Internal Revenue bulletin

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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2005–74, page 1153.

Employee relocation costs. This ruling addresses the tax treatment of costs an employer incurs in connection with three different home purchase programs the employer may offer to employees who are being relocated. Transactions under the three programs are analyzed to determine whether, based on the benefits and burdens of ownership of an employee's home, the transactions are treated for tax purposes as a sale of the home by the employee to the employer followed by a separate sale by the employer to a third party buyer, or as one sale by the employee to the third party buyer facilitated by the employer.

Rev. Rul. 2005–78, page 1157.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2006, will be 7 percent for overpayments (6 percent in the case of a corporation), 7 percent for underpayments, and 9 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 4.5 percent.

Notice 2005–90, page 1163.

This notice announces that Treasury and the Service intend to exercise regulatory authority under section 901(1)(3) of the Code not to apply the credit disallowance rules of section 901(1) to foreign withholding taxes on royalties received in "ordinary course" back-to-back computer software licensing arrangements. The notice solicits comments on the exception as well as related issues under sections 901(1) and 901(k).

Notice 2005–91, page 1164.

This notice informs taxpayers that guidance will be issued regarding the election to treat members of a family as a single S corporation shareholder provided in section 1361(c)(1) of the Code, which was created by the American Jobs Creation Act of 2004. Taxpayers may rely on guidance described in the notice until actual guidance is issued.

EMPLOYEE PLANS

REG–124988–05, page 1186.

Proposed regulations under section 412 of the Code provide guidance regarding mortality tables to be used in determining the current liability of a qualified defined benefit plan under section 412(l)(7). A public hearing is scheduled for April 19, 2006.

Notice 2005–92, page 1165.

Distributions; recontributions; loans; Katrina Emergency Tax Relief Act of 2005 (KETRA). This notice describes various aspects of sections 101 and 103 of KETRA. The notice addresses distributions, recontributions, 3-year ratable inclusions, 1-year inclusions and loans. The notice contains numerous examples of how these provisions work in the context of eligible retirement plans.

(Continued on the next page)

Actions Relating to Court Decisions is on the page following the Introduction.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Notice 2005–95, page 1172.

Plan amendments; retroactive annuity starting date; elective deferrals. This notice clarifies the interaction of the amendment timing deadlines for plans qualified under section 401(a) of the Code as set forth in Rev. Proc. 2005–66 with the deadlines set forth in various other published guidance. This notice also provides transitional relief from certain deadlines, thus giving sponsors, practitioners, and employers additional time to adopt those required amendments. Notices 2004–84 and 2005–5 modified.

ADMINISTRATIVE

Rev. Proc. 2005–77, page 1176.

This procedure amends the final withholding foreign partnership and withholding foreign trust agreements contained in Rev. Proc. 2003–64 by expanding the availability of simplified documentation, reporting and withholding procedures, which are currently available only if the withholding foreign partnership is a general partner of the partnership or the withholding foreign trust is a trustee of the trust. This procedure removes this relatedness requirement thus expanding the availability of the simplified procedures. This procedure also makes a conforming change to the portion of the Qualified Intermediary agreement contained in Rev. Proc. 2003–64. Rev. Proc. 2003–64 modified.

Rev. Proc. 2005–78, page 1177.

Optional standard mileage rates. This procedure announces 44.5 cents as the optional rate for deducting or accounting for expenses for business use of an automobile, 14 cents as the optional rate for use of an automobile as a charitable contribution, and 18 cents as the optional rate for use of an automobile as a medical or moving expense for 2006. Special rates apply to the charitable use of an automobile for the provision of relief related to Hurricane Katrina. The procedure also provides rules for substantiating the deductible expenses of using an automobile for business, moving, medical, or charitable purposes. Rev. Proc. 2004–64, as modified by Announcement 2005–71, superseded.

The IRS Mission

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

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are 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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Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. "Nonacquiescence" signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a "nonacquiescence" indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in the following decision:

Montgomery v. Commissioner,[1]
122 T.C. 1 (2004)

[1] Acquiescence relating to whether a taxpayer is barred from challenging the existence or amount of the underlying tax liability for a tax period in a collection due process hearing under I.R.C. section 6330 solely because the tax liability was reported on the taxpayer's tax return for that period.

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

Section 61.—Gross Income Defined

26 CFR 1.61–6: Gains derived from dealings in property.
(Also §§ 82, 1001; 1.82–1, 1.6045–4.)

Employee relocation costs. This ruling addresses the tax treatment of costs an employer incurs in connection with three different home purchase programs the employer may offer to employees who are being relocated. Transactions under the three programs are analyzed to determine whether, based on the benefits and burdens of ownership of an employee's home, the transactions are treated for tax purposes as a sale of the home by the employee to the employer followed by a separate sale by the employer to a third party buyer, or as one sale by the employee to the third party buyer facilitated by the employer.

Rev. Rul. 2005–74

ISSUE

Whether the transactions in the following situations are, for federal tax purposes, a sale of a home by an employee to an employer through the employer's agent, a relocation management company, followed by a separate sale of that home by the employer to a third party buyer, or one sale of the home from the employee to the third party buyer facilitated by the employer through the relocation management company.

FACTS

Situation 1

Company *X* enters into a contract with *Y*, a relocation management company, to provide relocation assistance, including a home purchase program, to employees of *X* whom *X* is relocating to new job sites. Under the contract, *Y* agrees to act as *X*'s agent in purchasing at fair market value the homes of employees who are being relocated and then selling the homes to third party buyers. *X* is liable for all costs incurred by *Y* in purchasing and selling the homes. *X* also is liable for any losses incurred by *Y* on the sale of any home, and is entitled to proceeds from the sale of a home in excess of the costs of purchasing the home. In no event will *X*, or *Y* as *X*'s agent, pay an employee any amount representing gain on the subsequent sale of the employee's home to a third party buyer. *X* agrees to pay *Y* a fee for performing these services on *X*'s behalf.

A is an employee of *X* that *X* is relocating to another job site. Pursuant to the contract with *X*, *Y* offers its services under the home purchase program to *A*. *A* chooses to use *Y*'s services and selects two appraisers from a list maintained by *Y*. Each appraiser prepares an appraisal of *A*'s home, and the appraisals are averaged to determine the fair market value price at which *Y* will offer to purchase the home.

The purchase price for *A*'s home determined under the appraisal process is \$500*x*. Under a proposed contract of sale, *Y* offers to purchase *A*'s home for \$500*x*. This offer remains open for 90 days. If *A* accepts *Y*'s offer by signing the contract of sale, the contract of sale requires *A* to vacate the home and deliver possession to *Y* within a specified period of time. If the amount of *Y*'s offer is less than the outstanding balance on *A*'s mortgage, the contract of sale requires *A* to pay the difference to *Y* at or before the closing of the sale. The contract of sale is not contingent or dependent in any way upon *Y*'s entering into a sales agreement with a subsequent third party buyer, or any other event associated with *Y*'s subsequent sale of the home, such as the buyer's qualification for financing or the settlement date. Under the contract of sale, *Y* is unconditionally obligated to pay the \$500*x* purchase price and may assume, take subject to, or otherwise become responsible for any outstanding mortgages, liens, and encumbrances. The contract provides that *Y* becomes unconditionally obligated for all maintenance, taxes, insurance, expenses, risks, losses, and costs associated with the home as of the "settlement date," that is, the later of the date of the contract of sale or the date *A* vacates the home and turns possession over to *Y*. If *A* fails to perform its obligations under the contract, *Y* may obtain damages or specific performance as a remedy. After the settlement date, *Y* holds itself out as the owner of the home to the general public. *Y* deals with mortgage holders, insurance companies, home maintenance companies, taxing jurisdictions, utility companies, real estate brokers, and other third parties in its own name.

At closing, *Y* pays *A* the value of the equity in the home (\$500*x* purchase price minus any mortgages, liens, or encumbrances assumed), plus any property tax prorations and other customary allocations (such as homeowner association dues). *Y* pays the settlement costs that are typically imposed on the buyer under local law. *A*, as grantor, transfers the home to *Y* by executing a deed to the property on which the name of the grantee is left blank (a "blank deed"). *Y* has the option of inserting its own name as grantee and recording the deed, or inserting the name of a third party buyer of the home from *Y* at the time *Y* closes the sale of the home to the third party buyer.

Y does not insert its name as grantee and does not record the deed. *Y* manages and maintains the property while listing the home for sale through a real estate broker that locates *B*, a third party buyer. *Y* sells the home to *B* for \$490*x*. *Y* inserts *B*'s name in the deed and conveys legal title to the home to *B*. Pursuant to the contract between *X* and *Y*, *X* pays *Y*'s fee and reimburses *Y* for any costs incurred and the \$10*x* loss on the sale of the home to *B*.

Situation 2

The facts are the same as in *Situation 1* except that the home purchase program provided for in *X*'s contract with *Y* also affords an "amended value option" to employees that are being relocated. In addition to receiving the appraised value offer from *Y*, an employee who exercises the amended value option may list the home with a real estate broker to market the home to other potential buyers. If the employee exercises the amended value option, the employee must select the broker from a list of qualified brokers maintained by *Y*. Any listing agreement entered into by the employee must include an "exclusion clause" that provides that no commission is earned by or due to the broker unless

a sale of the home to a third party buyer closes, and that a sale of the home to *Y* terminates the listing agreement without any commission being earned or due.

If a potential third party buyer makes an offer, the real estate broker refers the offer to *Y*. If *Y* determines that the offer is *bona fide* and exceeds *Y*'s earlier offer based on the appraisals, *Y* amends the contract of sale to match the third party buyer's offer. If the employee accepts the amended offer by signing the contract of sale, *Y* then enters into a new listing agreement with a real estate broker, customarily the broker previously selected by the employee, to market the home to a third party buyer, who may or may not be the same potential buyer who made the previous offer. The employee does not sign any contract, binder or other document with a third party buyer, nor does the employee accept any down payment, deposit, or earnest money from a third party buyer.

Y remits to *X* any proceeds received on the sale of the home to a third party buyer in excess of the purchase price paid to the employee for the home. In no event does *Y* or *X* transfer any part of the excess amount to the employee.

If the sale of the home by *Y* to the third party buyer does not close, the employee is not obligated under the contract of sale to refund any portion of the purchase price to *Y*. Nothing related to *Y*'s sale of the home to a third party buyer affects the employee's sale of the home to *Y*.

C is an employee of *X* whom *X* is relocating to another job site. In addition to receiving an appraised value offer from *Y* of $500*x*, *C* exercises the amended value option and lists the home with a qualified real estate broker. As a result of this listing, *C* obtains an offer for $520*x* from a third party buyer, *D*, and forwards the offer to *Y*. *Y* determines that the $520*x* offer is *bona fide* and amends its proposed contract of sale to match *D*'s offer. *C* accepts *Y*'s offer by signing the contract of sale at the amended price of $520*x*.

Y subsequently pays to *C* the value of the equity in the home based on the purchase price of $520*x*. Pursuant to the exclusion clause, *C*'s listing agreement with the real estate broker is terminated without any commission being earned or due. *Y* takes possession of the home and, pursuant to the contract of sale, becomes unconditionally obligated for all maintenance, taxes, insurance, expenses, risks, losses, and costs associated with the home. *C*, as grantor, transfers the home to *Y* by executing a blank deed to the property. *Y* leaves the name of the grantee blank and does not record this deed.

Y enters into a new listing agreement with the real estate broker and thereafter *Y* enters into a separate sales agreement with *D* for $520*x*. The sales agreement is made in *Y*'s name. *C* does not sign any contract, binder or other document with *D*. *Y*'s sale of the home to *D* closes. At closing, *D* pays $520*x* to *Y*, *Y* inserts *D*'s name on the deed as grantee, and the deed is recorded in *D*'s name.

Situation 3

The facts are the same as in *Situation 2*, except that *X* instead enters into a contract with *Z*, a relocation management company, to provide relocation assistance to employees whom *X* is relocating to new job sites. Under the home purchase program provided for in *X*'s contract with *Z*, employees may select an "amended value option" that has different terms and conditions than the amended value option offered by *Y* as described in *Situation 2*. Specifically, *Z*, acting as *X*'s agent, is not required to offer a higher, amended value for an employee's home, based on an offer from a prospective third party buyer located by the employee, unless and until *Z* enters into a sales contract with that third party buyer. In addition, the employee retains the right to approve or reject any offer or counter-offer made in the course of negotiations between *Z* and the third party buyer. Finally, the proceeds representing the higher amended value are distributed to the employee, and not to *X* or *Z*, only if and when the sale to the third party buyer closes.

E, an employee of *X*, receives an appraised value offer from *Z* of $500*x* for *E*'s home. *E* exercises *Z*'s amended value option and locates a prospective purchaser, *F*, who offers $510*x* for *E*'s home. *E* informs *Z* of *F*'s offer of $510*x*. *Z*, with *E*'s approval, agrees that *Z* will accept *F*'s offer and sell the home to *F* for $510*x* once *Z* purchases the home from *E*. *Z* subsequently enters into a contract to purchase the home from *E* for $510*x*. *Z* closes on the purchase of the home from *E* for $510*x* and receives a blank deed signed by *E*, as grantor. At the closing of the sale of the home to *F*, *Z* inserts *F*'s name on the deed as grantee, and the deed is recorded in *F*'s name. *Z* pays to *E* the value of the equity in the home based on the $510*x* sales price.

LAW

Section 61(a) of the Internal Revenue Code provides that except as otherwise provided in Subtitle A, gross income means all income from whatever source derived, including (but not limited to) compensation for services, including fees, commissions, fringe benefits, and similar items, and gains derived from dealings in property. *See generally* §§ 1.61–1, 1.61–2, and 1.61–6 of the Income Tax Regulations.

Section 82 provides that except as provided in § 132(a)(6), gross income includes (as compensation for services) any amount received or accrued, directly or indirectly, by an individual as a payment for or reimbursement of expenses of moving from one residence to another residence that is attributable to employment or self-employment. *See generally* § 1.82–1.

Section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in § 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in § 1011 for determining loss over the amount realized.

The examples in § 1.6045–4(r) illustrate the information reporting rules in § 1.6045–4 for real estate transactions. *Example* (2) in § 1.6045–4(r) describes a transaction in which an employee, *C*, who is being transferred by his employer, accepts an offer to purchase *C*'s home from *Y*, a corporation acting on behalf of the employer to facilitate the relocation of transferred employees. *C* transfers the home to *Y* for $250,000 by executing a deed to the property in blank and giving *Y* a power of attorney to dispose of the home. *C* also immediately vacates the home, whereupon *Y* duly pays all costs associated with the home and is entitled to all income from the home, including sales proceeds. Shortly thereafter, *Y* sells the residence to *D* and inserts *D*'s name in the deed previously executed by *C*. Thus, neither *Y* nor the employer ever becomes a record owner of the residence. *C*'s transfer of the residence to *Y* is a sale of reportable

real estate as defined in § 1.6045–4(b)(2) and is subject to information reporting under § 1.6045–4. However, information reporting of the subsequent sale to *D* is not required because *Y*, as a corporation, is a transferor that is exempt from information reporting under § 1.6045–4(d)(1).

The issue is whether the transactions described in *Situation 1*, *Situation 2*, and *Situation 3* involve two separate sales of the home, a first sale from the employee to the employer and a second sale from the employer to a third party buyer, or only one sale from the employee to the third party buyer. A sale occurs for federal tax purposes upon the transfer of the benefits and burdens of ownership. Whether the benefits and burdens of ownership have been transferred is a question of fact that must be ascertained from the intention of the parties as evidenced by their written agreements read in the light of attending facts and circumstances. *See Grodt & McKay Realty, Inc. v. Commissioner*, 77 T.C. 1221, 1237 (1981); *see also Major Realty v. Commissioner*, 749 F.2d 1483, 1486 (11th Cir. 1985).

Courts consider the following factors in determining whether the benefits and burdens of ownership are transferred: (1) whether legal title passes; (2) how the parties treat the transaction; (3) whether an equity was acquired in the property; (4) whether the contract creates a present obligation on the seller to execute and deliver a deed and a present obligation on the purchaser to make payments; (5) whether the right of possession is vested in the purchaser; (6) which party pays the property taxes; (7) which party bears the risk of loss or damage to the property; and (8) which party receives the profits from the operation and sale of the property. *Grodt and McKay*, 77 T.C. at 1237–1238.

Although the passage of legal title is a significant factor, it is not determinative. *Yelencsics v. Commissioner*, 74 T.C. 1513, 1527 (1980); *Deyoe v. Commissioner*, 66 T.C. 904, 910 (1976). Thus, for federal tax purposes a sale occurs upon the transfer of the benefits and burdens of ownership rather than upon the satisfaction of the technical requirements for passage of legal title under state law. *Derr v. Commissioner*, 77 T.C. 708, 723 (1981); *Yelencsics*, 74 T.C. at 1527. *See also* Rev. Rul. 72–252, 1972–1 C.B. 193 (sale occurs when the purchaser executes an unconditional contract to purchase property, acquires possession, and assumes other burdens and privileges of ownership, even if the deed to the property is delivered later). Consequently, the execution of a contract to purchase real estate in the future generally is not a realization event. *See* Rev. Rul. 69–93, 1969–1 C.B. 139.

In *Amdahl Corp. v. Commissioner*, 108 T.C. 507 (1997), the court considered whether payments made by the taxpayer to relocation service companies to assist in the disposition of homes of relocated employees were deductible as ordinary expenses or as capital losses. The Internal Revenue Service contended that the taxpayer acquired ownership of the employees' homes, that the homes were capital assets when resold by the taxpayer, and that the payments were deductible only as capital losses. The taxpayer argued that the payments were a form of employee benefits deductible as ordinary and necessary business expenses.

On the facts presented in *Amdahl*, the court agreed with the taxpayer that it did not acquire ownership of the employees' homes, and that the payments were deductible as ordinary expenses. The court found that the most significant factors of the taxpayer's relocation service programs demonstrated that the employees retained the benefits and burdens of ownership of the homes. In particular, the court emphasized that the relocating employees retained legal title to their homes through the use of blank deeds; that it was not the intent of the parties to transfer ownership of the homes, as evidenced by the fact the taxpayer did not generally hold itself out to the public as the purchaser or owner of the homes; that the contracts of sale did not create present obligations on the relocation service companies and the employees to effect a transfer of ownership of the homes; and that the employees received the profits from the subsequent sales of the homes by the taxpayer to third parties.

ANALYSIS

Pursuant to a benefits and burdens analysis of the transactions in *Situation 1*, there are two separate sales of the home. Under the contract of sale between *A* and *Y*, *A* is obligated to, and does, deliver a deed to the home to *Y*. This delivery is accomplished whether *A* delivers to *Y* at closing a deed with *Y*'s name inserted as grantee or a blank deed. *See* § 1.6045–4(r), *Example* (2).

In *Situation 1*, the delivery of the deed by *A* to convey ownership of the home to *Y* is accompanied by *Y*'s corresponding obligation to pay the purchase price of the home to *A*. On the settlement date, *Y* acquires all of *A*'s interest and equity in the home.

A and *Y* treat the transaction as a sale of the home from *A* to *Y*. In this regard, the contract provides that *A* is selling, and *Y* is buying, the home. After purchasing the home, *Y* deals with mortgage holders, insurance companies, home maintenance companies, taxing jurisdictions, utility companies, real estate brokers, and other members of the public in its own name and as if it were the owner of the home. If any sales agreement subsequently entered into by *Y* with a third party buyer does not close, *Y* remains responsible for all costs and risks attributable to ownership.

After settlement, *Y* has the sole right to possession of the home. *Y* also agrees to pay real property and other taxes with respect to the home. *Y* will sustain any loss or benefit from any gain if the consideration to *A* (payments and any assumed liabilities) is greater or less than the amount received by *Y* from a sale to a third party buyer. *Y* has the risk of loss due to casualty and is responsible for insuring the home and making any and all necessary repairs to the home.

By virtue of the agreement between *X* and *Y*, *Y* is acting as *X*'s agent. The application of the above factors establishes that the benefits and burdens of ownership of the home transfer from *A* to *X*, whether or not a blank deed is sufficient under local law to transfer legal title to the home to *X*. While the reason *X* acquires the benefits and burdens of ownership of the home is to facilitate *A*'s relocation, this motivation is not incompatible with concluding that *X* acquired the property. *See* Rev. Ruls. 72–339, 1972–2 C.B. 31, and 82–204, 1982–2 C.B. 192; § 1.6045–4(r), *Example* (2).

Thus, in *Situation 1*, *A* sells the home to *X* for \$500*x*. Any gain on the sale of the home is realized by *A* under § 1001 and § 61(a)(3), and none of this amount constitutes taxable compensation to *A* under § 61(a)(1). *X*, acting through *Y*, separately sells the home to *B* for \$490*x*.

Applying the benefits and burdens analysis to the transactions in *Situation 2*, the fact that *C* exercises the amended value option does not alter the conclusion that there are two separate sales of the home. For the reasons discussed with respect to the sale of the home from *A* to *X* in *Situation 1*, the benefits and burdens of ownership also transfer from *C* to *X* in the sale of the home in *Situation 2*. Furthermore, the sale of *C*'s home to *X* is not contingent in any respect on *X*'s sale of the home to *D* or any other third party buyer. *X*'s agent, *Y*, is identified as the seller in the sales agreement with *D*, and under no circumstances is *C* entitled to any part of any gain realized if the consideration received by *X* on the sale of the home to *D* exceeds the consideration paid to *C* by *X* on the purchase of the home.

Thus, in *Situation 2*, *C* sells the home to *X* for $520*x*. Any gain on the sale of the home is realized by *C* under § 1001 and § 61(a)(3), and none of this amount constitutes taxable compensation to *C* under § 61(a)(1). *X* separately sells the home to *D* for $520*x*.

However, applying the benefits and burdens analysis to the transactions in *Situation 3* yields a different result. In *Situation 3* the amended value option offered under the contract between *X* and *Z*, the relocation company acting as *X*'s agent, differs significantly from the option described in *Situation 2*. The sale of *E*'s home to *Z*, acting for *X*, at the higher amended price is contingent on *Z* entering into a contract at that price with *F*, the third party buyer located by *E*. In addition, *E* retains the right to approve any offer or counter-offer in any negotiations between *Z* and *F*. Therefore, although *X*, through its agent *Z*, is burdened with some costs in connection with the transaction, *E* effectively retains the rights to negotiate the final contract and obtain the benefit of a higher price for the property. *See Amdahl*, 108 T.C. at 523 (employer "did not acquire beneficial ownership of the residences of its relocating employees").

Thus, in *Situation 3* the transaction is, for federal tax purposes, one sale of the home from *E* to *F* for $510*x*, facilitated by *X* through its agent *Z*. Any gain on the sale of the home is realized by *E* under § 1001 and § 61(a)(3). Any expenses paid by *X*, directly or through its agent *Z*, with respect to the home, including maintenance costs, taxes, insurance, losses, and other costs associated with the home would be considered paid on behalf of *E* by virtue of *E*'s employment with *X*. Consequently, any such amounts paid by *X* constitute taxable compensation to *E* under § 61(a)(1).

The conclusions in this revenue ruling with respect to *Situation 1* and *Situation 2* apply to circumstances involving substantially similar relocation service programs. The Service will follow the *Amdahl* opinion in circumstances involving relocation service programs that are substantially similar to the programs described in that opinion, and in other circumstances, such as those described in *Situation 3*, which indicate that the benefits and burdens of ownership of the employees' homes are not transferred to the employer. Consistent with the holdings in *Situation 1* and *Situation 2*, the use of a blank deed will not, by itself, cause a program to be treated as substantially similar to the programs described in *Amdahl*.

HOLDINGS

The transactions in *Situation 1* and *Situation 2* are, for federal tax purposes, sales of a home by an employee to an employer through the employer's agent, a relocation management company, followed by a separate sale of that home by the employer to a third party buyer. The transaction in *Situation 3* is, for federal tax purposes, one sale of a home by an employee to a third party buyer facilitated by the employer through the relocation management company.

DRAFTING INFORMATION

The principal author of this revenue ruling is Edward C. Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Schwartz at (202) 622–4960 (not a toll-free call).

Section 62.—Adjusted Gross Income Defined

26 CFR 1.62–2: Reimbursements and other expense allowance arrangements.

Rules are provided under which a reimbursement or other expense allowance arrangement for the cost of operating an automobile for business purposes will satisfy the requirements of section 62(c) of the Code as to business connection, substantiation, and returning amounts in excess of expenses. See Rev. Proc. 2005-78, page 1177.

Section 82.—Reimbursement for Expenses of Moving

26 CFR 1.82–1: Payments for or reimbursements of expenses of moving from one residence to another residence attributable to employment or self-employment.

In the transactions addressed in the ruling, is there a sale of a home by an employee to an employer followed by a separate sale of the home by the employer to a third party buyer, or one sale of the home from the employee to the third party buyer? See Rev. Rul. 2005-74, page 1153.

Section 162.—Trade or Business Expenses

26 CFR 1.162–17: Reporting and substantiation of certain business expenses of employees.

Rules are provided for substantiating the amount of a deduction for an expense for business use of an automobile. See Rev. Proc. 2005-78, page 1177.

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

26 CFR 1.170A–1: Charitable, etc., contributions and gifts; allowance of deduction.

Rules are provided for substantiating the amount of a deduction for an expense for charitable use of an automobile. See Rev. Proc. 2005-78, page 1177.

Section 213.—Medical, Dental, etc., Expenses

26 CFR 1.213–1: Medical, dental, etc., expenses.

Rules are provided for substantiating the amount of a deduction or an expense for use of an automobile to obtain medical services. See Rev. Proc. 2005-78, page 1177.

Section 217.—Moving Expenses

26 CFR 1.217–2: Moving expenses.

Rules are provided for substantiating the amount of a deduction or an expense for use of an automobile as part of a move. See Rev. Proc. 2005-78, page 1177.

Section 274.—Disallowance of Certain Entertainment, etc., Expenses

26 CFR 1.274–5: Substantiation requirements.

Rules are provided for substantiating the amount of ordinary and necessary business expenses of an employee for automobile expenses when a payor provides a mileage allowance for the expenses. Rules are also provided for employees and self-employed individuals to use in substantiating a trade or business deduction for automobile expenses. See Rev. Proc. 2005-78, page 1177.

Section 1001.—Determination of Amount of and Recognition of Gain or Loss

In the transactions addressed in the ruling, is there a sale of a home by an employee to an employer followed by a separate sale of the home by the employer to a third party buyer, or one sale of the home from the employee to the third party buyer? See Rev. Rul. 2005-74, page 1153.

Section 1016.—Adjustments to Basis

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

Rules are provided for reduction of basis for business use of an automobile under either the optional standard mileage rate method or a mileage allowance under a reimbursement or other expense allowance arrangement. See Rev. Proc. 2005-78, page 1177.

Section 6045.—Returns of Brokers

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

In the transactions addressed in the ruling, is there a sale of a home by an employee to an employer followed by a separate sale of the home by the employer to a third party buyer, or one sale of the home from the employee to the third party buyer? See Rev. Rul. 2005-74, page 1153.

Section 6621.—Determination of Rate of Interest

26 CFR 301.6621–1: Interest rate.

Interest rates; underpayments and overpayments. The rate of interest determined under section 6621 of the Code for the calendar quarter beginning January 1, 2006, will be 7 percent for overpayments (6 percent in the case of a corporation), 7 percent for underpayments, and 9 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding $10,000 will be 4.5 percent.

Rev. Rul. 2005–78

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 for interest computations made after December 31, 1994. 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 such 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 such taxable year also applies during the first 15 days of the fourth month following such taxable year.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 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 October 2005 is 4 percent. Accordingly, an overpayment rate of 7 percent (6 percent in the case of a corporation) and an underpayment rate of 7 percent are established for the calendar quarter beginning January 1, 2006. The overpayment rate for the portion of a corporate overpayment exceeding $10,000 for the calendar quarter beginning January 1, 2006, is 4.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning January 1, 2006, is 9 percent. These rates apply to amounts bearing interest during that calendar quarter.

The 7 percent rate also applies to estimated tax underpayments for the first calendar quarter in 2006 and for the first 15 days in April 2006.

Interest factors for daily compound interest for annual rates of 4.5 percent, 6 percent, 7 percent, and 9 percent are published in Tables 14, 17, 19, and 23 of Rev. Proc. 95–17, 1995–1 C.B. 556, 568, 571, 573, and 577.

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 Crystal Foster of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue ruling, contact Ms. Foster at (202) 622–7198 (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
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

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 — Dec. 31, 1998 — Continued

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. TABLE	PG
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. TABLE	PG
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
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

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

	OVERPAYMENTS			UNDERPAYMENTS		
	RATE	1995–1 C.B. TABLE	PG	RATE	1995–1 C.B. 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
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

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

TABLE OF INTEREST RATES FOR
LARGE CORPORATE UNDERPAYMENTS

FROM JANUARY 1, 1991 — PRESENT – Continued

	RATE	1995–1 C.B. TABLE	PG
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
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

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

Part III. Administrative, Procedural, and Miscellaneous

Credit for Certain Foreign Withholding Taxes

Notice 2005–90

PURPOSE

This notice provides guidance regarding the application of section 901(l) of the Internal Revenue Code (Code). In particular, it addresses section 901(l)(1)(B), which disallows a foreign tax credit for certain withholding taxes on items of income or gain to the extent the recipient of the item is under an obligation to make related payments with respect to positions in substantially similar or related property. The Treasury Department and the Internal Revenue Service (IRS) expect to issue regulations that incorporate the guidance provided in this notice.

BACKGROUND

Section 832 of the American Jobs Creation Act of 2004 (P.L. 108–357) (the Act) added new subsection (l) to section 901 of the Code. Section 901(l) generally disallows a foreign tax credit for foreign withholding tax on any item of income (other than dividends) or gain with respect to property if (a) the recipient of the item has not held the property for more than 15 days (within a 31-day testing period), exclusive of periods during which the recipient is protected from risk of loss, or (b) the recipient is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property. Section 901(l)(3) provides that the Secretary may by regulation provide that section 901(l)(1) does not apply to property where such application is not necessary to carry out the purposes of section 901(l). Section 901(l) is effective for amounts that are paid or accrued after November 21, 2004, the date which is 30 days after the date of enactment of the Act. Section 901(l) provides a rule similar to section 901(k), enacted in 1997, which disallows a foreign tax credit for certain foreign taxes paid with respect to certain dividends.

DISCUSSION

The Treasury Department and the IRS remain concerned about transactions that involve inappropriate foreign tax credit results. In this regard, the Treasury Department and the IRS believe that the credit disallowance rules of section 901(l) are important tools in preventing transactions designed for tax purposes to separate foreign taxes from the related foreign income. The language of section 901(l) and its legislative history, however, make clear that the Treasury Department and the IRS are authorized to exercise regulatory authority to prevent application of the general rule of section 901(l) in appropriate cases.

The Treasury Department and the IRS have become aware of certain business arrangements involving computer software licensing in which application of the credit disallowance rules of section 901(l) is not necessary to carry out the purposes of section 901(l). Under a typical business arrangement, a domestic corporation (X) licenses rights to a computer program (the master license agreement) to another domestic corporation (Y) for use in computers and similar and related equipment that Y employs in connection with its business or that it manufactures and markets to customers. Y conducts its business operations through various domestic and foreign subsidiaries, sublicensing rights to X's computer program to the subsidiaries as permitted under the terms and conditions of the master license agreement. X licenses the computer program to Y rather than directly to each of Y's subsidiaries because X wishes to centralize its customer relationship with Y and minimize administrative burdens, minimize its exposure to the credit risk and local risk of Y's foreign subsidiaries, and protect its rights in the computer program. Pursuant to the master license agreement, Y makes payments to X when (a) Y or Y's subsidiaries reproduce the licensed computer program on computers and other equipment used by Y or Y's subsidiaries or (b) Y or Y's subsidiaries reproduce and distribute X's computer program on computers and other equipment manufactured and marketed to customers by Y or Y's subsidiaries. Pursuant to the sublicense agreements, Y's subsidiaries make payments to Y when they reproduce X's computer program on computers and other equipment that they use or when they reproduce and distribute X's computer program on computers and other equipment that they manufacture and market to customers. Foreign gross-basis withholding taxes may be imposed with respect to the payments by Y's foreign subsidiaries to Y.

As noted, section 901(l) generally disallows a foreign tax credit for foreign withholding tax on any item of income (other than dividends) or gain with respect to property if the recipient is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property, and section 901(l)(3) provides that the Secretary may by regulation provide that section 901(l)(1) does not apply to property where such application is not necessary to carry out the purposes of section 901(l).

Pursuant to section 901(l)(3), the Treasury Department and the IRS have determined that the application of section 901(l) to foreign withholding taxes imposed on payments in a back-to-back computer program licensing arrangement in the ordinary course of the licensor's and licensee's respective trades or businesses is not necessary to carry out the purposes of section 901(l). For this purpose, a "back-to-back computer program licensing arrangement" is a transaction or series of transactions in which (a) a domestic corporation (the master licensor) transfers a copyright right in a computer program or a copy of the computer program (as those terms are defined in Treas. Reg. §1.861–18(c) and (f)) to a domestic corporation (the head licensee), and (b) the head licensee transfers a copyright right in the computer program or a copy of the computer program to one or more of its affiliates, as permitted under the terms and conditions of the master license agreement, for use in computers and similar and related equipment manufactured and marketed by the affiliate (in the case of a transfer of a copyright right) or for the affiliate's own use (in the case of a transfer of a copy of the computer program). For this purpose, an affiliate is any member of the head licensee's affiliated group as defined in section 1504(a),

except that foreign corporations and section 936 corporations meeting the ownership requirements of section 1504(a) are also included in the affiliated group.

For purposes of this notice, a back-to-back computer program licensing arrangement will be in the ordinary course of the licensor's and licensee's respective trades or businesses if (1) the arrangement is consistent with normal business practices of the master licensor, independent of tax considerations, such as maintaining a centralized customer relationship with its licensee and minimizing administrative burdens and commercial risks; (2) the master licensor or one or more members of its affiliated group (as defined in section 1504(a)) is regularly engaged in the business of selling, leasing, or licensing computer programs; and (3) in the case of each transfer of a copyright right in the computer program or a copy of the computer program to an affiliate of the head licensee, where the payments with respect to such transfer are subject to foreign withholding taxes, the affiliate uses the copyright rights or the copy of the computer program in a trade or business within the meaning of Treas. Reg. §1.367(a)–2T(b)(2) and (b)(5).

Pursuant to section 901(l)(3), the Treasury Department and the IRS expect to issue regulations providing that section 901(l)(1)(B) will not apply to disallow a credit for foreign gross-basis withholding taxes imposed on income or gain with respect to back-to-back computer program licensing arrangements described in the preceding two paragraphs. In addition, the Treasury Department and the IRS are considering issuing regulations providing that section 901(l)(1)(B) generally will not apply to payments between members of the same consolidated group. The Treasury Department and the IRS also contemplate issuing regulations under section 901(k) and (l) addressing issues on which comments are solicited below.

EFFECTIVE DATE

The exception from the application of section 901(l)(1)(B) described in this notice is effective for amounts that are paid or accrued after November 21, 2004 (the effective date of section 901(l)). Until regulations incorporating the guidance set forth in this notice are issued, taxpayers may rely on the guidance contained in this notice.

REQUEST FOR COMMENTS AND CONTACT INFORMATION

The Treasury Department and the IRS request comments concerning the exception to section 901(l)(1)(B) described in this notice and any additional issues that should be addressed by regulations. In particular, comments are requested on (a) whether the licensing exception should apply in the case of sublicenses to related parties that are not corporations (and which test of "relatedness" should apply), (b) the extent to which the licensing exception should apply if the master licensor or head licensee is a foreign corporation, (c) other types of licensing arrangements and types of property that should be covered by the licensing exception, (d) what restrictions should apply as part of the ordinary course of a trade or business requirement, and (e) other types of transactions that are not within the purposes of section 901(l) and the reasons for excluding such transactions from the application of section 901(l).

In addition, comments are requested on the definitions of "related payments" and "positions in substantially similar or related property" for purposes of section 901(k) and (l). In particular, comments are requested on the application of section 901(k) where the recipient of a dividend is obligated to make payments under an arrangement where such payments reflect not only the amount of the dividend but also other factors, such as changes in the value of the dividend-paying stock, dividend performance or changes in the value of a portfolio of stocks, or obligations under a debt instrument, annuity, or insurance contract. Finally, comments are requested on how regulations should address the effect of hedging transactions (including hedges of risk with respect to interest rate or currency fluctuations and credit risk) on the holding period and related payment rules of section 901(k) and (l).

Written comments may be submitted to the Office of Associate Chief Counsel (International), Attention: Ginny Chung (Notice 2005–90), CC:INTL:3, Internal Revenue Service, 1111 Constitution Avenue, NW, IR–4555, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to *Notice.comments@irscounsel.treas.gov*. Comments will be available for public inspection and copying. For further information regarding this notice, contact Ms. Chung of the Office of Associate Chief Counsel (International) at (202) 622–3850 (not a toll-free call).

S Corporation Family Shareholder Election

Notice 2005–91

PURPOSE

The purpose of this notice is to inform taxpayers that Treasury and the Internal Revenue Service intend to issue future guidance regarding the election under § 1361(c)(1)(D) of the Internal Revenue Code, which allows members of a family to be treated as a single S corporation shareholder (hereinafter, the election). The election was created by § 231 of the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418 (the Act), which was enacted on October 22, 2004. The guidance will provide that the election is made in a manner similar to that described in this notice. Until such guidance is issued, taxpayers may rely on this notice.

BACKGROUND

Section 231 of the Act allows any family member to make an election under new § 1361(c)(1)(D) of the Internal Revenue Code to treat all members of the family as one shareholder of an S corporation for purposes of determining the number of shareholders of the corporation. The election is relevant only to the determination of whether the corporation has no more than 100 shareholders as required under §1361(b)(1)(A) and has no impact on any other existing requirement for qualification as an S corporation.

The term "members of the family" is defined in §1361(c)(1)(B) to include (i) the common ancestor, (ii) the lineal descendants of the common ancestor, and (iii) the spouses (or former spouses) of the lineal descendants or of the common ancestor. The common ancestor may not be more than six generations removed from

the youngest generation of shareholders who would be members of the common ancestor's family (but for the six-generation limit for identifying the common ancestor). This test is applied as of the later of the effective date of § 1361(c)(1), as amended by the Act, or the time the S corporation election under § 1362(a) (the S corporation election) is made. The election may be made (except as provided in Treasury regulations) by any member of the family. The election does not affect the requirement under § 1362(a)(2) that an S corporation election must be consented to by all shareholders, whether or not "members of the family," who are shareholders at the time of the S corporation election.

The election may be made for taxable years of the S corporation beginning after December 31, 2004. The election will be effective as of the first day of the S corporation's taxable year identified in the election as the first taxable year of the corporation for which the election is effective, and shall remain in effect until terminated as provided in regulations prescribed by the Secretary.

FAMILY SHAREHOLDER ELECTION

A member of the family who is (or is treated under § 1361 and the regulations thereunder as) a shareholder of the S corporation may make the election. The election is made by notifying the corporation to which the election applies. The notification shall identify by name the member of the family making the election, the "common ancestor" of the family to which the election applies, and the first taxable year of the corporation for which the election is to be effective.

For purposes of identifying the common ancestor (who does not have to be alive at the time the election is made) any spouse or former spouse of the common ancestor will be treated as being in the same generation as the common ancestor, and any spouse or former spouse of a lineal descendant of the common ancestor will be treated as being in the same generation as the lineal descendant to whom that spouse is or was married.

For purposes of the election, the estate of a deceased member of the family will be considered to be a member of the family during the period in which the estate, or a trust described in § 1361(c)(2)(A)(iii), holds stock in the S corporation.

Additionally, for purposes of the election, the members of the family will include:

(1) Each potential current beneficiary of an electing small business trust (ESBT) who is a member of the family,

(2) The income beneficiary of a qualified subchapter S trust (QSST) who makes the QSST election, if that income beneficiary is a member of the family,

(3) Each beneficiary of a trust who is a member of the family, if the trust was created primarily to exercise the voting power of stock transferred to it,

(4) The member of the family for whose benefit a trust described in § 1361(c)(2)(A)(vi) was created,

(5) The deemed owner of a trust treated as wholly owned under subpart E of Part I of subchapter J of Chapter 1 of Subtitle A of the Internal Revenue Code, if that deemed owner is a member of the family, and

(6) The owner of an entity disregarded as an entity separate from its owner under § 301.7701–3 of the Procedure and Administration Regulations, if that owner is a member of the family.

If a corporation has two or more elections in effect and the members of one family for which the election has been made (the inclusive family) include all the members of another family for which the election was also made (the subsumed family), then the members of the inclusive family will be counted as one shareholder for purposes of § 1361(b)(1)(A) as long as the inclusive family's election is in effect, and the members of the subsumed family will not be counted as a separate and additional shareholder.

The election will be effective as of the first day of the corporation's taxable year designated by the shareholder making the election. Any election will remain in effect until terminated as provided in regulations.

Taxpayers may have already taken certain actions in order to make this election by various forms of notification to the corporation or to the IRS. In order for the election to be effective for taxable years beginning after December 31, 2004, taxpayers will need to provide the information described in this guidance to the corporation (to the extent not already provided to the corporation).

The corporation is required to keep records in accordance with § 6001 and the regulations thereunder.

The principal author of this notice is Bradford R. Poston of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Bradford R. Poston at (202) 622–3060 (not a toll-free call).

Hurricane Katrina Relief Under Sections 101 and 103 of the Katrina Emergency Tax Relief Act of 2005

Notice 2005–92

PURPOSE

This notice provides guidance relating to the application of sections 101 and 103 of the Katrina Emergency Tax Relief Act of 2005, P.L. 109–73 (KETRA) for qualified individuals and eligible retirement plans. KETRA was enacted on September 23, 2005. Under section 101 of KETRA, qualified individuals receive favorable tax treatment with respect to distributions from eligible retirement plans that are qualified Hurricane Katrina distributions (Katrina distributions). A Katrina distribution is not subject to the 10% additional tax under § 72(t) of the Code (including the 25% additional tax under § 72(t)(6) for certain distributions from SIMPLE IRAs), is generally includible in income over a 3-year period, and, to the extent the distribution is eligible for tax-free rollover treatment and is contributed to an eligible retirement plan (recontributed) within a 3-year period, will not be includible in income. Section 103 of KETRA increases the allowable plan loan amount under § 72(p) of the Code and permits a suspension of payments for plan loans outstanding on or after August 25, 2005, that are made to qualified individuals.

BACKGROUND

Under § 402(c)(8) of the Code, an eligible retirement plan includes an individual retirement arrangement (IRA) under § 408(a) or (b), a qualified plan under § 401(a), an annuity plan under § 403(a), a section 403(b) plan, and a

governmental deferred compensation plan under § 457(b). Distributions from these plans are generally includible in the distributee's gross income in the year of the distribution. For example, for qualified plans, § 402(a) provides that any amount actually distributed to a distributee is taxable to the distributee in the taxable year of the distribution under § 72. Similar rules exist for section 403(b) plans under § 403(b)(1), for governmental section 457(b) plans under § 457(a), and for IRAs under § 408(d)(1).

Section 402(f) provides that a plan is required to provide a distributee, within a reasonable period of time before an eligible rollover distribution is made, with a written explanation of the distributee's rollover rights and the tax and other potential consequences of the distribution or rollover.

Section 402(c)(4) provides that any distribution of all or a portion of the balance to the credit of an employee under a qualified plan is an eligible rollover distribution with certain exceptions. These exceptions include substantially equal periodic payments over a specified period of at least 10 years, or for the life or the life expectancy of the employee (or the employee and the employee's designated beneficiary); minimum distributions required under § 401(a)(9); and any distribution that is made upon the hardship of an employee. This same definition of eligible rollover distributions applies to distributions from section 403(b) plans under § 403(b)(8) and governmental section 457(b) plans under § 457(e)(16). Generally, any distribution from an IRA is eligible for rollover except a required minimum distribution or certain distributions from inherited IRAs.

Under § 401(a)(31), if a distributee elects to have an eligible rollover distribution paid directly to an eligible retirement plan and specifies the eligible retirement plan to receive the distribution, a qualified plan must pay the distribution to that eligible retirement plan in a direct rollover. Similar rules apply to section 403(b) plans under § 403(b)(10) and governmental section 457(b) plans under § 457(d)(1).

Q&A–14 of §1.401(a)(31)–1 of the Income Tax Regulations provides that if a plan accepts an invalid rollover contribution, the contribution will be treated, for purposes of applying the qualification requirements to the receiving plan, as if it were a valid rollover contribution, if two conditions are satisfied. First, when accepting the amount from the employee as a rollover contribution, the plan administrator of the receiving plan reasonably concludes that the contribution is a valid rollover contribution. Second, if the plan administrator later determines that the rollover contribution was an invalid rollover contribution, any amount attributable to the invalid rollover contribution (including earnings) must be distributed to the employee within a reasonable amount of time after the determination.

Under § 402, if an eligible rollover distribution is contributed to an eligible retirement plan in a direct rollover or within 60 days from the date of distribution as a rollover contribution, the amount rolled over is not includible in the distributee's gross income.

Section 72(t)(1) imposes an additional tax on early distributions from eligible retirement plans. In general, this additional tax is equal to 10% of the portion of the distribution that is includible in income. For any amount distributed from a SIMPLE IRA during the 2-year period described in § 72(t)(6), the rate of the additional tax is increased from 10% to 25%. Section 72(t)(2) provides a number of exceptions to this additional tax, including, for example, exceptions for distributions made on or after the employee attains age 59½, distributions made to a beneficiary on or after the employee's death, distributions made because of the employee's disability, and distributions that are a part of substantially equal periodic payments made over the employee's life or life expectancy.

Section 401(k)(2)(B)(i) generally provides that amounts attributable to elective contributions under a qualified cash or deferred arrangement may not be distributable to participants or beneficiaries earlier than severance from employment, death or disability, plan termination, or attainment of age 59½. This same restriction applies to any amount attributable to qualified nonelective contributions and qualified matching contributions under qualified cash or deferred arrangements. An amount equal to the dollar amount of elective contributions can generally be distributed upon hardship of the employee. Parallel rules apply to custodial accounts under § 403(b)(7)(A)(ii), to annuity contracts under § 403(b)(11), and to governmental section 457(b) plans under § 457(d)(1)(A).

Section 72(p) imposes certain requirements relating to plan loans. Unless these requirements are satisfied, an amount received by a participant as a loan is treated as having been received as a distribution from the plan (deemed distribution). Deemed distributions are includible in income and are subject to the 10% additional tax under § 72(t), unless an exception applies.

Under § 72(p)(2)(A), a plan loan (when added to the outstanding balance of all other loans outstanding) must not exceed the lesser of (1) $50,000 reduced by the excess of the highest outstanding balance of loans from the plan during the 1-year period ending on the day before the date on which the loan is made over the outstanding balance of loans from the plan on the date that the loan is made or (2) the greater of $10,000 or one-half of the present value of the participant's nonforfeitable accrued benefit under the plan. Section 72(p)(2)(B) provides that a loan must be repaid within 5 years. However, an exception to the 5-year repayment rule applies for loans used to acquire any dwelling unit that will be used (determined at the time the loan is made) as the participant's principal residence. Section 72(p)(2)(C) requires substantially level amortization of a plan loan (with payments not less frequently than quarterly) over the term of the loan.

Q&A–10(a) of § 1.72(p)–1 of the regulations provides that the failure to make any installment payment when due, in accordance with the terms of a loan, violates § 72(p)(2)(C) and, accordingly, results in a deemed distribution at the time of such failure. However, the plan administrator may allow a cure period and § 72(p)(2)(C) will not be considered to have been violated if the installment payment is made not later than the end of the cure period, which period cannot continue beyond the last day of the calendar quarter following the calendar quarter in which the required installment payment was due. If there is a failure to pay the installment payments required under the terms of the loan (taking into account any cure period allowed under Q&A–10(a)), then the amount of the deemed distribution equals the entire outstanding balance of the loan (including accrued interest) at the time of such failure.

SECTION 1: QUALIFIED HURRICANE KATRINA DISTRIBUTIONS

A. *Special tax treatment for Qualified Hurricane Katrina distributions.*

Section 101 of KETRA provides for special tax treatment for a Katrina distribution. Section 101 of KETRA provides an exception to the 10% additional tax under § 72(t) of the Code (including the 25% additional tax under § 72(t)(6) for certain distributions from SIMPLE IRAs), allows the distribution to be included in income ratably over 3 years, and provides that the distribution will be treated as though it were paid in a direct rollover to an eligible retirement plan if the distribution is eligible for tax-free rollover treatment and is recontributed to an eligible retirement plan within 3 years of the date of the distribution. Section 101 of KETRA also permits special treatment for Katrina distributions under employer retirement plans, as described in section 2 of this notice.

B. *Definition of qualified individual.*

For purposes of this notice, a qualified individual is an individual whose principal place of abode on August 28, 2005, is located in the Hurricane Katrina disaster area as defined in section 2(1) of KETRA and who has sustained an economic loss by reason of Hurricane Katrina. For purposes of the relief provided under KETRA, the term "Hurricane Katrina disaster area" as set forth in section 2(1) means the entire states of Louisiana, Mississippi, Alabama, and Florida.[1]

C. *Definition of Katrina distribution.*

Section 101(d)(1) of KETRA defines a Katrina distribution as any distribution from an eligible retirement plan made on or after August 25, 2005, and before January 1, 2007, to a qualified individual. Section 101(b) of KETRA limits the amount of distributions that can be treated as Katrina distributions to no more than $100,000.

A qualified individual is permitted to designate a distribution described above as a Katrina distribution. This designation is permitted to be made with respect to any distribution that would meet the requirements of a Katrina distribution without regard to whether the distribution was on account of Hurricane Katrina. Thus, periodic payments and required minimum distributions received by a qualified individual from an eligible retirement plan on or after August 25, 2005, and before January 1, 2007, are permitted to be treated as Katrina distributions. Similarly, any distribution received by a qualified individual as a beneficiary can be treated as a Katrina distribution. In addition, a reduction or offset of a participant's account balance in order to repay a plan loan, as described in Q&A–9(b) of § 1.402(c)–2 of the regulations, is permitted to be treated as a Katrina distribution. However, any amount described in Q&A–4 of §1.402(c)–2 of the regulations is not permitted to be treated as a Katrina distribution. Thus, the following amounts are not Katrina distributions: corrective distributions of excess contributions under § 415, excess elective deferrals under § 402(g), excess contributions under § 401(k), and excess aggregate contributions under § 401(m); loans that are treated as deemed distributions pursuant to § 72(p); dividends paid on applicable employer securities under § 404(k); and the costs of current life insurance protection. See section 1.D of this notice for rules relating to which Katrina distributions are permitted to be recontributed to an eligible retirement plan.

The definition of Katrina distribution under section 101(d)(1) of KETRA does not limit the designation of a Katrina distribution to amounts withdrawn solely to meet a need arising from Hurricane Katrina. Thus, even though a qualified individual is required to have sustained an economic loss, Katrina distributions are permitted without regard to the qualified individual's need and the amount of the distribution is not required to correspond to the amount of the economic loss suffered by the qualified individual.

As explained in section 2.C of this notice, an employer retirement plan is also permitted to treat a plan distribution described above as a Katrina distribution. It is possible that a qualified individual's designation of a Katrina distribution may be different from the employer retirement plan's treatment of the distribution. This different treatment could occur, for example, if a qualified individual has more than one plan distribution that meets the requirements of a Katrina distribution. This different treatment could also occur if a qualified individual has distributions from more than one eligible retirement plan.

D. *Certain Katrina distributions are permitted to be recontributed.*

Subject to certain exceptions, distributions from an eligible retirement plan that satisfy the requirements of a Katrina distribution under section 1.C of this notice are permitted to be treated as Katrina distributions. Such distributions may be included in income ratably over 3 years and are not subject to the 10% additional tax under § 72(t) of the Code. However, only a Katrina distribution that is eligible for tax-free rollover treatment under § 402(c) (and 402(e)(6)), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16) is permitted to be recontributed to an eligible retirement plan, and such recontribution will be treated as having been made in a direct rollover to that eligible retirement plan.

In the case of a distribution from an eligible retirement plan other than an IRA, only a Katrina distribution that is an eligible rollover distribution within the meaning of § 402(c)(4) is permitted to be recontributed to an eligible retirement plan. Thus, periodic payments (for a period of at least 10 years, or the life or the life expectancy of the employee (or the lives or joint life expectancies of the employee and the employee's designated beneficiary)) and required minimum distributions are not permitted to be recontributed to an eligible retirement plan even though those distributions are permitted to be treated as Katrina distributions if they satisfy the requirements under section 1.C of this notice. In the case of a distribution from an IRA, only a Katrina distribution that is eligible for rollover treatment under § 408(d)(3) is permitted to be recontributed to an eligible retirement plan. Thus, required minimum distributions are not permitted to be recontributed to an eligible retirement plan. Any Katrina distribution (whether from an

[1] This definition applies solely for purposes of relief provided under KETRA and does not apply for purposes of relief under other provisions. For example, see Notice 2005–73, 2005–42 I.R.B. 723, which defines taxpayers affected by Hurricane Katrina and designates disaster areas for purposes of the relief provided under § 7508A.

employer retirement plan or an IRA) paid to a qualified individual as a beneficiary of an employee or IRA owner (other than the surviving spouse of the employee or IRA owner) cannot be recontributed. See section 4.C of this notice for rules relating to recontributions of Katrina distributions.

In general, a distribution from an employer retirement plan made on account of hardship is not an eligible rollover distribution. However, if such a distribution satisfies the requirements under section 1.C of this notice, then the distribution is not treated as made on account of hardship for purposes of this notice and, thus, any portion of the distribution is permitted to be recontributed to an eligible retirement plan. See section 4.C of this notice for rules relating to recontributions.

E. *Definition of principal place of abode.*

An individual's principal place of abode is where the individual lives unless temporarily absent due to special circumstances. A temporary absence from the household due to special circumstances, such as illness, education, business, vacation, or military service, will not change an individual's principal place of abode. See §§ 1.2–2, 1.152–1(b), and 1.152–2(a)(2)(ii) of the regulations for information relating to a temporary absence from a principal place of abode. If an individual's principal place of abode was in the Hurricane Katrina disaster area immediately before August 28, 2005, and the individual evacuated because of Hurricane Katrina, the individual's principal place of abode will be considered to be in the Hurricane Katrina disaster area on August 28, 2005.

SECTION 2. GUIDANCE FOR EMPLOYER RETIREMENT PLANS MAKING KATRINA DISTRIBUTIONS

A. *Katrina distributions are generally treated as satisfying certain plan distribution restrictions.*

Under section 101 of KETRA, a Katrina distribution designated by an employer retirement plan is treated as meeting the distribution restrictions for qualified cash or deferred arrangements under § 401(k)(2)(B)(i) of the Code, for custodial accounts under § 403(b)(7)(A)(ii), for annuity contracts under § 403(b)(11), and for governmental deferred compensation plans under § 457(d)(1)(A). Thus, for example, an employer is permitted to expand the distribution options under its plan to allow an amount attributable to an elective, qualified nonelective, or qualified matching contribution under a qualified cash or deferred arrangement to be distributed as a Katrina distribution even though the distribution is before an otherwise permitted distributable event, such as severance from employment, disability, or attainment of age 59½.

Except as described above, section 101 of KETRA does not change the requirements for when plan distributions are permitted to be made from employer retirement plans. Thus, for example, a qualified plan that is a pension plan (*e.g.* a money purchase plan) is not permitted to make in-service distributions merely because the distribution, if made, would qualify as a Katrina distribution. Further, a pension plan is not permitted to make a distribution under a distribution form that is not a qualified joint and survivor annuity without spousal consent merely because the distribution, if made, could be treated as a Katrina distribution.

B. *Direct rollover and 20% withholding requirements are not applicable to Katrina distributions.*

If a distribution is treated as a Katrina distribution by an employer retirement plan, the rules for eligible rollover distributions under §§ 401(a)(31), 402(f), and 3405 of the Code are not applicable with respect to the distribution. Thus, the plan is not required to offer the qualified individual a direct rollover with respect to the distribution. In addition, the plan administrator does not have to provide a § 402(f) notice. Finally, the plan administrator or payor of the Katrina distributions is not required to withhold an amount equal to 20% of the distribution, as is usually required under § 3405(c)(1). However, a Katrina distribution is subject to the voluntary withholding requirements of § 3405(b) and § 35.3405–1T of the Temporary Employment Tax Regulations.

C. *Treatment of distributions as Katrina distributions.*

An employer is permitted to choose whether to treat distributions under its plans as Katrina distributions. Further, the employer (or plan administrator) is permitted to develop any reasonable procedures for identifying which distributions are treated as Katrina distributions under its retirement plans. However, if an employer retirement plan treats any distribution of an amount subject to § 401(k)(2)(B)(i), 403(b)(7)(A)(ii), 403(b)(11) or 457(d)(1)(A) as a Katrina distribution, the plan must be consistent in its treatment. Thus, the amount of the distribution must be taken into account in determining the $100,000 limit on Katrina distribution payments made under the retirement plans maintained by the employer.

D. *Distribution limits on Katrina distributions.*

The total amount of distributions treated by an employer as Katrina distributions under its retirement plans with respect to a qualified individual is not permitted to exceed $100,000. For purposes of this rule, the term "employer" means the employer maintaining the plan and those employers required to be aggregated with the employer under § 414(b), (c), (m), or (o). However, a plan will not fail to satisfy any requirement under the Code merely because a qualified individual's total Katrina distributions exceed $100,000, taking into account distributions from IRAs or other eligible retirement plans maintained by unrelated employers.

E. *Reliance on reasonable representations.*

In making a determination that a distribution is a Katrina distribution, a plan sponsor or plan administrator of an employer retirement plan is permitted to rely on reasonable representations from a distributee with respect to the distributee's principal place of abode on August 28, 2005, and whether the distributee suffered an economic loss by reason of Hurricane Katrina, unless the plan sponsor or plan administrator has actual knowledge to the contrary.

F. *An employer retirement plan will be treated as operating in accordance with its terms if certain requirements are satisfied.*

The Internal Revenue Service will be issuing guidance in the future relating to plan amendments for KETRA. An employer retirement plan will not be treated as failing to operate in accordance with its terms merely because the plan implements the provisions of sections 101 and 103 of KETRA if the plan sponsor amends its plan by the applicable dates described below. For employer retirement plans other than a governmental plan, the date by which any plan amendment to reflect KETRA is required to be made will not be earlier than the last day of the first plan year beginning on or after January 1, 2007. For governmental plans under § 414(d) of the Code, the date by which any plan amendment to reflect KETRA is required to be made will not be earlier than the last day of the first plan year beginning on or after January 1, 2009.

SECTION 3. GUIDANCE FOR ELIGIBLE RETIREMENT PLANS MAKING, OR ACCEPTING RECONTRIBUTION OF, KATRINA DISTRIBUTIONS

This section provides guidance for eligible retirement plans (*i.e.*, employer retirement plans and IRAs) making, or accepting recontribution of, Katrina distributions.

A. *Tax reporting on Katrina distributions.*

An eligible retirement plan must report the payment of a Katrina distribution to a qualified individual on Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc*. This reporting is required even if the qualified individual recontributes the Katrina distribution to the same eligible retirement plan in the same year. If a payor is treating the payment as a Katrina distribution and no other appropriate code applies, the payor is permitted to use distribution code 2 (early distribution, exception applies) in box 7 of Form 1099-R. However, a payor is also permitted to use distribution code 1 (early distribution, no known exception) in box 7 of Form 1099-R.

B. *Reliance on representations relating to the recontribution of a Katrina distribution.*

In general, a qualified individual who receives a Katrina distribution that is eligible for tax-free rollover treatment is permitted to recontribute, at any time in a 3-year period, any portion of the distribution to an eligible retirement plan that is permitted to accept eligible rollover contributions. The relief in Q&A–14 of § 1.401(a)(31)–1 of the regulations applies to an employer retirement plan accepting recontributions of Katrina distributions. In order to obtain the relief described in Q&A–14 of § 1.401(a)(31)–1, a plan administrator accepting the recontribution of a Katrina distribution must reasonably conclude that the recontribution is eligible for direct rollover treatment under section 101(c) of KETRA and that the recontribution is made in accordance with the rules under section 4.C of this notice. In making this determination, the rule in section 2.E of this notice applies. Thus, a plan administrator may rely on the reasonable representations of a qualified individual with respect to the individual's principal place of abode on August 28, 2005, and whether the individual suffered an economic loss by reason of Hurricane Katrina, unless the plan administrator has actual knowledge to the contrary.

SECTION 4. GUIDANCE FOR INDIVIDUALS RECEIVING KATRINA DISTRIBUTIONS UNDER SECTION 101 OF KETRA

This section provides guidance for qualified individuals requesting and receiving Katrina distributions. A qualified individual receiving a Katrina distribution is entitled to favorable tax treatment with respect to the distribution. First, the 10% additional tax under § 72(t) of the Code (including the 25% additional tax under § 72(t)(6) for certain distributions from SIMPLE IRAs) does not apply to any Katrina distribution. Second, a Katrina distribution is permitted to be included in income ratably over 3 years. Third, a qualified individual is permitted to recontribute any portion of a Katrina distribution that is eligible for tax-free rollover treatment to an eligible retirement plan within 3 years from the day after the date of the distribution, and the recontribution will be treated as if it were paid in a direct rollover to an eligible retirement plan. See section 1.D of this notice for rules relating to which Katrina distributions are permitted to be recontributed. Qualified individuals will use Form 8915[2], *Qualified Hurricane Katrina Retirement Plan Distributions and Repayments*, to report any recontribution made during the taxable year and to determine the amount of the Katrina distribution includible in income for the taxable year.

A. *Election to designate a distribution as a Katrina distribution.*

A qualified individual is permitted to designate any distribution described in section 1.C of this notice as a Katrina distribution provided the total amount treated by the individual as Katrina distributions does not exceed $100,000. For example, if a qualified individual received a distribution of $50,000 in 2005 and a distribution of $75,000 in 2006 and both distributions satisfy the definition of a Katrina distribution, only $100,000 of the $125,000 received by the qualified individual can be treated as a Katrina distribution. Thus, if such individual treated the 2005 distribution of $50,000 as a Katrina distribution on his or her 2005 tax return, the individual can only treat $50,000 of the 2006 distribution as a Katrina distribution on his or her 2006 tax return. Assuming no § 72(t)(2) exception applies, the remaining $25,000 of the 2006 distribution is an early distribution. This amount will be subject to the 10% additional tax, must be included on the individual's 2006 tax return, and will not be eligible for 3 year recontribution to an eligible retirement plan.

Example. A section 401(k) plan distributes $35,000 to a qualified individual on December 1, 2005. The qualified individual also receives a distribution from his or her IRA on December 1, 2005 of $15,000. The individual is permitted to treat both the $35,000 from the plan and the $15,000 from the IRA as Katrina distributions on the individual's 2005 tax return.

[2] Form 8915 is expected to be available soon.

B. *Income inclusion for Katrina distributions*

There are two methods for a qualified individual to include in income the taxable portion of a Katrina distribution. First, a qualified individual who receives a Katrina distribution is permitted to include the taxable portion of the amount of the distribution in income ratably over a 3-year period that begins in the year of the distribution. Second, a qualified individual is permitted to elect out of the 3-year ratable income inclusion and include the entire amount of the taxable portion of the Katrina distribution in income in the year of the distribution. All Katrina distributions received in a taxable year must be treated consistently (either all distributions are included in income over a 3-year period or all distributions are included in income in the current year). If a qualified individual uses the 3-year ratable income inclusion method, such method cannot be changed after the timely filing of the individual's tax return (including extensions) for the year of the distribution.

Example. Taxpayer A receives a $30,000 distribution from his or her IRA on October 1, 2005. Taxpayer A is a qualified individual and elects to treat the distribution as a Katrina distribution. Taxpayer A uses the 3-year ratable income inclusion for the $30,000 distribution. Taxpayer A should include $10,000 in income with respect to the Katrina distribution on each of his or her 2005, 2006, and 2007 tax returns.

C. *Tax treatment of recontributions of Katrina distributions.*

If a Katrina distribution is eligible for tax-free rollover treatment (taking into account section 1.D of this notice), a qualified individual is permitted, at any time in the 3-year period beginning the day after the date of a Katrina distribution, to recontribute any portion of the distribution, but not in excess of the amount of the distribution, to an eligible retirement plan. A recontribution of a Katrina distribution will not be treated as a rollover contribution for purposes of the one-rollover-per-year limitation under § 408(d)(3)(B).

D. *Tax treatment of recontributions of a Katrina distribution using the 1-year income inclusion method.*

If a qualified individual elects to include all Katrina distributions received in a year in gross income for that year and recontributes any portion of the Katrina distributions to an eligible retirement plan at any time during the 3-year recontribution period, then the amount of the recontribution will reduce the amount of the Katrina distribution included in gross income for the year of the distribution. The qualified individual will report the amount of the recontribution on Form 8915, which will be filed with the individual's income tax return.

If a qualified individual includes a Katrina distribution in gross income in the year of the distribution and recontributes the distribution to an eligible retirement plan after the timely filing of the individual's tax return for the year of the distribution (*i.e.*, after the due date, including extensions), the individual will need to file an amended tax return. The qualified individual will need to file a revised Form 8915 with his or her amended return to report the amount of the recontribution and should reduce his or her gross income by the amount of the recontribution, but not to exceed the amount of the Katrina distribution.

Example 1. Taxpayer B receives a $45,000 distribution from a section 403(b) plan on November 1, 2005. Taxpayer B is a qualified individual and treats the distribution as a Katrina distribution. Taxpayer B receives no other Katrina distribution from any eligible retirement plan in 2005. After receiving reimbursement from his or her insurance company for a casualty loss, Taxpayer B recontributes $45,000 to an IRA on March 31, 2006. Taxpayer B reports the recontribution on Form 8915 and files the 2005 tax return on April 10, 2006. For Taxpayer B, no portion of the Katrina distribution is includible as income for the 2005 tax year.

Example 2. The facts are the same as *Example 1* of this section 4.D, except that Taxpayer B timely requests an extension of time to file the 2005 tax return and makes a recontribution on August 2, 2006, before he or she files the 2005 tax return. Taxpayer B files the 2005 tax return on August 10, 2006. As in *Example 1*, no portion of the Katrina distribution is includible in income for the 2005 year because Taxpayer B made the recontribution before the timely filing of the 2005 return.

Example 3. Taxpayer C receives a $15,000 distribution from a section 457(b) plan on January 10, 2006. Taxpayer C is a qualified individual and treats the distribution as a Katrina distribution. Taxpayer C elects out of the 3-year ratable income inclusion on Form 8915 and includes the entire $15,000 in gross income for the 2006 taxable year. On December 31, 2008, Taxpayer C recontributes $15,000 to the section 457(b) plan. Taxpayer C will need to file an amended return for the 2006 tax year to report the amount of the recontribution and reduce Taxpayer C's gross income by $15,000 with respect to the Katrina distribution on the 2006 original tax return.

E. *Tax treatment of recontributions of a Katrina distribution using the 3-year ratable income inclusion method.*

As explained above, a qualified individual is permitted to include a Katrina distribution in income ratably over a 3-year period. If a qualified individual includes a Katrina distribution ratably over a 3-year period and the individual recontributes any portion of the Katrina distribution to an eligible retirement plan at any date before the timely filing of the individual's tax return (*i.e.*, by the due date, including extensions), the amount of the recontribution will reduce the ratable portion of the Katrina distribution that is includible in gross income for the tax year of the filed return.

Example 1. Taxpayer D receives $75,000 from a section 401(k) plan on December 1, 2005. Taxpayer D is a qualified individual and treats the $75,000 distribution as a Katrina distribution. Taxpayer D uses the 3-year ratable income inclusion method for the distribution. Taxpayer D makes one recontribution of $25,000 to the section 401(k) plan on April 10, 2007. Taxpayer D files the 2006 tax return on April 15, 2007. Without the recontribution, Taxpayer D should include $25,000 in income with respect to the Katrina distribution on each of D's 2005, 2006, and 2007 tax returns. However, as a result of the recontribution to the section 401(k) plan, Taxpayer D should include $25,000 in income with respect to the Katrina distribution on the 2005 tax return, $0 in income with respect to the Katrina distribution on the 2006 tax return, and $25,000 in income with respect to the Katrina distribution on the 2007 tax return.

Example 2. The facts are the same as *Example 1* of this section 4.E, except that Taxpayer D recontributes $25,000 to the section 401(k) plan on August 10, 2007. Taxpayer D files the 2006 tax return on April 15, 2007, and does not request an extension of time to file the return. As a result of the recontribution to the section 401(k) plan, Taxpayer D should include $25,000 in income with respect to the Katrina distribution on the 2005 tax return, $25,000 in income with respect to the Katrina distribution on the 2006 tax return, and $0 in income with respect to the Katrina distribution on the 2007 tax return.

F. *Recontributions of a Katrina distribution may be carried back or forward when using the 3-year ratable income inclusion.*

If a qualified individual using the 3-year ratable income inclusion method recontributes an amount of a Katrina distribution for a taxable year that exceeds the amount which is otherwise includible in gross income for the tax year of the filed return, as described in section 4.E of this notice, the excess amount of the recontribution is per-

mitted to be carried forward to reduce the amount of the Katrina distribution that is includible in gross income in the next taxable year. Alternatively, the qualified individual is permitted to carry back the excess amount of the recontribution to a prior taxable year or years in which the individual included income attributable to a Katrina distribution. The individual will need to file an amended return for the prior taxable year or years to report the amount of the recontribution on Form 8915 and reduce his or her gross income by the excess amount of the recontribution.

Example. Taxpayer E receives a distribution of $90,000 from his or her IRA on November 15, 2005. Taxpayer E is a qualified individual and treats the distribution as a Katrina distribution. Taxpayer E ratably includes the $90,000 distribution over a 3-year period. Without any recontribution, Taxpayer E will include $30,000 in income with respect to the Katrina distribution on each of the 2005, 2006, and 2007 tax returns. Taxpayer E includes $30,000 in income with respect to the Katrina distribution on the 2005 tax return. Taxpayer E then recontributes $45,000 to an IRA on November 10, 2006 (and made no other recontribution in the 3-year period). Taxpayer E is permitted to do either of the following:

Option *1*. Taxpayer E includes $0 in income with respect to the Katrina distribution on the 2006 tax return. Taxpayer E carries forward the excess recontribution of $15,000 to 2007 and includes $15,000 in income with respect to the Katrina distribution on E's 2007 tax return.

Option *2*. Taxpayer E includes $0 in income with respect to the Katrina distribution on the 2006 tax return and $30,000 in income on the 2007 tax return. Taxpayer E then files an amended return for 2005 to reduce the amount included in income as a result of the Katrina distribution to $15,000.

G. *Special rule for 3-year ratable income inclusion method for Katrina distributions.*

If a qualified individual dies before the full taxable amount of the Katrina distribution has been included in gross income, then the remainder must be included in gross income for the taxable year that includes the individual's death.

H. *Katrina distributions will not be treated as a change in substantially equal periodic payments.*

In the case of an individual receiving substantially equal periodic payments from an eligible retirement plan, the receipt of a Katrina distribution from that plan will not be treated as a change in substantially equal payments as described in § 72(t)(4) merely because of the Katrina distribution.

SECTION 5. APPLICATION OF SECTION 103 OF KETRA TO PLAN LOANS

This section provides guidance regarding the application of section 103 of KETRA to plan loans, including a safe harbor that is treated as satisfying section 103(b) of KETRA.

A. *Increase in the allowable loan amount.*

Special rules apply to a loan made from a qualified employer plan (as defined in § 1.72(p)–1, Q&A–2) to a qualified individual on or after September 24, 2005 (the day after the date of enactment of KETRA) and before January 1, 2007. For these loans, section 103(a) of KETRA changes the limits under § 72(p)(2)(A) of the Code. In applying § 72(p) to a plan loan, the $50,000 aggregate limit in § 72(p)(2)(A)(i) is increased to $100,000 and the rule in § 72(p)(2)(A)(ii) limiting the aggregate amount of loans to one half of the employee's vested accrued benefit is increased to 100 percent of the employee's vested accrued benefit.[3]

B. *Suspension of payments and extension of term of loan.*

A special rule applies if a qualified individual has an outstanding loan from a qualified employer plan on or after August 25, 2005. Section 103(b) of KETRA provides that, for purposes of § 72(p), in the case of a qualified individual with a loan from a qualified employer plan outstanding on or after August 25, 2005, if the due date for any repayment with respect to the loan occurs during the period beginning on August 25, 2005, and ending on December 31, 2006, such due date shall be delayed for one year. In addition, any subsequent repayments for the loan shall be appropriately adjusted to reflect the delay and any interest accruing for such delay, and the period of delay shall be disregarded in determining the 5-year period and the term of the loan under § 72(p)(2)(B) and (C). Thus, an employer is permitted to choose to allow this delay in loan repayments under its plan with respect to a qualified individual, and, as a result, there will not be a deemed distribution to the individual under § 72(p).

This notice provides the following safe harbor for satisfying section 103(b) of KETRA. Under this safe harbor, a qualified employer plan will be treated as satisfying the requirements of § 72(p) pursuant to section 103(b) of KETRA if a qualified individual's obligation to repay a plan loan is suspended under the plan for any period beginning not earlier than August 25, 2005, and ending not later than December 31, 2006 (suspension period). The loan repayments must resume upon the end of the suspension period, and the term of the loan may be extended by the duration of such suspension period. If a qualified employer plan suspends loan repayments during the suspension period, the suspension will not cause the loan to be deemed distributed even if, due solely to the suspension, the term of the loan is extended beyond five years. Interest accruing during the suspension period must be added to the remaining principal of the loan. A plan satisfies these rules if the loan is repaid thereafter by amortization in substantially level installments over the remaining period of the loan (*i.e.*, five years from the date of the loan, assuming that the loan is not a principal residence loan, plus the suspension period). If an employer, under its plan, chooses to permit a suspension period that is less than the suspension period described above, the employer is permitted to extend subsequently the suspension period, but not beyond December 31, 2006.

Example. On March 31, 2005, a participant with a nonforfeitable account balance of $40,000 borrowed $20,000 to be repaid in level monthly installments of $394 each over 5 years, with the repayments to be made by payroll withholding. The participant makes 8 monthly payments until December 1, 2005. The participant's home is in the Hurricane Katrina disaster area and the participant sustained an economic loss. The participant's employer takes action to suspend payroll withholding repayments, for the period from December 1, 2005, through the end of 2006, for loans to qualified individuals that are outstanding on or after August 25, 2005, but only for its employees who have a principal place of abode in the Hurricane Katrina disaster area and sustained an economic loss. Because the participant is an employee

[3] The Department of Labor has advised the Department of the Treasury and the Service that it will not treat any person as having violated the provisions of Title I of the Employee Retirement Income Security Act (ERISA), including the adequate security and reasonably equivalent basis requirements in ERISA section 408(b)(1) and 29 CFR 2550.408b–1, solely because the person made a plan loan to a qualified individual in compliance with KETRA section 103, Code § 72(p), and the provisions of this notice.

of the employer who has a principal place of abode in the Hurricane Katrina disaster area and notifies the employer that he or she has sustained an economic loss, no further repayments are made on the participant's loan until January 1, 2007 (when the balance is $19,045). At that time, repayments on the loan resume, with the amount of each monthly installment increased to $423 in order to repay the loan by April 30, 2011 (which is the date the loan originally would have been fully repaid, plus the 13-month loan suspension period that resulted from Hurricane Katrina).

C. *Qualified employer plan may rely on reasonable representations.*

A qualified employer plan is permitted to rely on a participant's reasonable representations that such participant is a qualified individual and therefore qualifies for the special treatment for loans under section 103 of KETRA, unless the plan administrator (or other responsible person) with respect to the qualified employer plan has actual knowledge to the contrary.

DRAFTING INFORMATION

The principal authors of this notice are Pamela R. Kinard and Vernon Carter of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, please contact the Employee Plans taxpayer assistance telephone service at (877) 829–5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday.

Transitional Relief Provided for Certain Plan Amendment Deadlines

Notice 2005–95

I. Purpose

This notice clarifies the interaction of the amendment timing deadlines for plans qualified under § 401(a) as set forth in Rev. Proc. 2005–66, 2005–37 I.R.B. 509, with the deadlines set forth in various other published guidance. This notice also provides transitional relief from certain of those deadlines, thus giving sponsors, practitioners, and employers additional time to adopt required amendments. Pursuant to this relief, sponsors, practitioners, and employers maintaining plans qualified under § 401(a) will have an extension of the otherwise applicable deadline for adopting certain plan amendments reflecting the final retroactive annuity starting date regulations, the automatic rollover requirements under § 401(a)(31)(B) of the Internal Revenue Code, and the final §§ 401(k) and 401(m) regulations.

This notice also provides relief with respect to the satisfaction of the safe harbor notice requirement of § 401(k)(12) for plan years beginning before 2007. In addition, this notice provides relief, under the heading "Required Minimum Distributions for Defined Benefit Plans," to sponsors of prototype individual retirement arrangements.

II. Overview

The Service has received inquiries with respect to the impact, if any, that Rev. Proc. 2005–66 has on the deadline for plan sponsors maintaining qualified plans to adopt plan amendments reflecting certain published guidance. Section 5.05 of Rev. Proc. 2005–66 provides a general rule for the deadline for the timely adoption of an interim or discretionary amendment. When there are statutory or regulatory changes with respect to plan qualification requirements that will impact provisions of the written plan document, the adoption of an interim amendment will generally be required by the deadline under Rev. Proc. 2005–66, as described below.

Under Rev. Proc. 2005–66, the deadline is different for a discretionary amendment than for an amendment with respect to a disqualifying provision. For a disqualifying provision[1] or a provision that is integral to a disqualifying provision, an interim amendment must be adopted by the later of (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins[2] or (2) the last day of the plan year that includes the date on which the remedial amendment period begins. A plan maintained by more than one employer need not be amended for a disqualifying provision until the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins. A discretionary amendment must be adopted by the end of the plan year in which the plan amendment is effective.

The deadlines set forth by Rev. Proc. 2005–66 have generated concern among the practitioner community as to when plan amendments must be adopted to reflect changes in various qualification requirements. This notice re-affirms the applicability of the timing rules under Rev. Proc. 2005–66, while giving transitional relief to plan sponsors and employers that will, in some cases, provide additional time to adopt plan amendments related to the final retroactive annuity starting date regulations, automatic rollover guidance under Notice 2005–5, and final §§ 401(k) and 401(m) regulations as set forth in section IV and summarized in the Appendix to this notice.

III. General Timing Rules for Plan Amendments

In general, the deadlines set forth under section 5.05 of Rev. Proc. 2005–66 apply except in the following circumstances:

(1) A statutory provision or guidance issued by the Service sets forth an earlier deadline to timely adopt an amendment. For example, an amendment generally cannot be adopted retroactively when to do so would violate the anti-cutback rules of § 411(d)(6). Also, an amendment to add a qualified cash or deferred arrangement to a profit sharing plan or to change a § 401(k) plan to become a safe harbor plan cannot be adopted retroactively.

(2) A statutory provision or guidance issued by the Service sets forth a specific deadline for the adoption of an amendment that is earlier or later than the deadlines set forth under section 5.05 of Rev. Proc. 2005–66. See section V for a list of those deadlines.

[1] A plan provision under an existing plan is designated as a disqualifying provision under § 1.401(b)–1(b)(3) if the provision either (1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001; or (2) is integral to a qualification requirement of the Code that has been changed effective after December 31, 2001, but only if the provision is integral to a plan provision that is a disqualifying provision under (1) above with respect to the plan. A disqualifying provision under § 1.401(b)–1(b)(1) is a provision of, or absence of a provision from, a new plan and the plan was intended, in good faith, to be qualified.

[2] The remedial amendment period begins on the date on which the change becomes effective with respect to the plan or, in the case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan is operated in accordance with the provisions as amended.

IV. Amendment Timing Issues for Provisions Modified in this Notice

Retroactive Annuity Starting Date

Final regulations for plans providing a retroactive annuity starting date (RASD) under § 1.417(e)–1 were issued on July 16, 2003. The final regulations apply to plan years beginning on or after January 1, 2004. In Notice 2004–84, 2004–2 C.B. 1030, the Service provided that a defined benefit plan with a provision that does not satisfy the RASD regulations has a disqualifying provision.

Section 5.05 of Rev. Proc. 2005–66 stated that the deadline to adopt an interim amendment depends on whether or not the plan amendment is required or discretionary. For example, a plan sponsor who maintains a single employer defined benefit plan with a calendar plan year that already provides for RASD but which did not comply with the final regulations has a disqualifying provision and under Rev. Proc. 2005–66 must adopt an interim amendment by the due date (including extensions) for filing the income tax return for the employer's taxable year that contains January 1, 2004 or if later, December 31, 2004. By contrast, where a single employer defined benefit plan does not provide for RASD and the employer wishes to provide for RASD, under Rev. Proc. 2005–66 a discretionary amendment providing for RASD must be adopted by the end of the plan year in which the plan amendment is effective.

Pursuant to this notice, the deadline to adopt an interim amendment to comply with the final RASD regulations will be the later of the deadline under Rev. Proc. 2005–66 that would otherwise apply to the plan sponsor or employer or December 31, 2005.

Automatic Rollover

Section 657 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16 (EGTRRA) amended § 401(a)(31)(B) of the Code and directed the Department of Labor (DOL) to issue regulations for the direct rollover of certain mandatory distributions. DOL issued final regulations on September 28, 2004 (29 CFR § 2550.404a–2) which were effective for any rollover of mandatory distributions made on or after March 28, 2005.

Notice 2001–42, 2001–2 C.B. 70 set forth amendment timing rules for all amendments adopted pursuant to EGTRRA and provided that if a plan sponsor implements an EGTRRA provision for a plan year, then the plan sponsor must adopt the good faith amendment by the end of the plan year. Notice 2001–42 provided that the EGTRRA remedial amendment period would end no earlier than the last day of the first plan year beginning on or after January 1, 2005. With respect to the automatic rollover requirements of § 401(a)(31)(B) of the Code, Notice 2005–5, 2005–3 I.R.B. 337, provided guidance effective for mandatory distributions made on or after March 28, 2005. In accordance with the effective date of the automatic rollover rules and Notice 2001–42, Notice 2005–5 required qualified plans (other than governmental and non-electing church plans) to be amended to comply with the automatic rollover rules by the end of the first plan year ending on or after March 28, 2005.

If the amendment timing rules under Rev. Proc. 2005–66 were applied to an amendment to comply with the mandatory rollover requirements, a plan sponsor would be required to correct the disqualifying provision by adopting an interim amendment by the later of (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes March 28, 2005 or (2) the last day of the plan year that includes March 28, 2005. Pursuant to this notice, the Service is clarifying that the deadline under Rev. Proc. 2005–66 applies to the amendments to reflect the automatic rollover requirements under Notice 2005–5, and under the transitional relief provided, the deadline will be the later of the deadline under Rev. Proc. 2005–66 or December 31, 2005.

Final §§ 401(k) and 401(m) Regulations

Final Regulations under §§ 401(k) and 401(m) were published on December 29, 2004 (Final § 401(k) regulations). The Final § 401(k) regulations generally apply to plan years beginning on or after January 1, 2006. In the case of a plan maintained pursuant to one or more collectively bargained agreements between employee representatives and one or more employers in effect on January 1, 2006, the Final § 401(k) regulations apply to the later of the first plan year beginning after the termination of the last such agreement or the first plan year beginning on or after January 1, 2006.

Plan sponsors are permitted to apply the Final § 401(k) regulations to any plan year that ends after December 29, 2004. An amendment that implements the Final § 401(k) regulations for a plan year before the effective date with respect to that plan is a discretionary amendment. Under Rev. Proc. 2005–66, the deadline to adopt a discretionary amendment is the end of the plan year in which the plan amendment is effective.

Pursuant to this notice, the deadline to adopt a discretionary amendment for the Final § 401(k) regulations prior to the effective date is extended to the later of December 31, 2005 or the otherwise applicable deadline (*i.e.*, the end of the plan year in which the regulations are implemented). However, this transitional relief does not otherwise override other existing rules regarding the deadline to adopt a plan amendment prior to the beginning of the plan year (*e.g.*, adding a qualified cash or deferred arrangement to a profit sharing plan or adding a safe harbor feature to a § 401(k) plan).

In addition, for plan years beginning before 2007, a safe harbor § 401(k) plan described in § 401(k)(12) will not fail to satisfy the notice requirement of § 401(k)(12)(D) merely because the notice cross-references the plan's summary plan description in accordance with Q&A–8 in Notice 2000–3, 2000–1 C.B. 413.

V. Other Delays in Amendment Timing Issues

In the situations set forth in this section V, the deadlines for plan amendments described below apply in lieu of the deadlines set forth in Rev. Proc. 2005–66.

Required Minimum Distributions for Defined Benefit Plans

Rev. Proc. 2002–29, 2002–1 C.B. 1176, provided, in part, that defined benefit plans must be amended by the end of the first plan year beginning on or after January 1, 2003, to the extent necessary to comply with the Final and Tem-

porary regulations under § 401(a)(9), relating to required minimum distributions. However, Rev. Proc. 2003–10, 2003–1 C.B. 259, postponed the time by which defined benefit plans must be amended to comply with the requirements set forth in the Final and Temporary Regulations under § 401(a)(9) to the end of the EGTRRA remedial amendment period as set forth in Notice 2001–42. Notice 2001–42 provided that the EGTRRA remedial amendment period would end no earlier than the last day of the first plan year beginning on or after January 1, 2005.

Sections 12 and 18 of Rev. Proc. 2005–66 modified Notice 2001–42 by extending the EGTRRA remedial amendment period for individually designed plans to the end of the initial five-year remedial amendment cycle and for pre-approved plans to the end of the initial six-year remedial amendment cycle. Thus, defined benefit plans must be amended for the final regulations under § 401(a)(9) by the end of the initial five or six-year remedial amendment cycle described in Rev. Proc. 2005–66, whichever is applicable.

Sponsors of prototype individual retirement arrangements (IRAs), including Roth IRAs and SIMPLE IRAs, that reference the temporary regulations under § 401(a)(9) are not required to amend their documents merely to reference the final regulations under § 401(a)(9) or to make other conforming changes that are expected to have no effect on plan operation. However, if an IRA sponsor does make such changes, no application to the Service is required for continued reliance on an Opinion Letter.

Suspension of Benefits Plan Amendments

Heinz v. Central Laborers' Pension Fund was decided on June 7, 2004. The Supreme Court held that § 204(g) of the Employee Retirement Income Security Act of 1974 (ERISA) prohibits a plan amendment from expanding the categories of post-retirement employment that results in suspension of the payment of early retirement benefits already accrued. The Service subsequently published Rev. Proc. 2005–23, 2005–18 I.R.B. 991, on April 18, 2005. Rev. Proc. 2005–23 gave § 7805(b)(8) relief for plans that adopted an amendment before June 7, 2004 which violated § 411(d)(6) of the Code (the counterpart to § 204(g) of ERISA). Under Rev. Proc. 2005–23, a plan sponsor has until the last day of the EGTRRA remedial amendment period to adopt an amendment correcting the disqualifying provision. As noted above, Rev. Proc. 2005–66 extended the EGTRRA remedial amendment period for individually designed plans to the end of the initial five-year remedial amendment cycle and for pre-approved plans to the end of the initial six-year remedial amendment cycle.

Rev. Proc. 2005–76, 2005–50 I.R.B. 1139 (Dec. 12, 2005), provides extensions to the time periods for taking corrective action to be eligible for § 7805(b) relief.

Professional Employer Organizations

In Rev. Proc. 2002–21, 2002–1 C.B. 911, the Service provided transitional relief for certain defined contribution plans maintained by professional employer organizations (PEO). In order to remain qualified under § 401(a), the plan sponsor had the option to either terminate the PEO plan or convert the PEO plan into a multiple employer plan by the 120th day after the first day of the first plan year beginning on or after January 1, 2003. For a calendar year plan, the deadline was May 2, 2003. The Service published Rev. Proc. 2003–86, 2003–2 C.B. 1211, to provide additional guidance relating to PEOs. Rev. Proc. 2003–86 provided that plan sponsors have until the end of the EGTRRA remedial amendment period as set forth in Notice 2001–42 to adopt transitional amendments for technical corrections. As noted above, Rev. Proc. 2005–66 extended the EGTRRA remedial amendment period for individually designed plans to the end of the initial five-year remedial amendment cycle and for pre-approved plans to the end of the initial six-year remedial amendment cycle.

Pension Funding Equity Act of 2004

The Pension Funding Equity Act of 2004, Pub. L. 108–218 (PFEA) was enacted on April 10, 2004. PFEA amended § 415(b)(2)(E)(ii) applicable for the plan years beginning in 2004 and 2005. Under § 101(c) of PFEA, the deadline to amend plans to comply with the changes to § 415(b)(2)(E)(ii) is the last day of the first plan year beginning on or after January 1, 2006.

Hurricane Katrina Relief

The Katrina Emergency Tax Relief Act of 2005, P. L. 109–73 (KETRA) was enacted on September 23, 2005 to provide that qualified individuals receive favorable tax treatment with respect to distributions from eligible retirement plans that are qualified Hurricane Katrina distributions. Under § 104 of KETRA, for an employer plan other than a governmental plan, the date by which any plan amendment to reflect KETRA is required to be made will not be earlier than the last day of the first plan year beginning on or after January 1, 2007. For a governmental plan described in § 414(d) of the Code, the date by which any plan amendment to reflect KETRA is required to be made will not be earlier than the last day of the first plan year beginning on or after January 1, 2009.

Announcement 2005–70, 2005–40 I.R.B. 682, provides relief for taxpayers adversely affected by Hurricane Katrina for hardship distribution and loans. A plan that does not provide for loans or hardship distributions as described in Announcement 2005–70 must be amended to provide for loans or such emergency distributions no later than the end of the first plan year beginning after December 31, 2005.

VI. Other Amendment Issues

Designated Roth Contributions

Section 402A of the Code was added by EGTRRA to allow the optional treatment of elective deferrals as designated Roth elective deferrals to defined contribution plans. Proposed amendments to the Final § 401(k) Regulations related to designated Roth contributions were published on March 2, 2005. The regulatory effective date is proposed to be the same as the effective date for the Final § 401(k) Regulations described above. The statutory effective date for designated Roth contributions is for taxable years beginning after December 31, 2005.

An employer can implement designated Roth contributions beginning with the statutory effective date, even if it is prior to the regulatory effective date of the Final § 401(k) Regulations. As a discretionary amendment, the deadline to adopt an amendment implementing designated Roth contributions under Rev. Proc.

2005–66 is the end of the plan year in which the plan amendment is effective. For example, for a plan where the plan year ends March 31st, designated Roth contributions can be implemented as early as January 1, 2006 but in such cases, the plan sponsor must amend the plan by March 31, 2006.

In order to facilitate the timely adoption of the discretionary amendment, the Service intends to issue a sample amendment for designated Roth contributions after publication of the final § 401(k) regulations as amended for designated Roth contributions.

Good Faith Amendments

Notice 2005–5 includes a sample amendment that can be used to implement the automatic rollover rules. However, the Service does not currently intend to issue a model or sample amendment for the final RASD regulations, final § 401(k) regulations, final § 401(a)(9) regulations for the required minimum distribution for defined benefit plans, the suspension of benefits under *Heinz v. Central Laborers' Pension Fund*, the Pension Funding Equity Act of 2004, and certain defined contribution plans maintained by professional employer organizations. Therefore, plan sponsors must adopt good faith plan amendments reflecting these qualification changes. The Service will consider whether to issue a sample amendment related to Hurricane Katrina Relief.

Maintaining the Pre-approved Status of a Pre-approved Plan

The Service will not treat the adoption of good faith plan amendments that reflect the qualification changes listed in sections 4 and 5 of this notice as affecting the pre-approved status of a master and prototype (M&P) or volume submitter plan. That is, M&P plans may be amended by the M&P sponsor (and, if applicable, the adopting employer) without causing the plans to fail to be M&P plans. Similarly, volume submitter plans may be amended by the sponsoring employer or the practitioner, if authorized under the terms of the plans, without causing the plans to fail to be volume submitter plans. In either case, the amendment will not result in the loss of reliance on a favorable opinion, advisory, or determination letter, if the amendment causes the plan to fail to satisfy § 401(a) and a retroactive remedial amendment is adopted within the applicable five or six-year remedial amendment cycle.

VII. Effect on other Documents

Notice 2004–84 and Notice 2005–5 are modified.

DRAFTING INFORMATION

The principal author of this notice is Dana Barry of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday (a toll-free call). Ms. Barry may be reached at (202) 283–9888 (not a toll-free call).

Appendix

Guidance	Date of Publication	Effective Date of Published Guidance	Deadline to Adopt Plan Amendment under Rev. Proc. 2005–66 (or Notice 2005–5)	Deadline to Adopt Plan Amendment under this Notice
Retroactive Annuity Starting Date § 1.417(e)–1	July 17, 2003	Plan years beginning on or after January 1, 2004.	If discretionary — end of the plan year in which plan amendment is put into effect. If required — later of the end of the employer's tax filing date for the taxable year that contains January 1, 2004 or the last day of the first plan year beginning on or after January 1, 2004.	Later of (1) the deadline under Rev. Proc. 2005-66 or (2) December 31, 2005.
Automatic Rollover § 401(a)(31)(B)	December 28, 2004	Mandatory distributions made on or after March 28, 2005.	Notice 2001-42 and Notice 2005–5 required the amendment to be adopted by the end of the plan year ending on or after March 28, 2005.	Latest of (1) December 31, 2005, (2) the end of the plan year that contains March 28, 2005, or (3) the tax filing deadline for the employer's tax year containing March 28, 2005.
Final §§ 401(k) and 401(m) Regulations §§ 1.401(k)–1 through –6 and 1.401(m)–1 through –5	December 29, 2004	Generally, plan years beginning on or after January 1, 2006. Plan sponsors are permitted to apply final regulations to any plan year that ends after December 29, 2004.	If discretionary — end of plan year in which plan amendment is put into effect. (Amendment is discretionary if it is adopted prior to the effective date.)	Later of (1) December 31, 2005 or (2) the end of the plan year in which the §§ 401(k) and 401(m) regulations are implemented.

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26 CFR 1.1441–5: Withholding on payments to partnerships, trusts and estates.

Rev. Proc. 2005–77

SECTION 1. PURPOSE

This revenue procedure modifies the final withholding foreign partnership ("WP") and withholding foreign trust ("WT") agreements, contained in Rev. Proc. 2003–64, 2003–2 C.B. 306, by expanding the availability of certain documentation, reporting, and withholding procedures. This revenue procedure also makes a conforming change to the portion of the Qualified Intermediary ("QI") withholding agreement (the "QI agreement") contained in Rev. Proc. 2003–64.

SECTION 2. BACKGROUND

Rev. Proc. 2003–64 contains the WP and WT agreements described in Treasury Regulation § 1.1441–5(c)(2)(ii) and (e)(5)(v) and sets forth the application procedures for entering into such agreements. Rev. Proc. 2003–64 also amended the QI agreement, contained in Rev. Proc. 2000–12, 2000–1 C.B. 387, to add new Section 4A. In Rev. Proc. 2004–21, 2004–1 C.B. 702, the Internal Revenue Service (IRS) and the Treasury Department amended Section 10.01 of the WP and WT agreements and new Section 4A.01 of the QI agreement to eliminate a $200,000 cap that restricted the application of those provisions.

Section 10.02 of the WP and WT agreements and new Section 4A.02 of the QI agreement provide generally that a QI, WP, or WT may apply simplified documentation, reporting, and withholding procedures to a foreign trust or foreign partnership if certain conditions are met (the "Agency Provision"). Currently a QI, WP,

or WT may apply the Agency Provision only if, among other things, the QI (or an affiliate), WP or WT is a general partner of the partnership or a trustee of the trust (the "relatedness requirement"). Upon consideration of comments received, the IRS and the Treasury Department have concluded that the relatedness requirement is unnecessary and that its elimination will facilitate compliance consistent with the objectives of the underlying reporting and withholding regimes.

SECTION 3. EXPANSION OF AGENCY PROVISION

Appendices 1, 2, and 3 of Rev. Proc. 2003–64, containing the WP and WT agreements and new Section 4A of the QI agreement, respectively, are amended as follows. In Appendices 1 and 2, the first paragraph of Section 10.02 of the WP and WT agreements is amended by inserting "and" before "(2)", by replacing the semicolon before "(3)" with a period, and by deleting "and (3) the [WP/WT] is a general partner of the partnership or a trustee of the trust." In Appendix 3, the first paragraph of Section 4A.02 of the QI agreement is amended by inserting "and" before "(2)", by replacing the semicolon before "(3)" with a period, and by deleting "and (3) the QI, or an affiliate of the QI, is a general partner of the partnership or a trustee of the trust."

SECTION 4. EFFECTIVE DATE

The modifications to Rev. Proc 2003–64 made by this revenue procedure are effective as of July 10, 2003, the effective date of Rev. Proc. 2003–64. Pursuant to Section 12.02 of the QI agreement, and Section 11.02 of the WP and WT agreements, these amendments apply to all existing QI, WP, and WT agreements. These amendments will be incorporated into the text of all QI, WP, and WT agreements entered into on or after the date this revenue procedure is released.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2003–64, 2003–2 C.B. 306, is modified.

SECTION 6. CONTACT INFORMATION

For further information regarding this revenue procedure, contact Kathryn T. Holman at (202) 622–3840 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 62, 162, 170, 213, 217, 274, 1016; 1.62–2, 1.162–17, 1.170A–1, 1.213–1, 1.217–2, 1.274–5, 1.1016–3.)

Rev. Proc. 2005–78

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2004–64, 2004–2 C.B. 898, as modified by Announcement 2005–71, 2005–41 I.R.B. 714, and provides optional standard mileage rates for employees, self-employed individuals, or other taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. In addition, this revenue procedure provides optional standard mileage rates for computing the deductible costs of operating an automobile in providing donated services to charity for the provision of relief related to Hurricane Katrina and for determining the amount that may be excluded from income by taxpayers who are reimbursed for such use. This revenue procedure also provides rules under which the amount of ordinary and necessary expenses of local travel or transportation away from home that are paid or incurred by an employee will be deemed substantiated under § 1.274–5 of the Income Tax Regulations if a payor (the employer, its agent, or a third party) provides a mileage allowance under a reimbursement or other expense allowance arrangement to pay for the expenses. Use of a method of substantiation described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. The Internal Revenue Service prospectively adjusts the business, medical, and moving standard mileage rates annually (to the extent warranted).

SECTION 2. SUMMARY OF STANDARD MILEAGE RATES

.01 *Standard mileage rates*

(1) Business (section 5 below)	44.5 cents per mile
(2) Charitable contribution (section 7 below)	
(a) General	14 cents per mile
(b) Hurricane Katrina deduction	32 cents per mile
(c) Hurricane Katrina reimbursement	44.5 cents per mile
(3) Medical and moving (section 7 below)	18 cents per mile

.02 *Determination of standard mileage rates*. The business, medical, and moving standard mileage rates reflected in this revenue procedure are based on an annual study of the fixed and variable costs of operating an automobile conducted on behalf of the Service by an independent contractor. The charitable contribution standard mileage rate is provided in § 170(i) of the Internal Revenue Code. The Hurricane Katrina charitable contribution deduction standard mileage rate is established by § 303 of the Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109–73, 119 Stat. 2016 (KETRA). The Hurricane Katrina charitable contribution reimbursement standard mileage rate is established by § 304 of KETRA.

SECTION 3. BACKGROUND AND CHANGES

.01 Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under that provision, an employee or self-employed individual may deduct the cost of operating an automobile to the extent that it is used in a trade or business. However, under § 262, no portion of the cost of operating an automobile that is attributable to personal use is deductible.

.02 Section 274(d) provides, in part, that no deduction is allowed under § 162 with respect to any listed property (as defined in § 280F(d)(4) to include passenger automobiles and any other property used as a means of transportation) unless the taxpayer complies with certain substantiation requirements. Section 274(d) further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by the regulations.

.03 Section 1.274–5(j), in part, grants the Commissioner of Internal Revenue the authority to establish a method under which a taxpayer may use mileage rates to substantiate, for purposes of § 274(d), the amount of the ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home.

.04 Section 1.274–5(g), in part, grants the Commissioner the authority to prescribe rules relating to mileage allowances for ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home. Pursuant to this grant of authority, the Commissioner may prescribe rules under which the allowances, if in accordance with reasonable business practice, will be regarded as (1) equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of the travel and transportation expenses for purposes of § 1.274–5(c), and (2) satisfying the requirements of an adequate accounting to the employer of the amount of the expenses for purposes of § 1.274–5(f).

.05 Section 62(a)(2)(A) allows an employee, in determining adjusted gross income, a deduction for the expenses allowed by Part VI (§ 161 and following), subchapter B, chapter 1 of the Code, paid or incurred by the employee in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement with a payor.

.06 Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) provides the employee with the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

Section 62(c) further provides that the substantiation requirements described therein do not apply to any expense to the extent that, under the grant of regulatory authority in § 274(d), the Commissioner has provided that substantiation is not required for the expense.

.07 Under § 1.62–2(c)(1), a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses as specified in the regulations. Section 1.62–2(e)(2) specifically provides that substantiation of certain business expenses in accordance with rules prescribed under the authority of § 1.274–5(g) will be treated as substantiation of the amount of the expenses for purposes of § 1.62–2. Under § 1.62–2(f)(2), the Commissioner may prescribe rules under which an arrangement providing mileage allowances will be treated as satisfying the requirement of returning amounts in excess of expenses, even though the arrangement does not require the employee to return the portion of the allowance that relates to miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated pursuant to rules prescribed under § 274(d), provided the allowance is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return any portion of the allowance that relates to miles of travel not substantiated.

.08 Section 1.62–2(h)(2)(i)(B) provides that if a payor pays a mileage allowance under an arrangement that meets the requirements of § 1.62–2(c)(1), the portion, if any, of the allowance that relates to miles of travel substantiated in accordance with § 1.62–2(e), that exceeds the amount of the employee's expenses deemed substantiated for the travel pursuant to rules prescribed under § 274(d) and § 1.274–5(g), and that the employee is not required to return, is subject to withholding and payment of employment taxes. *See* §§ 31.3121(a)–3, 31.3231(e)–1(a)(5), 31.3306(b)–2, and 31.3401(a)–4 of the Employment Tax Regulations. Because the employee is not required to return this excess portion, the reasonable period of time provisions of § 1.62–2(g) (relating to the return of excess amounts) do not apply to this excess portion.

.09 Under § 1.62–2(h)(2)(i)(B)(4), the Commissioner may provide special rules regarding the timing of withholding and payment of employment taxes on mileage allowances.

.10 Section 303 of KETRA provides that the standard mileage rate for purposes of computing the amount allowable as a charitable contribution deduction for the cost of operating an automobile for the provision of relief related to Hurricane Katrina during the period beginning on August 25, 2005, and ending on December 31, 2006, shall be 70 percent of the business standard mileage rate in effect. Section 304 of KETRA provides that taxpayers may exclude from income an amount computed at the business standard mileage rate received from a charity as reimbursement for the cost of operating an automobile for the provision of relief related to Hurricane Katrina during the period beginning on August 25, 2005, and ending on December 31, 2006. Sections 2.01 and 7.01 of this revenue procedure are revised to include these special charitable contribution standard mileage rates for 2006. For the period beginning on August 25, 2005, and ending on August 31, 2005, the charitable contribution standard mileage rate is 29 cents for deduction purposes and 40.5 cents for reimbursement purposes. For the period beginning on September 1, 2005, and ending on December 31, 2005, the charitable contribution standard mileage rate is 34 cents

for deduction purposes and 48.5 cents for reimbursement purposes.

.11 Section 5.06(3) of this revenue procedure clarifies the limitation on use of the business standard mileage rate by a taxpayer that has claimed the special depreciation allowance under § 168(k). Section 8.04(1) clarifies the limitation on use of a fixed and variable rate (FAVR) allowance with respect to an automobile for which an employee has claimed the special depreciation allowance under § 168(k). Section 8.05(4) clarifies the requirement that an employer's FAVR allowance or allowances must cover at least five or more employees. Section 8.05(5) clarifies the requirement that an employee may not participate in a FAVR allowance unless the cost of the employee's automobile was at least 90 percent of the standard automobile cost.

SECTION 4. DEFINITIONS

.01 *Standard mileage rate*. The term "standard mileage rate" means the applicable amount provided by the Service for optional use by employees or self-employed individuals in computing the deductible costs of operating automobiles (including vans, pickups, or panel trucks) they own or lease for business purposes, or by taxpayers in computing the deductible costs of operating automobiles for charitable, medical, or moving expense purposes.

.02 *Transportation expenses*. The term "transportation expenses" means the expenses of operating an automobile for local travel or transportation away from home.

.03 *Mileage allowance*. The term "mileage allowance" means a payment under a reimbursement or other expense allowance arrangement that meets the requirements specified in § 1.62–2(c)(1) and that is:

(1) paid with respect to the ordinary and necessary business expenses incurred, or that the payor reasonably anticipates will be incurred, by an employee for transportation expenses in connection with the performance of services as an employee of the employer,

(2) reasonably calculated not to exceed the amount of the expenses or the anticipated expenses, and

(3) paid at the applicable standard mileage rate, a flat rate or stated schedule, or in accordance with any other Service-specified rate or schedule.

.04 *Flat rate or stated schedule*. A mileage allowance is paid at a flat rate or stated schedule if it is provided on a uniform and objective basis with respect to the expenses described in section 4.03 of this revenue procedure. The allowance may be paid periodically at a fixed rate, at a cents-per-mile rate, at a variable rate based on a stated schedule, at a rate that combines any of these rates, or on any other basis that is consistently applied and in accordance with reasonable business practice. Thus, for example, a periodic payment at a fixed rate to cover the fixed costs (including depreciation (or lease payments), insurance, registration and license fees, and personal property taxes) of driving an automobile in connection with the performance of services as an employee of the employer, coupled with a periodic payment at a cents-per-mile rate to cover the operating costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of using an automobile for those purposes, is an allowance paid at a flat rate or stated schedule. Likewise, a periodic payment at a variable rate based on a stated schedule for different locales to cover the costs of driving an automobile in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule.

SECTION 5. BUSINESS STANDARD MILEAGE RATE

.01 *In general*. The standard mileage rate for transportation expenses is 44.5 cents per mile for all miles of use for business purposes.

.02 *Use of the business standard mileage rate*. A taxpayer may use the business standard mileage rate with respect to an automobile that is either owned or leased by the taxpayer. A taxpayer generally may deduct an amount equal to either the business standard mileage rate times the number of business miles traveled or the actual costs (both operating and fixed) paid or incurred by the taxpayer that are allocable to traveling those business miles.

.03 *Business standard mileage rate in lieu of operating and fixed costs*. A deduction using the standard mileage rate for business miles is computed on a yearly basis and is in lieu of all operating and fixed costs of the automobile allocable to business purposes (except as provided in section 9.06 of this revenue procedure). Items such as depreciation (or lease payments), maintenance and repairs, tires, gasoline (including all taxes thereon), oil, insurance, and license and registration fees are included in operating and fixed costs for this purpose.

.04 *Parking fees, tolls, interest, and taxes*. Parking fees and tolls attributable to use of the automobile for business purposes may be deducted as separate items. Likewise, interest relating to the purchase of the automobile as well as state and local personal property taxes may be deducted as separate items, but only to the extent allowable under § 163 or § 164, respectively. Section 163(h)(2)(A) expressly provides that interest is nondeductible personal interest if it is paid or accrued on indebtedness properly allocable to the trade or business of performing services as an employee. Section 164 expressly provides that state and local taxes that are paid or accrued by a taxpayer in connection with an acquisition or disposition of property will be treated as part of the cost of the acquired property or as a reduction in the amount realized on the disposition of the property. If the automobile is operated less than 100 percent for business purposes, an allocation is required to determine the business and nonbusiness portion of the taxes and interest deduction allowable.

.05 *Depreciation*. For owned automobiles placed in service for business purposes, and for which the business standard mileage rate has been used for any year, depreciation will be considered to have been allowed at the rate of 15 cents per mile for 2002, 16 cents per mile for 2003 and 2004, and 17 cents per mile for 2005 and 2006, for those years in which the business standard mileage rate was used. If actual costs were used for one or more of those years, the rates above do not apply to any year in which actual costs were used. The depreciation described above will reduce the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016.

.06 *Limitations*.

(1) The business standard mileage rate may not be used to compute the deductible expenses of (a) automobiles used for hire, such as taxicabs, or (b) five or more auto-

mobiles owned or leased by a taxpayer and used simultaneously (such as in fleet operations).

(2) The business standard mileage rate may not be used to compute the deductible business expenses of an automobile leased by a taxpayer unless the taxpayer uses either the business standard mileage rate or a FAVR allowance (as provided in section 8 of this revenue procedure) to compute the deductible business expenses of the automobile for the entire lease period (including renewals). For a lease commencing on or before December 31, 1997, the "entire lease period" means the portion of the lease period (including renewals) remaining after that date.

(3) The business standard mileage rate may not be used to compute the deductible expenses of an automobile for which the taxpayer has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179 deduction, (c) claimed the special depreciation allowance under § 168(k), or (d) used the Accelerated Cost Recovery System (ACRS) under former § 168 or the Modified Accelerated Cost Recovery System (MACRS) under current § 168. By using the business standard mileage rate, the taxpayer has elected to exclude the automobile (if owned) from MACRS pursuant to § 168(f)(1). If, after using the business standard mileage rate, the taxpayer uses actual costs, the taxpayer must use straight-line depreciation for the automobile's remaining estimated useful life (subject to the applicable depreciation deduction limitations under § 280F).

(4) The business standard mileage rate and this revenue procedure may not be used to compute the amount of the deductible automobile expenses of an employee of the United States Postal Service incurred in performing services involving the collection and delivery of mail on a rural route if the employee receives qualified reimbursements (as defined in § 162(o)) for the expenses. *See* § 162(o) for the rules that apply to these qualified reimbursements.

SECTION 6. RESERVED

SECTION 7. CHARITABLE, MEDICAL, AND MOVING STANDARD MILEAGE RATES

.01 *Charitable*. Section 170(i) provides a standard mileage rate of 14 cents per mile for purposes of computing the charitable contribution deduction for use of an automobile in connection with rendering gratuitous services to a charitable organization under § 170. The standard mileage rate is 32 cents per mile for purposes of computing the charitable contribution deduction for use of an automobile in providing donated services to charity for the provision of relief related to Hurricane Katrina. The standard mileage rate is 44.5 cents per mile for purposes of determining the amount that may be excluded from income by taxpayers who are reimbursed for the use of an automobile in providing donated services to charity for the provision of relief related to Hurricane Katrina.

.02 *Medical and moving*. The standard mileage rate is 18 cents per mile for use of an automobile (a) to obtain medical care described in § 213, or (b) as part of a move for which the expenses are deductible under § 217.

.03 *Charitable, medical, or moving expense standard mileage rates in lieu of operating expenses*. A deduction computed using the applicable standard mileage rate for charitable, medical, or moving expense miles is in lieu of all operating expenses (including gasoline and oil) of the automobile allocable to those purposes. Costs for items such as depreciation (or lease payments), insurance, and license and registration fees are not deductible, and are not included in the standard mileage rates.

.04 *Parking fees, tolls, interest, and taxes*. Parking fees and tolls attributable to the use of the automobile for charitable, medical, or moving expense purposes may be deducted as separate items. Interest relating to the purchase of the automobile and state and local personal property taxes are not deductible as charitable, medical, or moving expenses, but they may be deducted as separate items to the extent allowable under § 163 or § 164, respectively.

SECTION 8. FIXED AND VARIABLE RATE ALLOWANCE

.01 *In general*.

(1) The ordinary and necessary expenses paid or incurred by an employee in driving an automobile owned or leased by the employee in connection with the performance of services as an employee of the employer will be deemed substantiated (in an amount determined under section 9 of this revenue procedure) when a payor reimburses those expenses with a mileage allowance using a flat rate or stated schedule that combines periodic fixed and variable rate payments that meet all the requirements of section 8 of this revenue procedure (a FAVR allowance).

(2) The amount of a FAVR allowance must be based on data that (a) is derived from the base locality, (b) reflects retail prices paid by consumers, and (c) is reasonable and statistically defensible in approximating the actual expenses employees receiving the allowance would incur as owners of the standard automobile.

.02 *Computation of FAVR allowance*.

(1) *FAVR allowance*. A FAVR allowance includes periodic fixed payments and periodic variable payments. A payor may maintain more than one FAVR allowance. A FAVR allowance that uses the same payor, standard automobile (or an automobile of the same make and model that is comparably equipped), retention period, and business use percentage is considered one FAVR allowance, even though other features of the allowance may vary. A FAVR allowance also includes any optional high mileage payments; however, optional high mileage payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W–2, and are subject to withholding and payment of employment taxes when paid. *See* section 9.05 of this revenue procedure. An optional high mileage payment covers the additional depreciation for a standard automobile attributable to business miles driven and substantiated by the employee for a calendar year in excess of the annual business mileage for that year. If an employee is covered by the FAVR allowance for less than the entire calendar year, the annual business mileage may be prorated on a monthly basis for purposes of the preceding sentence.

(2) *Periodic fixed payment*. A periodic fixed payment covers the projected fixed costs (including depreciation (or lease payments), insurance, registration and license fees, and personal property taxes) of driving the standard automobile in connection with the performance of services as an employee of the employer in a base locality, and must be paid at least quarterly. A periodic fixed payment may be computed by (a) dividing the total projected fixed costs of the standard automobile for all years of the retention period, determined at the beginning of the retention period, by the number of periodic fixed payments in the retention period, and (b) multiplying the resulting amount by the business use percentage.

(3) *Periodic variable payment*. A periodic variable payment covers the projected operating costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of driving a standard automobile in connection with the performance of services as an employee of the employer in a base locality, and must be paid at least quarterly. The rate of a periodic variable payment for a computation period may be computed by dividing the total projected operating costs for the standard automobile for the computation period, determined at the beginning of the computation period, by the computation period mileage. A computation period can be any period of a year or less. Computation period mileage is the total mileage (business and personal) a payor reasonably projects a standard automobile will be driven during a computation period and equals the retention mileage divided by the number of computation periods in the retention period. For each business mile substantiated by the employee for the computation period, the periodic variable payment must be paid at a rate that does not exceed the rate for that computation period.

(4) *Base locality*. A base locality is the particular geographic locality or region of the United States in which the costs of driving an automobile in connection with the performance of services as an employee of the employer are generally paid or incurred by the employee. Thus, for purposes of determining the amount of fixed costs, the base locality is generally the geographic locality or region in which the employee resides. For purposes of determining the amount of operating costs, the base locality is generally the geographic locality or region in which the employee drives the automobile in connection with the performance of services as an employee of the employer.

(5) *Standard automobile*. A standard automobile is the automobile selected by the payor on which a specific FAVR allowance is based.

(6) *Standard automobile cost*. The standard automobile cost for a calendar year may not exceed 95 percent of the sum of (a) the retail dealer invoice cost of the standard automobile in the base locality, and (b) state and local sales or use taxes applicable on the purchase of the automobile. Further, the standard automobile cost may not exceed $27,400.

(7) *Annual mileage*. Annual mileage is the total mileage (business and personal) a payor reasonably projects a standard automobile will be driven during a calendar year. Annual mileage equals the annual business mileage divided by the business use percentage.

(8) *Annual business mileage*. Annual business mileage is the mileage a payor reasonably projects a standard automobile will be driven by an employee in connection with the performance of services as an employee of the employer during the calendar year, but may not be less than 6,250 miles for a calendar year. Annual business mileage equals the annual mileage multiplied by the business use percentage.

(9) *Business use percentage*. A business use percentage is determined by dividing the annual business mileage by the annual mileage. The business use percentage may not exceed 75 percent. In lieu of demonstrating the reasonableness of the business use percentage based on records of total mileage and business mileage driven by the employees annually, a payor may use a business use percentage that is less than or equal to the following percentages for a FAVR allowance that is paid for the following annual business mileage:

Annual business mileage	*Business use percentage*
6,250 or more but less than 10,000	45 percent
10,000 or more but less than 15,000	55 percent
15,000 or more but less than 20,000	65 percent
20,000 or more	75 percent

(10) *Retention period*. A retention period is the period in calendar years selected by the payor during which the payor expects an employee to drive a standard automobile in connection with the performance of services as an employee of the employer before the automobile is replaced. The period may not be less than two calendar years.

(11) *Retention mileage*. Retention mileage is the annual mileage multiplied by the number of calendar years in the retention period.

(12) *Residual value*. The residual value of a standard automobile is the projected amount for which it could be sold at the end of the retention period after being driven the retention mileage. The Service will accept the following safe harbor residual values for a standard automobile computed as a percentage of the standard automobile cost:

Retention period	*Residual value*
2-year	70 percent
3-year	60 percent
4-year	50 percent

.03 *FAVR allowance in lieu of operating and fixed costs*.

(1) A reimbursement computed using a FAVR allowance is in lieu of the employee's deduction of all the operating and fixed costs paid or incurred by an employee in driving the automobile in connection with the performance of services as an employee of the employer, except as provided in section 9.06 of this revenue procedure. Items such as depreciation (or lease payments), maintenance and repairs, tires, gasoline (including all taxes thereon), oil, insurance, license and registration fees, and personal property taxes are included in operating and fixed costs for this purpose.

(2) Parking fees and tolls attributable to an employee driving the standard automobile in connection with the performance of services as an employee of the employer are not included in fixed and operating costs and may be deducted as separate items. Similarly, interest relating to the purchase of the standard automobile may be deducted as a separate item, but only to the extent that the interest is an allowable deduction under § 163.

.04 *Depreciation*.

(1) A FAVR allowance may not be paid with respect to an automobile for which the employee has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179 deduction, (c) claimed the special depreciation allowance under § 168(k), or (d) used ACRS under former § 168 or MACRS under current § 168. If an employee uses actual costs for an owned automobile that has been covered by a FAVR allowance, the employee must use straight-line depreciation for the automobile's remaining estimated useful life (subject to the applicable depreciation deduction limitations under § 280F).

(2) Except as provided in section 8.04(3) of this revenue procedure, the total amount of the depreciation component for the retention period taken into account in computing the periodic fixed payments for that retention period may not exceed the excess of the standard automobile cost over the residual value of the standard automobile. In addition, the total amount of the depreciation component may not exceed the sum of the annual § 280F limitations on depreciation (in effect at the beginning of the retention period) that apply to the standard automobile during the retention period.

(3) If the depreciation component of periodic fixed payments exceeds the limitations in section 8.04(2) of this revenue procedure, that section will be treated as satisfied in any year during which the total annual amount of the periodic fixed payments and the periodic variable payments made to an employee driving 80 percent of the annual business mileage of the standard automobile does not exceed the amount obtained by multiplying 80 percent of the annual business mileage of the standard automobile by the business standard mileage rate for that year (under section 5.01 of the applicable revenue procedure).

(4) The depreciation included in each periodic fixed payment portion of a FAVR allowance paid with respect to an automobile will reduce the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016. *See* section 8.07(2) of this revenue procedure for the requirement that the employer report the depreciation component of a periodic fixed payment to the employee.

.05 *FAVR allowance limitations*.

(1) A FAVR allowance may be paid only to an employee who substantiates to the payor for a calendar year at least 5,000 miles driven in connection with the performance of services as an employee of the employer or, if greater, 80 percent of the annual business mileage of that FAVR allowance. If the employee is covered by the FAVR allowance for less than the entire calendar year, these limits may be prorated on a monthly basis.

(2) A FAVR allowance may not be paid to a control employee (as defined in § 1.61–21(f)(5) and (6), excluding the $100,000 limitation in paragraph (f)(5)(iii)).

(3) An employer may not pay a FAVR allowance if at any time during a calendar year a majority of the employees covered by the FAVR allowance are management employees.

(4) An employer may not pay a FAVR allowance to any employee unless at all times during a calendar year at least five employees in total are covered by FAVR allowances provided by the employer.

(5) A FAVR allowance may be paid only with respect to an automobile (a) owned or leased by the employee receiving the payment, (b) the cost of which, as a new vehicle (whether or not purchased new by the employee), was at least 90 percent of the standard automobile cost taken into account for purposes of determining the FAVR allowance for the first calendar year the employee receives the allowance with respect to that automobile, and (c) the model year of which does not differ from the current calendar year by more than the number of years in the retention period.

(6) A FAVR allowance may not be paid with respect to an automobile leased by an employee for which the employee has used actual expenses to compute the deductible business expenses of the automobile for any year during the entire lease period. For a lease commencing on or before December 31, 1997, the "entire lease period" means the portion of the lease period (including renewals) remaining after that date.

(7) The insurance cost component of a FAVR allowance must be based on the rates charged in the base locality for insurance coverage on the standard automobile during the current calendar year without taking into account rate-increasing factors such as poor driving records or young drivers.

(8) A FAVR allowance may be paid only to an employee whose insurance coverage limits on the automobile with respect to which the FAVR allowance is paid are at least equal to the insurance coverage lim-

its used to compute the periodic fixed payment under that FAVR allowance.

.06 *Employee reporting*. Within 30 days after an employee's automobile is initially covered by a FAVR allowance, or is again covered by a FAVR allowance if coverage has lapsed, the employee by written declaration must provide the payor with the following information: (a) the make, model, and year of the employee's automobile, (b) written proof of the insurance coverage limits on the automobile, (c) the odometer reading of the automobile, (d) if owned, the purchase price of the automobile or, if leased, the price at which the automobile is ordinarily sold by retailers (the gross capitalized cost of the automobile), and (e) if owned, whether the employee has claimed depreciation with respect to the automobile using any of the depreciation methods prohibited by section 8.04(1) of this revenue procedure or, if leased, whether the employee has computed deductible business expenses with respect to the automobile using actual expenses. The information described in (a), (b), and (c) of the preceding sentence also must be supplied by the employee to the payor within 30 days after the beginning of each calendar year that the employee's automobile is covered by a FAVR allowance.

.07 *Payor recordkeeping and reporting*.

(1) The payor or its agent must maintain written records setting forth (a) the statistical data and projections on which the FAVR allowance payments are based, and (b) the information provided by the employees pursuant to section 8.06 of this revenue procedure.

(2) Within 30 days of the end of each calendar year, the employer must provide each employee covered by a FAVR allowance during that year with a statement that, for automobile owners, lists the amount of depreciation included in each periodic fixed payment portion of the FAVR allowance paid during that calendar year and explains that by receiving a FAVR allowance the employee has elected to exclude the automobile from the Modified Accelerated Cost Recovery System pursuant to § 168(f)(1). For automobile lessees, the statement must explain that by receiving the FAVR allowance the employee may not compute the deductible business expenses of the automobile using actual expenses for the entire lease period (including renewals). For a lease commencing on or before December 31, 1997, the "entire lease period" means the portion of the lease period (including renewals) remaining after that date.

.08 *Failure to meet section 8 requirements*. If an employee receives a mileage allowance that fails to meet one or more of the requirements of section 8 of this revenue procedure, the employee may not be treated as covered by any FAVR allowance of the payor during the period of the failure. Nevertheless, the expenses to which that mileage allowance relates may be deemed substantiated using the method described in sections 5, 9.01(1), and 9.02 of this revenue procedure to the extent the requirements of those sections are met

SECTION 9. APPLICATION

.01 If a payor pays a mileage allowance in lieu of reimbursing actual transportation expenses incurred or to be incurred by an employee, the amount of the expenses that is deemed substantiated to the payor is either:

(1) for any mileage allowance other than a FAVR allowance, the lesser of the amount paid under the mileage allowance or the applicable standard mileage rate in section 5.01 of this revenue procedure multiplied by the number of business miles substantiated by the employee; or

(2) for a FAVR allowance, the amount paid under the FAVR allowance less the sum of (a) any periodic variable rate payment that relates to miles in excess of the business miles substantiated by the employee and that the employee fails to return to the payor although required to do so, (b) any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return to the payor although required to do so, and (c) any optional high mileage payments.

.02 If the amount of transportation expenses is deemed substantiated under the rules provided in section 9.01 of this revenue procedure, and the employee actually substantiates to the payor the elements of time, place (or use), and business purpose of the transportation expenses in accordance with paragraphs (b)(2) (travel away from home) and (b)(6) (listed property, which includes passenger automobiles and any other property used as a means of transportation) of § 1.274–5T, and paragraph (c) of § 1.274–5, the employee is deemed to satisfy the adequate accounting requirements of § 1.274–5(f) as well as the requirement to substantiate by adequate records or other sufficient evidence for purposes of § 1.274–5(c). *See* § 1.62–2(e)(1) for the rule that an arrangement must require business expenses to be substantiated to the payor within a reasonable period of time.

.03 An arrangement providing mileage allowances will be treated as satisfying the requirement of § 1.62–2(f)(2) with respect to returning amounts in excess of expenses as follows:

(1) For a mileage allowance other than a FAVR allowance, the requirement to return excess amounts will be treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62–2(g)) any portion of the allowance that relates to miles of travel not substantiated by the employee, even though the arrangement does not require the employee to return the portion of the allowance that relates to the miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated. For example, assume a payor provides an employee an advance mileage allowance of $97 based on an anticipated 200 business miles at 48.5 cents per mile (at a time when the business standard mileage rate is 44.5 cents per mile), and the employee substantiates 120 business miles. The requirement to return excess amounts will be treated as satisfied if the employee is required to return the portion of the allowance that relates to the 80 unsubstantiated business miles ($38.80) even though the employee is not required to return the portion of the allowance ($4.80) that exceeds the amount of the employee's expenses deemed substantiated under section 9.01 of this revenue procedure ($53.40) for the 120 substantiated business miles. However, the $4.80 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 9.05.

(2) For a FAVR allowance, the requirement to return excess amounts will be treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62–2(g)), (a) the portion (if any) of the periodic variable

payment received that relates to miles in excess of the business miles substantiated by the employee, and (b) the portion (if any) of a periodic fixed payment that relates to a period during which the employee was not covered by the FAVR allowance.

.04 An employee is not required to include in gross income the portion of a mileage allowance received from a payor that is less than or equal to the amount deemed substantiated under section 9.01 of this revenue procedure, provided the employee substantiates in accordance with section 9.02. *See* § 1.274–5T(f)(2)(i). In addition, that portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W–2, and is exempt from withholding and payment of employment taxes. *See* § 1.62–2(c)(2) and (c)(4).

.05 An employee is required to include in gross income the portion of a mileage allowance received from a payor that exceeds the amount deemed substantiated under section 9.01 of this revenue procedure, provided the employee substantiates in accordance with section 9.02 of this revenue procedure. *See* § 1.274–5T(f)(2)(ii). In addition, the excess portion of the allowance is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W–2, and is subject to withholding and payment of employment taxes. *See* § 1.62–2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.06 If an employee's substantiated expenses are less than the employee's actual expenses, the following rules apply:

(1) Except as otherwise provided in section 9.06(2) of this revenue procedure with respect to leased automobiles, if the amount of the expenses deemed substantiated under the rules provided in section 9.01 of this revenue procedure is less than the amount of the employee's business transportation expenses, the employee may claim an itemized deduction for the amount by which the business transportation expenses exceed the amount that is deemed substantiated, provided the employee substantiates all the business transportation expenses, includes on Form 2106, *Employee Business Expenses*, the deemed substantiated portion of the mileage allowance received from the payor, and includes in gross income the portion (if any) of the mileage allowance received from the payor that exceeds the amount deemed substantiated. *See* § 1.274–5T(f)(2)(iii). However, for purposes of claiming this itemized deduction, substantiation of the amount of the expenses is not required if the employee is claiming a deduction that is equal to or less than the applicable standard mileage rate multiplied by the number of business miles substantiated by the employee minus the amount deemed substantiated under section 9.01 of this revenue procedure. The itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions provided in § 67.

(2) An employee whose business transportation expenses with respect to a leased automobile are deemed substantiated under section 9.01(1) of this revenue procedure (relating to an allowance other than a FAVR allowance) may not claim a deduction based on actual expenses under section 9.06(1) unless the employee does so consistently beginning with the first business use of the automobile after December 31, 1997. An employee whose business transportation expenses with respect to a leased automobile are deemed substantiated under section 9.01(2) of this revenue procedure (relating to a FAVR allowance) may not claim a deduction based on actual expenses.

.07 An employee may deduct an amount computed pursuant to section 5.01 of this revenue procedure only as an itemized deduction. This itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.08 A self-employed individual may deduct an amount computed pursuant to section 5.01 of this revenue procedure in determining adjusted gross income under § 62(a)(1).

.09 If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of § 62(c) and the regulations thereunder, all payments under the arrangement will be treated as made under a nonaccountable plan. Thus, the payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W–2, and are subject to withholding and payment of employment taxes. *See* § 1.62–2(c)(3), (c)(5), and (h)(2).

SECTION 10. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES

.01 The portion of a mileage allowance (other than a FAVR allowance), if any, that relates to the miles of business travel substantiated and that exceeds the amount deemed substantiated for those miles under section 9.01(1) of this revenue procedure is subject to withholding and payment of employment taxes. *See* § 1.62–2(h)(2)(i)(B).

(1) In the case of a mileage allowance paid as a reimbursement, the excess described in section 10.01 of this revenue procedure is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the business miles substantiated. *See* § 1.62–2(h)(2)(i)(B)(2).

(2) In the case of a mileage allowance paid as an advance, the excess described in section 10.01 of this revenue procedure is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the business miles with respect to which the advance was paid are substantiated. *See* § 1.62–2(h)(2)(i)(B)(3). If some or all of the business miles with respect to which the advance was paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those miles within a reasonable period of time, the portion of the allowance that relates to those miles is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. *See* § 1.62–2(h)(2)(i)(A).

(3) In the case of a mileage allowance that is not computed on the basis of a fixed amount per mile of travel (for example, a mileage allowance that combines periodic fixed and variable rate payments, but that does not satisfy the requirements of section 8 of this revenue procedure), the payor must compute periodically (no less frequently than quarterly) the amount, if any, that exceeds the amount deemed substantiated under section 9.01(1) of this revenue procedure by comparing the total mileage allowance paid for the period to the standard mileage rate in section 5.01 of this revenue procedure multiplied by the number of business miles substantiated by the employee for the period. Any excess

is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. *See* § 1.62–2(h)(2)(i)(B)(4).

(4) For example, assume an employer pays its employees a mileage allowance at a rate of 48.5 cents per mile (when the business standard mileage rate is 44.5 cents per mile). The employer does not require the return of the portion of the allowance that exceeds the business standard mileage rate for the business miles substantiated (4 cents). In June, the employer advances an employee $242.50 for 500 miles to be traveled during the month. In July, the employee substantiates to the employer 400 business miles traveled in June and returns $48.50 to the employer for the 100 business miles not traveled. The amount deemed substantiated for the 400 miles traveled is $178 and the employee is not required to return $16. No later than the first payroll period following the payroll period in which the 400 business miles traveled are substantiated, the employer must withhold and pay employment taxes on $16.

.02 The portion of a FAVR allowance, if any, that exceeds the amount deemed substantiated for those miles under section 9.01(2) of this revenue procedure is subject to withholding and payment of employment taxes. *See* § 1.62–2(h)(2)(i)(B).

(1) Any periodic variable rate payment that relates to miles in excess of the business miles substantiated by the employee and that the employee fails to return within a reasonable period, or any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return within a reasonable period, is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. *See* § 1.62–2(h)(2)(i)(A).

(2) Any optional high mileage payment is subject to withholding and payment of employment taxes when paid.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective for (1) deductible transportation expenses paid or incurred on or after January 1, 2006, and (2) mileage allowances or reimbursements paid to an employee or to a charitable volunteer (a) on or after January 1, 2006, and (b) with respect to transportation expenses paid or incurred by the employee or charitable volunteer on or after January 1, 2006.

SECTION 12. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2004–64, as modified by Announcement 2005–71, is superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is John Roman Faron of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Faron at (202) 622–4930 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Updated Mortality Tables for Determining Current Liability

REG–124988–05

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 412(l)(7)(C)(ii) of the Internal Revenue Code (Code) and section 302(d)(7)(C)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 93–406, 88 Stat. 829). These regulations provide the public with guidance regarding mortality tables to be used in determining current liability under section 412(l)(7) of the Code and section 302(d)(7) of ERISA. These regulations affect plan sponsors and administrators, and participants in and beneficiaries of, certain retirement plans.

DATES: Written or electronic comments and requests to speak and outlines of topics to be discussed at the public hearing scheduled for April 19, 2006, at 10 a.m., must be received by March 29, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–124988–05), room 5226, 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–124988–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Bruce Perlin or Linda Marshall at (202) 622–6090 (not a toll-free number); concerning submissions and the hearing and/or to be placed on the building access list to attend the hearing, Treena Garrett at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code provides minimum funding requirements with respect to certain defined benefit pension plans.[1] Section 412(l) provides additional funding requirements for certain of these plans, based in part on a plan's unfunded current liability, as defined in section 412(l)(8).

Pursuant to section 412(c)(6), if the otherwise applicable minimum funding requirement exceeds the plan's full funding limitation (defined in section 412(c)(7) as the excess of a specified measure of plan liability over the plan assets), then the minimum funding for the year is reduced by that excess. Under section 412(c)(7)(E), the full funding limitation cannot be less than the excess of 90% of the plan's current liability (including the expected increase in current liability due to benefits accruing during the plan year) over the value of the plan's assets. For this purpose, the term *current liability* generally has the same meaning given that term under section 412(l)(7).

Section 412(l)(7)(C)(ii) provides that, for purposes of determining current liability in plan years beginning on or after January 1, 1995, the mortality table used is the table prescribed by the Secretary. Under section 412(l)(7)(C)(ii)(I), the initial mortality table used in determining current liability under section 412(l)(7) must be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993. For purposes of section 807(d)(5), Rev. Rul. 92–19, 1992–1 C.B. 227, specifies the prevailing commissioners' standard table used to determine reserves for group annuity contracts issued on January 1, 1993, as the 1983 Group Annuity Mortality Table (1983 GAM). Accordingly, Rev. Rul. 95–28, 1995–1 C.B. 74, sets forth two gender-specific mortality tables — based on 1983 GAM — for purposes of determining current liability for participants who are not entitled to disability benefits.[2]

Section 412(l)(7)(C)(iii)(I) specifies that the Secretary is to establish different mortality tables to be used to determine current liability for individuals who are entitled to benefits under the plan on account of disability. One such set of tables is to apply to individuals whose disabilities occur in plan years beginning before January 1, 1995, and a second set of tables for individuals whose disabilities occur in plan years beginning on or after such date. Under section 412(l)(7)(C)(iii)(II), the separate tables for disabilities that occur in plan years beginning after December 31, 1994, apply only with respect to individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. Rev. Rul. 96–7, 1996–1 C.B. 59, sets forth the mortality tables established under section 412(l)(7)(C)(iii).

Under section 412(l)(7)(C)(ii)(III), the Secretary of the Treasury is required to periodically (at least every 5 years)

[1] Section 302 of ERISA sets forth funding rules that are parallel to those in section 412 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 412 of the Code apply as well for purposes of section 302 of ERISA.

[2] Section 417(e)(3)(A)(ii)(I) requires the present value of certain distributions to be determined using a table prescribed by the Secretary based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined. Thus, in contrast to the mortality table initially prescribed for determining current liability under section 412(l)(7)(C)(ii)(I), the mortality table used to determine present value under section 417(e)(3)(A)(ii)(I) is not fixed as of a specified date but, rather, must be updated when the prevailing commissioners' standard table changes. Rev. Rul. 95–6, 1995–1 C.B. 80, set forth tables under section 417(e)(3)(A)(ii)(I) based on 1983 GAM, which was the prevailing commissioners' standard table at that time. The 1994 Group Annuity Reserving Table became the prevailing commissioners' standard table under section 807(d)(5)(A) for annuities issued on or after January 1, 1999. See Rev. Rul. 2001–38, 2001–2 C.B. 124. Accordingly, Rev. Rul. 2001–62, 2001–2 C.B. 632, required plans to adopt a new mortality table (based on the 1994 Group Annuity Reserving Table) for calculating the minimum present value of distributions pursuant to section 417(e).

review any tables in effect under that subsection and, to the extent necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience. Section 412(l)(7)(C)(ii)(II) provides that the updated tables are to take into account the results of available independent studies of mortality of individuals covered by pension plans. Pursuant to section 412(l)(7)(C)(ii)(II), any new mortality tables prescribed by regulation can be effective no earlier than the first plan year beginning after December 31, 1999. Under section 412(l)(10), increases in current liability arising from the adoption of such a new mortality table generally are required to be amortized over a 10-year period.

In order to facilitate the review of the applicable mortality tables pursuant to section 412(l)(7)(C)(ii)(III), Rev. Rul. 95–28 requested comments concerning the mortality table to be used for determining current liability for plan years beginning after December 31, 1999, and information on existing or upcoming independent studies of mortality of individuals covered by pension plans. In Announcement 2000–7, 2000–1 C.B. 586, the IRS and the Treasury Department also requested comments regarding mortality tables to be used for determining current liability for plan years beginning after December 31, 1999, but indicated that it was anticipated that in no event would there be any change in the mortality tables for plan years beginning before January 1, 2001.

Notice 2003–62, 2003–2 C.B. 576, was issued as part of the periodic review by the IRS and the Treasury Department of the mortality tables used in determining current liability under section 412(l)(7). At the time the Notice 2003–62 was issued, the IRS and the Treasury Department were aware of two reviews of mortality experience for retirement plan participants undertaken by the Retirement Plans Experience Committee of the Society of Actuaries (the UP–94 Study and the RP–2000 Mortality Tables Report),[3] and commentators were invited to submit any other independent studies of pension plan mortality experience. Notice 2003–62 also requested the submission of studies regarding projected trends in mortality experience. With respect to projecting mortality improvements, the IRS and the Treasury Department requested comments regarding the advantages and disadvantages of reflecting these trends on an ongoing basis through the use of generational, modified generational, or sequentially static mortality tables.

In addition, Notice 2003–62 requested comments on whether certain risk factors should be taken into account in predicting an individual's mortality. Comments were requested as to the extent that separate mortality tables should be prescribed that take into account these factors, with particular attention paid to the administrative issues in applying such distinctions. In this regard, comments were specifically requested as to how it would be determined which category an individual fits into, the extent to which an individual, once categorized, remains in that same category, the classification of individuals for whom adequate information is unavailable, whether distinctions are applicable to beneficiaries, and the extent to which distinctions may overlap or work at cross purposes. Some examples of factors that were listed in Notice 2003–62 are the following: gender, tobacco use, job classification, annuity size, and income. Comments were also requested as to whether classification systems, if permitted, should be mandatory or optional. A number of comments were submitted regarding the issues identified in Notice 2003–62.

The IRS and the Treasury Department have reviewed the mortality tables that are used for purposes of determining current liability for participants and beneficiaries (other than disabled participants). The existing mortality table for determining current liability (1983 GAM) was compared to independent studies of mortality of individuals covered by pension plans, after reflecting projected trends for mortality improvement through 2007. The comparison indicates that the 1983 GAM is no longer appropriate for determining current liability. For example, comparing the RP–2000 Combined Healthy Mortality Table for males projected to 2007 (when this proposed regulation would take effect) with the 1983 GAM shows that a current mortality table reflects a 52% decrease in the number of expected deaths at age 50, a 26% decrease at 65, and a 19% decrease at age 80. Comparing annuity values derived under these updated mortality rates with annuity values determined under the 1983 GAM shows an increase in present value of 12% for a 35-year-old male with a deferred annuity payable at age 65, a 5% increase for a 55-year-old male with an immediate annuity, and a 7% increase for a 75-year-old male with an immediate annuity (all calculated at a 6% interest rate). Female mortality rates also changed, although with a different pattern. For females, the number of expected deaths decreased by 10% at age 50, but increased by 33% at age 65 and increased by 2% at age 80.[4] Comparing annuity values derived under these updated mortality rates with annuity values determined under the 1983 GAM shows a decrease in present value of 3% for a 35-year-old female with a deferred annuity payable at age 65, a 2% decrease for a 55-year-old female with an immediate annuity, and a 2% decrease for a 75-year-old female with an immediate annuity (all calculated at a 6% interest rate).

Based on this review of the 1983 GAM compared to more recent mortality experience, the IRS and Treasury Department have determined that updated mortality tables should be used to determine current liability for participants and beneficiaries (other than disabled participants).[5]

Explanation of Provisions

The proposed regulations would set forth the methodology the IRS and Treasury would use to establish mortality tables to be used under section 412(l)(7)(C)(ii) to determine current liability for participants and beneficiaries (other than disabled par-

[3] The UP–94 Study, prepared by the UP–94 Task Force of the Society of Actuaries, was published in the Transactions of the Society of Actuaries, Vol. XLVII (1995), p. 819. The RP–2000 Mortality Table Report was released in July, 2000. Society of Actuaries, RP–2000 Mortality Tables Report, at *http://www.soa.org/ccm/content/research-publications/experience-studies-tools/the-rp–2000-mortality-tables/*.

[4] The developers of the 1983 GAM table acknowledged that the number of female lives used to develop the table had been relatively small and they recommended an age setback to the male table be used rather than a separate female table. See Development of the 1983 Group Annuity Mortality Table, Transaction of the Society of Actuaries, Vol. XXXV (1983), pp. 859, 883–84.

[5] The IRS and Treasury are in the process of reviewing recent mortality experience and expected trends for disabled participants to determine whether updated mortality tables under section 412(l)(7)(C)(iii) are needed.

ticipants). The mortality tables that would apply for the 2007 plan year are set forth in the proposed regulations. The mortality tables that would be used for subsequent plan years would be published in the Internal Revenue Bulletin. Comments are requested regarding whether it would be desirable to publish a series of tables for each of a number of years (such as five years) along with final regulations, with tables for subsequent years to be published in the Internal Revenue Bulletin.

These new mortality tables would be based on the tables contained in the RP–2000 Mortality Tables Report. Commentators generally recommended that the RP–2000 mortality tables be the basis for the mortality tables used under section 412(l)(7)(C)(ii) (although one commentator urged that large employers be permitted to use mortality tables tailored to their actual mortality experience). The IRS and the Treasury Department have reviewed the RP–2000 mortality tables and the accompanying report published by the Society of Actuaries, and have determined that the RP–2000 mortality tables form the best available basis for predicting mortality of pension plan participants and beneficiaries (other than disabled participants) based on pension plan experience and expected trends. Accordingly, the proposed regulations would change the mortality tables used to determine current liability from tables based on 1983 GAM to updated tables based on the RP–2000 mortality tables. As under the currently applicable mortality tables, the mortality tables set forth in these proposed regulations are gender-distinct because of significant differences between expected male mortality and expected female mortality.

The proposed regulations would provide for separate sets of tables for annuitants and nonannuitants. This distinction has been made because the RP–2000 Mortality Tables Report indicates that these two groups have significantly different mortality experience. This is particularly true at typical ages for early retirees, where the number of health-induced early retirements results in a population that has higher mortality rates than the population of currently employed individuals. Under the proposed regulations, the annuitant mortality table would be applied to determine the present value of benefits for each annuitant. The annuitant mortality table is also used for each nonannuitant (*i.e.*, an active employee or a terminated vested participant) for the period after which the nonannuitant is projected to commence receiving benefits, while the nonannuitant mortality table is applied for the period before the nonannuitant is projected to commence receiving benefits. Thus, for example, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 55 (*i.e.*, so that the probability of an active male participant living from age 45 to the age of 55 using the mortality table that would apply in 2007 is 98.59%) and the annuitant mortality table after the participant attains age 55. Similarly, if a 45-year-old terminated vested participant is projected to commence an annuity at age 65, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 65 and the annuitant mortality table for ages 65 and above.

The mortality tables that would be established pursuant to this regulation would be based on mortality improvements through the year of the actuarial valuation and would reflect the impact of further expected improvements in mortality. Commentators generally stated that the projection of mortality improvement is desirable because it reflects expected mortality more accurately than using mortality tables that do not reflect such projection. The IRS and Treasury agree with these comments, and believe that failing to project mortality improvement in determining current liability would tend to leave plans underfunded. The regulations would specify the projection factors that are to be used to calculate expected mortality improvement. These projection factors are from Mortality Projection Scale AA, which was also recommended for use in the UP–94 Study and RP–2000 Mortality Tables Report. The mortality tables for annuitants are generally based on a future projection period of 7 years, and the mortality tables for nonannuitants are generally based on a future projection period of 15 years. These projection periods were selected as the expected average duration of liabilities and are consistent with projection periods suggested by commentators.

The RP–2000 Mortality Tables Report did not develop mortality rates for annuitants younger than 50 years of age or for nonannuitants older than 70 years of age. The mortality tables for annuitants use the values that apply for the nonannuitant mortality tables at younger ages, with a smoothed transition to the annuitant mortality tables by age 50. Similarly, the mortality tables for both male and female nonannuitants use the values that apply for the annuitant mortality tables at older ages (*i.e.*, ages above 70), with a smoothed transition to the nonannuitant mortality tables by age 70.

The mortality tables for annuitants applicable for the 2007 plan year would use the values that apply for the nonannuitant mortality tables at ages 40 and younger for males and at ages 44 and younger for females with a smoothed transition to the annuitant mortality tables between the ages of 41 and 49 for males and between 45 and 49 for females. Similarly, the mortality tables for both male and female nonannuitants applicable for the 2007 plan year use the values that apply for the annuitant mortality tables at ages 80 and older, with a smoothed transition to the nonannuitant mortality tables between the ages of 71 and 79.

The proposed regulations would provide an option for smaller plans (*i.e.*, plans where the total of active and inactive participants is less than 500) to use a single blended table for all healthy participants — in lieu of the separate tables for annuitants and nonannuitants — in order to simplify the actuarial valuation for these plans. This blended table would be constructed from the separate nonannuitant and annuitant tables using the nonannuitant/annuitant weighting factors published in the RP–2000 Mortality Tables Report. However, because the RP–2000 Mortality Tables Report does not provide weighting factors before age 50 or after age 70, the IRS and the Treasury Department would extend the table of weighting factors for ages 41 through 50 (ages 45–50 for females) and for ages 70 through 79 in order to develop the blended table.

The proposed regulations do not provide for the use of generational mortality tables to compute a plan's current liability. Although commentators generally

stated that the use of generational mortality tables provides a more accurate prediction of participant mortality, they urged against requiring the use of generational mortality tables, arguing that many actuarial valuation systems are not currently capable of using a generational approach to mortality improvement. However, several commentators requested that the use of generational mortality tables be permitted on an optional basis. The IRS and the Treasury Department agree that the use of generational mortality tables would be preferable, but believe that the approach taken in the proposed regulations (*i.e.*, projecting liabilities for annuitants and nonannuitants to average expected duration) is appropriate because it reasonably approximates the use of generational tables without being overly complex to apply. In light of several comments requesting that the use of generational tables be optional, the IRS and the Treasury Department are considering adopting such a rule and request comments regarding any issues that might arise in implementing an optional use of a generational table. In addition, comments are requested regarding how much lead time would be appropriate if generational mortality tables were to be required in the future.

The RP–2000 mortality tables and the accompanying report analyze differences in expected mortality based on a number of factors, including job classification, annuity size, employment status (*i.e.*, active or retired), and industry. The IRS and the Treasury Department have considered whether separate mortality tables should be provided based on any of these distinctions, or on other distinctions cited in Notice 2003–62, such as tobacco use or income level. The IRS and the Treasury Department have concluded that it is inappropriate to apply distinctions other than the annuitant and nonannuitant distinction described above. In general, these other distinctions were not made because of the complexity involved in the process. For example, no distinction was made for tobacco use because of the difficulty in obtaining, maintaining, and documenting accurate data on the extent of tobacco use.

Although several commentators recommended that separate mortality tables apply to plans that are determined to be "white collar" or "blue collar" in nature, the IRS and Treasury have not adopted this recommendation because of serious administrability concerns. Commentators recognized that it may be difficult to identify whether a specific individual falls into the category of blue collar or white collar (especially if an individual has shifted job classifications during his or her career), and suggested that the classification be based on whether the plan is primarily composed of blue collar employees or white collar employees or whether a plan covers a mixed population of blue collar and white collar employees. While the plan-wide classification may avoid the difficulties of categorizing those individuals who are hard to classify as either blue collar or white collar, it would create additional problems if a plan shifted between these categories.

More importantly, the RP–2000 Mortality Tables Report indicates that plans that are primarily blue collar in nature, but that provide large annuities, tend to have significantly better mortality experience than the average mortality for individuals in the RP–2000 Mortality Tables Report. As a result, classifying such a plan as blue collar and allowing the plan to use a weaker mortality table will lead to systematic underfunding of the plan.[6] Other concerns weighing against the use of separate tables for blue collar and white collar plans include the risk of anti-selection by plans in the absence of mandatory adjustments and the lack of research showing the extent to which any mortality differences attributable to blue collar or white collar status extend to beneficiaries of the plan.

As noted above, the mortality experience is significantly different for annuitants and nonannuitants. While the use of separate mortality rates for these groups of individuals will likely entail changes in programming of actuarial software, the IRS and Treasury believe that the improvement in accuracy resulting from the use of separate mortality tables for annuitants and nonannuitants more than offsets the added complexity. Furthermore, the annuitant/nonannuitant distinction does not have the same difficult administrative issues as separate tables based on collar type, annuity size, or tobacco. This is because it is usually a straightforward process to categorize an individual as an annuitant or a nonannuitant, and once an indvidual is categorized as an annuitant, the individual's status usually does not change again.

Proposed Effective Date

These regulations are proposed to apply to plan years beginning on or after January 1, 2007.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations provide for special rules to simplify the application of these regulations by actuaries who provide services for small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 19, 2006, at 10 a.m. in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must use the main

[6] Although some commentators suggested addressing this problem by treating some highly compensated union employees as if they were white collar workers, the developers of the RP–2000 Mortality Tables Report (and the researchers they hired to apply a multivariate analysis of the data) were unable to find a practical model to apply the combined effect of collar and annuity amount on mortality.

building entrance on Constitution Avenue. 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 more information about having your name placed on the 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 written (signed original and eight (8) copies) or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by March 29, 2006. 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 authors of these regulations are Bruce Perlin and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

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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 1.412(l)(7)–1 is added to read as follows:

§1.412(l)(7)–1 Mortality tables used to determine current liability.

(a) *General rules*. This section sets forth the basis used to generate mortality tables to be used in connection with computations under section 412(l)(7)(C)(ii) for determining current liability for participants and beneficiaries (other than disabled participants). The mortality tables, which reflect the probability of death at each age, that are to be used for plan years beginning during 2007, are provided in paragraph (e) of this section. The mortality tables to be used for later plan years are to be provided in guidance published in the Internal Revenue Bulletin. See §601.601(d) of this chapter.

(b) *Use of the tables*—(1) *Separate tables for annuitants and nonannuitants*. Separate tables are provided for use by annuitants and nonannuitants. The annuitant mortality table is applied to determine the present value of benefits for each annuitant, and to each nonannuitant for the period after which the nonannuitant is projected to commence receiving benefits. For purposes of this section, an annuitant means a plan participant who is currently receiving benefits and a nonannuitant means a plan participant who is not currently receiving benefits (*e.g.*, an active employee or a terminated vested participant). A participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit which has commenced and a nonannuitant with respect to the balance of the benefit. The nonannuitant mortality table is applied to each nonannuitant for the period before the nonannuitant is projected to commence receiving benefits. Thus, for example, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 55 (*i.e.*, so that the probability of an active male participant living from age 45 to the age of 55 for the table that applies in plan years beginning in 2007 is 98.59%) and the annuitant mortality table for the period ages 55 and above. Similarly, if a 45-year-old terminated vested participant is projected to commence an annuity at age 65, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 65 and the annuitant mortality table for ages 65 and above.

(2) *Small plan tables*. As an alternative to the separate tables specified for annuitants and nonannuitants, a small plan can use a combined table that applies the same mortality rates to both annuitants and nonannuitants. For this purpose, a small plan is defined as a plan with fewer than 500 participants (including both active and inactive participants).

(c) *Construction of the tables*—(1) *Source of basic data*. The mortality tables are based on the separate mortality tables for employees and healthy annuitants under the RP–2000 Mortality Tables Report (*http://www.soa.org/ccm/content/research-publications/experience-studies-tools/the-rp–2000-mortality-tables/)*, as set forth in paragraph (d) of this section.

(2) *Projected mortality improvements*. The mortality rates under the basic mortality tables are projected to improve using Projection Scale AA, as set forth in paragraph (d) of this section. The annuitant mortality rates for a plan year are based on applying the improvement factors from 2000 until 7 years after the plan year. The nonannuitant mortality rates for a plan year are based on applying the improvement factors from 2000 until 15 years after the plan year. The projection scale is applied using the following equation: Projected mortality rate = base mortality rate * [(1 - projection factor)^(number of years projected)].

(3) *Treatment of young annuitants and older nonannuitants*. The mortality tables for annuitants use the values that apply for the nonannuitant mortality tables at younger ages, with a smoothed transition to the annuitant mortality tables by age 50. Similarly, the mortality tables for both male and female nonannuitants use the values that apply for the annuitant mortality tables at older ages (*i.e.*, ages above 70), with a smoothed transition to the nonannuitant mortality tables by age 70.

(4) *Construction of the combined table for small plans*. The combined table for small plans is constructed from the separate nonannuitant and annuitant tables using the nonannuitant weighting factors as set forth in paragraph (d) of this section. The weighting factors are applied to develop this table using the following equation: Combined mortality rate = [non-annuitant rate * (1- weighting factor)] + [annuitant rate * weighting factor].

(d) *Tables*. As set forth in paragraph (c) of this section, the following values are used to develop the mortality tables that are used for determining current liability

under section 412(l)(7)(C)(ii) and this section.

Age	MALE Non-Annuitant Table (Year 2000)	MALE Annuitant Table (Year 2000)	MALE Projection Scale AA	MALE Weighting factors for small plans	FEMALE Non-Annuitant Table (Year 2000)	FEMALE Annuitant Table (Year 2000)	FEMALE Projection Scale AA	FEMALE Weighting factors for small plans
1	0.000637	-	0.020	-	0.000571	-	0.020	-
2	0.000430	-	0.020	-	0.000372	-	0.020	-
3	0.000357	-	0.020	-	0.000278	-	0.020	-
4	0.000278	-	0.020	-	0.000208	-	0.020	-
5	0.000255	-	0.020	-	0.000188	-	0.020	-
6	0.000244	-	0.020	-	0.000176	-	0.020	-
7	0.000234	-	0.020	-	0.000165	-	0.020	-
8	0.000216	-	0.020	-	0.000147	-	0.020	-
9	0.000209	-	0.020	-	0.000140	-	0.020	-
10	0.000212	-	0.020	-	0.000141	-	0.020	-
11	0.000219	-	0.020	-	0.000143	-	0.020	-
12	0.000228	-	0.020	-	0.000148	-	0.020	-
13	0.000240	-	0.020	-	0.000155	-	0.020	-
14	0.000254	-	0.019	-	0.000162	-	0.018	-
15	0.000269	-	0.019	-	0.000170	-	0.016	-
16	0.000284	-	0.019	-	0.000177	-	0.015	-
17	0.000301	-	0.019	-	0.000184	-	0.014	-
18	0.000316	-	0.019	-	0.000188	-	0.014	-
19	0.000331	-	0.019	-	0.000190	-	0.015	-
20	0.000345	-	0.019	-	0.000191	-	0.016	-
21	0.000357	-	0.018	-	0.000192	-	0.017	-
22	0.000366	-	0.017	-	0.000194	-	0.017	-
23	0.000373	-	0.015	-	0.000197	-	0.016	-
24	0.000376	-	0.013	-	0.000201	-	0.015	-
25	0.000376	-	0.010	-	0.000207	-	0.014	-
26	0.000378	-	0.006	-	0.000214	-	0.012	-
27	0.000382	-	0.005	-	0.000223	-	0.012	-
28	0.000393	-	0.005	-	0.000235	-	0.012	-
29	0.000412	-	0.005	-	0.000248	-	0.012	-
30	0.000444	-	0.005	-	0.000264	-	0.010	-
31	0.000499	-	0.005	-	0.000307	-	0.008	-
32	0.000562	-	0.005	-	0.000350	-	0.008	-
33	0.000631	-	0.005	-	0.000394	-	0.009	-
34	0.000702	-	0.005	-	0.000435	-	0.010	-
35	0.000773	-	0.005	-	0.000475	-	0.011	-
36	0.000841	-	0.005	-	0.000514	-	0.012	-
37	0.000904	-	0.005	-	0.000554	-	0.013	-
38	0.000964	-	0.006	-	0.000598	-	0.014	-
39	0.001021	-	0.007	-	0.000648	-	0.015	-
40	0.001079	-	0.008	-	0.000706	-	0.015	-
41	0.001142	-	0.009	0.0045	0.000774	-	0.015	-
42	0.001215	-	0.010	0.0091	0.000852	-	0.015	-
43	0.001299	-	0.011	0.0136	0.000937	-	0.015	-
44	0.001397	-	0.012	0.0181	0.001029	-	0.015	-
45	0.001508	-	0.013	0.0226	0.001124	-	0.016	0.0084
46	0.001616	-	0.014	0.0272	0.001223	-	0.017	0.0167

Age	MALE Non-Annuitant Table (Year 2000)	MALE Annuitant Table (Year 2000)	MALE Projection Scale AA	MALE Weighting factors for small plans	FEMALE Non-Annuitant Table (Year 2000)	FEMALE Annuitant Table (Year 2000)	FEMALE Projection Scale AA	FEMALE Weighting factors for small plans
47	0.001734	-	0.015	0.0317	0.001326	-	0.018	0.0251
48	0.001860	-	0.016	0.0362	0.001434	-	0.018	0.0335
49	0.001995	-	0.017	0.0407	0.001550	-	0.018	0.0419
50	0.002138	0.005347	0.018	0.0453	0.001676	0.002344	0.017	0.0502
51	0.002288	0.005528	0.019	0.0498	0.001814	0.002459	0.016	0.0586
52	0.002448	0.005644	0.020	0.0686	0.001967	0.002647	0.014	0.0744
53	0.002621	0.005722	0.020	0.0953	0.002135	0.002895	0.012	0.0947
54	0.002812	0.005797	0.020	0.1288	0.002321	0.003190	0.010	0.1189
55	0.003029	0.005905	0.019	0.2066	0.002526	0.003531	0.008	0.1897
56	0.003306	0.006124	0.018	0.3173	0.002756	0.003925	0.006	0.2857
57	0.003628	0.006444	0.017	0.3780	0.003010	0.004385	0.005	0.3403
58	0.003997	0.006895	0.016	0.4401	0.003291	0.004921	0.005	0.3878
59	0.004414	0.007485	0.016	0.4986	0.003599	0.005531	0.005	0.4360
60	0.004878	0.008196	0.016	0.5633	0.003931	0.006200	0.005	0.4954
61	0.005382	0.009001	0.015	0.6338	0.004285	0.006919	0.005	0.5805
62	0.005918	0.009915	0.015	0.7103	0.004656	0.007689	0.005	0.6598
63	0.006472	0.010951	0.014	0.7902	0.005039	0.008509	0.005	0.7520
64	0.007028	0.012117	0.014	0.8355	0.005429	0.009395	0.005	0.8043
65	0.007573	0.013419	0.014	0.8832	0.005821	0.010364	0.005	0.8552
66	0.008099	0.014868	0.013	0.9321	0.006207	0.011413	0.005	0.9118
67	0.008598	0.016460	0.013	0.9510	0.006583	0.012540	0.005	0.9367
68	0.009069	0.018200	0.014	0.9639	0.006945	0.013771	0.005	0.9523
69	0.009510	0.020105	0.014	0.9714	0.007289	0.015153	0.005	0.9627
70	0.009922	0.022206	0.015	0.9740	0.007613	0.016742	0.005	0.9661
71	-	0.024570	0.015	0.9766	-	0.018579	0.006	0.9695
72	-	0.027281	0.015	0.9792	-	0.020665	0.006	0.9729
73	-	0.030387	0.015	0.9818	-	0.022970	0.007	0.9763
74	-	0.033900	0.015	0.9844	-	0.025458	0.007	0.9797
75	-	0.037834	0.014	0.9870	-	0.028106	0.008	0.9830
76	-	0.042169	0.014	0.9896	-	0.030966	0.008	0.9864
77	-	0.046906	0.013	0.9922	-	0.034105	0.007	0.9898
78	-	0.052123	0.012	0.9948	-	0.037595	0.007	0.9932
79	-	0.057927	0.011	0.9974	-	0.041506	0.007	0.9966
80	-	0.064368	0.010	1.0000	-	0.045879	0.007	1.0000
81	-	0.072041	0.009	1.0000	-	0.050780	0.007	1.0000
82	-	0.080486	0.008	1.0000	-	0.056294	0.007	1.0000
83	-	0.089718	0.008	1.0000	-	0.062506	0.007	1.0000
84	-	0.099779	0.007	1.0000	-	0.069517	0.007	1.0000
85	-	0.110757	0.007	1.0000	-	0.077446	0.006	1.0000
86	-	0.122797	0.007	1.0000	-	0.086376	0.005	1.0000
87	-	0.136043	0.006	1.0000	-	0.096337	0.004	1.0000
88	-	0.150590	0.005	1.0000	-	0.107303	0.004	1.0000
89	-	0.166420	0.005	1.0000	-	0.119154	0.003	1.0000
90	-	0.183408	0.004	1.0000	-	0.131682	0.003	1.0000
91	-	0.199769	0.004	1.0000	-	0.144604	0.003	1.0000
92	-	0.216605	0.003	1.0000	-	0.157618	0.003	1.0000
93	-	0.233662	0.003	1.0000	-	0.170433	0.002	1.0000
94	-	0.250693	0.003	1.0000	-	0.182799	0.002	1.0000
95	-	0.267491	0.002	1.0000	-	0.194509	0.002	1.0000
96	-	0.283905	0.002	1.0000	-	0.205379	0.002	1.0000

Age	MALE Non-Annuitant Table (Year 2000)	MALE Annuitant Table (Year 2000)	MALE Projection Scale AA	MALE Weighting factors for small plans	FEMALE Non-Annuitant Table (Year 2000)	FEMALE Annuitant Table (Year 2000)	FEMALE Projection Scale AA	FEMALE Weighting factors for small plans
97	-	0.299852	0.002	1.0000	-	0.215240	0.001	1.0000
98	-	0.315296	0.001	1.0000	-	0.223947	0.001	1.0000
99	-	0.330207	0.001	1.0000	-	0.231387	0.001	1.0000
100	-	0.344556	0.001	1.0000	-	0.237467	0.001	1.0000
101	-	0.358628	0.000	1.0000	-	0.244834	0.000	1.0000
102	-	0.371685	0.000	1.0000	-	0.254498	0.000	1.0000
103	-	0.383040	0.000	1.0000	-	0.266044	0.000	1.0000
104	-	0.392003	0.000	1.0000	-	0.279055	0.000	1.0000
105	-	0.397886	0.000	1.0000	-	0.293116	0.000	1.0000
106	-	0.400000	0.000	1.0000	-	0.307811	0.000	1.0000
107	-	0.400000	0.000	1.0000	-	0.322725	0.000	1.0000
108	-	0.400000	0.000	1.0000	-	0.337441	0.000	1.0000
109	-	0.400000	0.000	1.0000	-	0.351544	0.000	1.0000
110	-	0.400000	0.000	1.0000	-	0.364617	0.000	1.0000
111	-	0.400000	0.000	1.0000	-	0.376246	0.000	1.0000
112	-	0.400000	0.000	1.0000	-	0.386015	0.000	1.0000
113	-	0.400000	0.000	1.0000	-	0.393507	0.000	1.0000
114	-	0.400000	0.000	1.0000	-	0.398308	0.000	1.0000
115	-	0.400000	0.000	1.0000	-	0.400000	0.000	1.0000
116	-	0.400000	0.000	1.0000	-	0.400000	0.000	1.0000
117	-	0.400000	0.000	1.0000	-	0.400000	0.000	1.0000
118	-	0.400000	0.000	1.0000	-	0.400000	0.000	1.0000
119	-	0.400000	0.000	1.0000	-	0.400000	0.000	1.0000
120	-	1.000000	0.000	1.0000	-	1.000000	0.000	1.0000

(e) *Tables for plan years beginning during 2007*. The following tables are to be used for determining current liability under section 412(l)(7)(C)(ii) for plan years beginning during 2007.

Age	MALE Non-Annuitant Table	MALE Annuitant Table	MALE Optional Combined Table for Small Plans	FEMALE Non-Annuitant Table	FEMALE Annuitant Table	FEMALE Optional Combined Table for Small Plans
1	0.000408	0.000408	0.000408	0.000366	0.000366	0.000366
2	0.000276	0.000276	0.000276	0.000239	0.000239	0.000239
3	0.000229	0.000229	0.000229	0.000178	0.000178	0.000178
4	0.000178	0.000178	0.000178	0.000133	0.000133	0.000133
5	0.000163	0.000163	0.000163	0.000121	0.000121	0.000121
6	0.000156	0.000156	0.000156	0.000113	0.000113	0.000113
7	0.000150	0.000150	0.000150	0.000106	0.000106	0.000106
8	0.000138	0.000138	0.000138	0.000094	0.000094	0.000094
9	0.000134	0.000134	0.000134	0.000090	0.000090	0.000090
10	0.000136	0.000136	0.000136	0.000090	0.000090	0.000090
11	0.000140	0.000140	0.000140	0.000092	0.000092	0.000092
12	0.000146	0.000146	0.000146	0.000095	0.000095	0.000095
13	0.000154	0.000154	0.000154	0.000099	0.000099	0.000099
14	0.000167	0.000167	0.000167	0.000109	0.000109	0.000109
15	0.000176	0.000176	0.000176	0.000119	0.000119	0.000119

Age	MALE Non-Annuitant Table	MALE Annuitant Table	MALE Optional Combined Table for Small Plans	FEMALE Non-Annuitant Table	FEMALE Annuitant Table	FEMALE Optional Combined Table for Small Plans
16	0.000186	0.000186	0.000186	0.000127	0.000127	0.000127
17	0.000197	0.000197	0.000197	0.000135	0.000135	0.000135
18	0.000207	0.000207	0.000207	0.000138	0.000138	0.000138
19	0.000217	0.000217	0.000217	0.000136	0.000136	0.000136
20	0.000226	0.000226	0.000226	0.000134	0.000134	0.000134
21	0.000239	0.000239	0.000239	0.000132	0.000132	0.000132
22	0.000251	0.000251	0.000251	0.000133	0.000133	0.000133
23	0.000267	0.000267	0.000267	0.000138	0.000138	0.000138
24	0.000282	0.000282	0.000282	0.000144	0.000144	0.000144
25	0.000301	0.000301	0.000301	0.000152	0.000152	0.000152
26	0.000331	0.000331	0.000331	0.000164	0.000164	0.000164
27	0.000342	0.000342	0.000342	0.000171	0.000171	0.000171
28	0.000352	0.000352	0.000352	0.000180	0.000180	0.000180
29	0.000369	0.000369	0.000369	0.000190	0.000190	0.000190
30	0.000398	0.000398	0.000398	0.000212	0.000212	0.000212
31	0.000447	0.000447	0.000447	0.000257	0.000257	0.000257
32	0.000503	0.000503	0.000503	0.000293	0.000293	0.000293
33	0.000565	0.000565	0.000565	0.000323	0.000323	0.000323
34	0.000629	0.000629	0.000629	0.000349	0.000349	0.000349
35	0.000692	0.000692	0.000692	0.000372	0.000372	0.000372
36	0.000753	0.000753	0.000753	0.000394	0.000394	0.000394
37	0.000810	0.000810	0.000810	0.000415	0.000415	0.000415
38	0.000844	0.000844	0.000844	0.000439	0.000439	0.000439
39	0.000875	0.000875	0.000875	0.000465	0.000465	0.000465
40	0.000904	0.000904	0.000904	0.000506	0.000506	0.000506
41	0.000936	0.000963	0.000936	0.000555	0.000555	0.000555
42	0.000974	0.001081	0.000975	0.000611	0.000611	0.000611
43	0.001018	0.001258	0.001021	0.000672	0.000672	0.000672
44	0.001071	0.001493	0.001079	0.000738	0.000738	0.000738
45	0.001131	0.001788	0.001146	0.000788	0.000791	0.000788
46	0.001185	0.002142	0.001211	0.000839	0.000896	0.000840
47	0.001244	0.002554	0.001286	0.000889	0.001054	0.000893
48	0.001304	0.003026	0.001366	0.000962	0.001265	0.000972
49	0.001368	0.003557	0.001457	0.001039	0.001528	0.001059
50	0.001434	0.004146	0.001557	0.001149	0.001844	0.001184
51	0.001500	0.004226	0.001636	0.001272	0.001962	0.001312
52	0.001570	0.004254	0.001754	0.001442	0.002173	0.001496
53	0.001681	0.004312	0.001932	0.001637	0.002445	0.001714
54	0.001803	0.004369	0.002134	0.001861	0.002771	0.001969
55	0.001986	0.004514	0.002508	0.002117	0.003155	0.002314
56	0.002217	0.004749	0.003020	0.002414	0.003608	0.002755
57	0.002488	0.005069	0.003464	0.002696	0.004088	0.003170
58	0.002803	0.005501	0.003990	0.002947	0.004588	0.003583
59	0.003095	0.005972	0.004529	0.003223	0.005156	0.004066
60	0.003421	0.006539	0.005177	0.003521	0.005780	0.004640
61	0.003860	0.007284	0.006030	0.003838	0.006450	0.005354
62	0.004244	0.008024	0.006929	0.004170	0.007168	0.006148
63	0.004746	0.008989	0.008099	0.004513	0.007932	0.007084
64	0.005154	0.009947	0.009159	0.004862	0.008758	0.007996

Age	MALE Non-Annuitant Table	MALE Annuitant Table	MALE Optional Combined Table for Small Plans	FEMALE Non-Annuitant Table	FEMALE Annuitant Table	FEMALE Optional Combined Table for Small Plans
65	0.005553	0.011015	0.010377	0.005213	0.009662	0.009018
66	0.006073	0.012379	0.011951	0.005559	0.010640	0.010192
67	0.006447	0.013705	0.013349	0.005896	0.011690	0.011323
68	0.006650	0.014940	0.014641	0.006220	0.012838	0.012522
69	0.006974	0.016504	0.016231	0.006528	0.014126	0.013843
70	0.007115	0.017971	0.017689	0.006818	0.015607	0.015309
71	0.008002	0.019884	0.019606	0.007450	0.017078	0.016784
72	0.009777	0.022078	0.021822	0.008714	0.018995	0.018716
73	0.012439	0.024592	0.024371	0.010610	0.020819	0.020577
74	0.015988	0.027435	0.027256	0.013139	0.023074	0.022872
75	0.020425	0.031057	0.030919	0.016299	0.025117	0.024967
76	0.025749	0.034615	0.034523	0.020092	0.027673	0.027570
77	0.031961	0.039054	0.038999	0.024516	0.030911	0.030846
78	0.039059	0.044018	0.043992	0.029573	0.034074	0.034043
79	0.047046	0.049617	0.049610	0.035261	0.037618	0.037610
80	0.055919	0.055919	0.055919	0.041582	0.041582	0.041582
81	0.063476	0.063476	0.063476	0.046024	0.046024	0.046024
82	0.071926	0.071926	0.071926	0.051021	0.051021	0.051021
83	0.080176	0.080176	0.080176	0.056651	0.056651	0.056651
84	0.090433	0.090433	0.090433	0.063006	0.063006	0.063006
85	0.100383	0.100383	0.100383	0.071188	0.071188	0.071188
86	0.111295	0.111295	0.111295	0.080522	0.080522	0.080522
87	0.125051	0.125051	0.125051	0.091080	0.091080	0.091080
88	0.140385	0.140385	0.140385	0.101448	0.101448	0.101448
89	0.155142	0.155142	0.155142	0.114246	0.114246	0.114246
90	0.173400	0.173400	0.173400	0.126258	0.126258	0.126258
91	0.188868	0.188868	0.188868	0.138648	0.138648	0.138648
92	0.207683	0.207683	0.207683	0.151126	0.151126	0.151126
93	0.224037	0.224037	0.224037	0.165722	0.165722	0.165722
94	0.240367	0.240367	0.240367	0.177747	0.177747	0.177747
95	0.260098	0.260098	0.260098	0.189133	0.189133	0.189133
96	0.276058	0.276058	0.276058	0.199703	0.199703	0.199703
97	0.291564	0.291564	0.291564	0.212246	0.212246	0.212246
98	0.310910	0.310910	0.310910	0.220832	0.220832	0.220832
99	0.325614	0.325614	0.325614	0.228169	0.228169	0.228169
100	0.339763	0.339763	0.339763	0.234164	0.234164	0.234164
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507

Age	MALE Non-Annuitant Table	MALE Annuitant Table	MALE Optional Combined Table for Small Plans	FEMALE Non-Annuitant Table	FEMALE Annuitant Table	FEMALE Optional Combined Table for Small Plans
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

(f) *Effective date*. The mortality tables described in this section apply for plan years beginning on or after January 1, 2007.

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

(Filed by the Office of the Federal Register on December 1, 2005, 8:45 a.m., and published in the issue of the Federal Register for December 2, 2005, 70 F.R. 72260)

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.

Numerical Finding List[1]

Bulletins 2005–27 through 2005–51

Announcements:

2005-46, 2005-27 I.R.B. *63*
2005-47, 2005-28 I.R.B. *71*
2005-48, 2005-29 I.R.B. *111*
2005-49, 2005-29 I.R.B. *119*
2005-50, 2005-30 I.R.B. *152*
2005-51, 2005-32 I.R.B. *283*
2005-52, 2005-31 I.R.B. *257*
2005-53, 2005-31 I.R.B. *258*
2005-54, 2005-32 I.R.B. *283*
2005-55, 2005-33 I.R.B. *317*
2005-56, 2005-33 I.R.B. *318*
2005-57, 2005-33 I.R.B. *318*
2005-58, 2005-33 I.R.B. *319*
2005-59, 2005-37 I.R.B. *524*
2005-60, 2005-35 I.R.B. *455*
2005-61, 2005-36 I.R.B. *495*
2005-62, 2005-36 I.R.B. *495*
2005-63, 2005-36 I.R.B. *496*
2005-64, 2005-37 I.R.B. *537*
2005-65, 2005-38 I.R.B. *587*
2005-66, 2005-39 I.R.B. *613*
2005-67, 2005-40 I.R.B. *678*
2005-68, 2005-39 I.R.B. *613*
2005-69, 2005-40 I.R.B. *681*
2005-70, 2005-40 I.R.B. *682*
2005-71, 2005-41 I.R.B. *714*
2005-72, 2005-41 I.R.B. *692*
2005-73, 2005-41 I.R.B. *715*
2005-74, 2005-42 I.R.B. *764*
2005-75, 2005-42 I.R.B. *764*
2005-76, 2005-42 I.R.B. *765*
2005-77, 2005-44 I.R.B. *855*
2005-78, 2005-44 I.R.B. *918*
2005-79, 2005-45 I.R.B. *941*
2005-80, 2005-46 I.R.B. *967*
2005-81, 2005-45 I.R.B. *941*
2005-82, 2005-45 I.R.B. *941*
2005-83, 2005-45 I.R.B. *941*
2005-84, 2005-48 I.R.B. *1064*
2005-85, 2005-48 I.R.B. *1065*
2005-86, 2005-48 I.R.B. *1069*
2005-87, 2005-50 I.R.B. *1144*
2005-88, 2005-50 I.R.B. *1145*
2005-89, 2005-50 I.R.B. *1149*

Notices:

2005-48, 2005-27 I.R.B. *9*
2005-49, 2005-27 I.R.B. *14*
2005-50, 2005-27 I.R.B. *14*
2005-51, 2005-28 I.R.B. *74*
2005-52, 2005-28 I.R.B. *75*
2005-53, 2005-32 I.R.B. *263*

Notices— Continued:

2005-54, 2005-30 I.R.B. *127*
2005-55, 2005-32 I.R.B. *265*
2005-56, 2005-32 I.R.B. *266*
2005-57, 2005-32 I.R.B. *267*
2005-58, 2005-33 I.R.B. *295*
2005-59, 2005-35 I.R.B. *443*
2005-60, 2005-39 I.R.B. *606*
2005-61, 2005-39 I.R.B. *607*
2005-62, 2005-35 I.R.B. *443*
2005-63, 2005-35 I.R.B. *448*
2005-64, 2005-36 I.R.B. *471*
2005-65, 2005-39 I.R.B. *607*
2005-66, 2005-40 I.R.B. *620*
2005-67, 2005-40 I.R.B. *621*
2005-68, 2005-40 I.R.B. *622*
2005-69, 2005-40 I.R.B. *622*
2005-70, 2005-41 I.R.B. *694*
2005-71, 2005-44 I.R.B. *863*
2005-72, 2005-47 I.R.B. *976*
2005-73, 2005-42 I.R.B. *723*
2005-74, 2005-42 I.R.B. *726*
2005-75, 2005-45 I.R.B. *929*
2005-76, 2005-46 I.R.B. *947*
2005-77, 2005-46 I.R.B. *951*
2005-78, 2005-46 I.R.B. *952*
2005-79, 2005-46 I.R.B. *952*
2005-80, 2005-46 I.R.B. *953*
2005-81, 2005-47 I.R.B. *977*
2005-82, 2005-47 I.R.B. *978*
2005-83, 2005-49 I.R.B. *1075*
2005-84, 2005-46 I.R.B. *959*
2005-85, 2005-46 I.R.B. *961*
2005-86, 2005-49 I.R.B. *1075*
2005-87, 2005-50 I.R.B. *1097*
2005-88, 2005-48 I.R.B. *1060*
2005-89, 2005-49 I.R.B. *1077*
2005-90, 2005-51 I.R.B. *1163*
2005-91, 2005-51 I.R.B. *1164*
2005-92, 2005-51 I.R.B. *1165*
2005-95, 2005-51 I.R.B. *1172*

Proposed Regulations:

REG-106030-98, 2005-42 I.R.B. *739*
REG-144615-02, 2005-40 I.R.B. *625*
REG-150088-02, 2005-43 I.R.B. *774*
REG-150091-02, 2005-43 I.R.B. *780*
REG-131739-03, 2005-36 I.R.B. *494*
REG-130241-04, 2005-27 I.R.B. *18*
REG-138362-04, 2005-33 I.R.B. *299*
REG-138647-04, 2005-41 I.R.B. *697*
REG-144620-04, 2005-50 I.R.B. *1141*
REG-144898-04, 2005-48 I.R.B. *1062*
REG-149436-04, 2005-35 I.R.B. *454*
REG-156518-04, 2005-38 I.R.B. *582*
REG-158080-04, 2005-43 I.R.B. *786*
REG-104143-05, 2005-41 I.R.B. *708*

Proposed Regulations— Continued:

REG-105847-05, 2005-47 I.R.B. *987*
REG-111257-05, 2005-42 I.R.B. *759*
REG-114371-05, 2005-45 I.R.B. *930*
REG-114444-05, 2005-45 I.R.B. *934*
REG-121584-05, 2005-37 I.R.B. *523*
REG-122857-05, 2005-39 I.R.B. *609*
REG-124988-05, 2005-51 I.R.B. *1186*
REG-129782-05, 2005-40 I.R.B. *675*
REG-133578-05, 2005-39 I.R.B. *610*

Revenue Procedures:

2005-35, 2005-28 I.R.B. *76*
2005-36, 2005-28 I.R.B. *78*
2005-37, 2005-28 I.R.B. *79*
2005-38, 2005-28 I.R.B. *81*
2005-39, 2005-28 I.R.B. *82*
2005-40, 2005-28 I.R.B. *83*
2005-41, 2005-29 I.R.B. *90*
2005-42, 2005-30 I.R.B. *128*
2005-43, 2005-29 I.R.B. *107*
2005-44, 2005-29 I.R.B. *110*
2005-45, 2005-30 I.R.B. *141*
2005-46, 2005-30 I.R.B. *142*
2005-47, 2005-32 I.R.B. *269*
2005-48, 2005-32 I.R.B. *271*
2005-49, 2005-31 I.R.B. *165*
2005-50, 2005-32 I.R.B. *272*
2005-51, 2005-33 I.R.B. *296*
2005-52, 2005-34 I.R.B. *326*
2005-53, 2005-34 I.R.B. *339*
2005-54, 2005-34 I.R.B. *353*
2005-55, 2005-34 I.R.B. *367*
2005-56, 2005-34 I.R.B. *383*
2005-57, 2005-34 I.R.B. *392*
2005-58, 2005-34 I.R.B. *402*
2005-59, 2005-34 I.R.B. *412*
2005-60, 2005-35 I.R.B. *449*
2005-61, 2005-37 I.R.B. *507*
2005-62, 2005-37 I.R.B. *507*
2005-63, 2005-36 I.R.B. *491*
2005-64, 2005-36 I.R.B. *492*
2005-65, 2005-38 I.R.B. *564*
2005-66, 2005-37 I.R.B. *509*
2005-67, 2005-42 I.R.B. *729*
2005-68, 2005-41 I.R.B. *694*
2005-69, 2005-44 I.R.B. *864*
2005-70, 2005-47 I.R.B. *979*
2005-71, 2005-47 I.R.B. *985*
2005-72, 2005-49 I.R.B. *1078*
2005-73, 2005-49 I.R.B. *1090*
2005-74, 2005-50 I.R.B. *1098*
2005-75, 2005-50 I.R.B. *1137*
2005-76, 2005-50 I.R.B. *1139*
2005-77, 2005-51 I.R.B. *1176*
2005-78, 2005-51 I.R.B. *1177*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.

Revenue Rulings:

2005-38, 2005-27 I.R.B. *6*
2005-39, 2005-27 I.R.B. *1*
2005-40, 2005-27 I.R.B. *4*
2005-41, 2005-28 I.R.B. *69*
2005-42, 2005-28 I.R.B. *67*
2005-43, 2005-29 I.R.B. *88*
2005-44, 2005-29 I.R.B. *87*
2005-45, 2005-30 I.R.B. *123*
2005-46, 2005-30 I.R.B. *120*
2005-47, 2005-32 I.R.B. *261*
2005-48, 2005-32 I.R.B. *259*
2005-49, 2005-30 I.R.B. *125*
2005-50, 2005-30 I.R.B. *124*
2005-51, 2005-31 I.R.B. *163*
2005-52, 2005-35 I.R.B. *423*
2005-53, 2005-35 I.R.B. *425*
2005-54, 2005-33 I.R.B. *289*
2005-55, 2005-33 I.R.B. *284*
2005-56, 2005-35 I.R.B. *427*
2005-57, 2005-36 I.R.B. *466*
2005-58, 2005-36 I.R.B. *465*
2005-59, 2005-37 I.R.B. *505*
2005-60, 2005-37 I.R.B. *502*
2005-61, 2005-38 I.R.B. *538*
2005-62, 2005-38 I.R.B. *557*
2005-63, 2005-39 I.R.B. *603*
2005-64, 2005-39 I.R.B. *600*
2005-65, 2005-41 I.R.B. *684*
2005-66, 2005-41 I.R.B. *686*
2005-67, 2005-43 I.R.B. *771*
2005-68, 2005-44 I.R.B. *853*
2005-69, 2005-44 I.R.B. *852*
2005-70, 2005-45 I.R.B. *919*
2005-71, 2005-45 I.R.B. *923*
2005-72, 2005-46 I.R.B. *944*
2005-73, 2005-48 I.R.B. *1050*
2005-74, 2005-51 I.R.B. *1153*
2005-75, 2005-49 I.R.B. *1073*
2005-76, 2005-49 I.R.B. *1072*
2005-77, 2005-49 I.R.B. *1071*
2005-78, 2005-51 I.R.B. *1157*

Social Security Contribution and Benefit Base; Domestic Employee Coverage Threshold:

2005-85, 2005-46 I.R.B. *961*

Tax Conventions:

2005-47, 2005-28 I.R.B. *71*
2005-72, 2005-41 I.R.B. *692*
2005-77, 2005-44 I.R.B. *855*

Treasury Decisions:

9208, 2005-31 I.R.B. *157*
9209, 2005-31 I.R.B. *153*
9210, 2005-33 I.R.B. *290*
9211, 2005-33 I.R.B. *287*

Treasury Decisions— Continued:

9212, 2005-35 I.R.B. *429*
9213, 2005-35 I.R.B. *440*
9214, 2005-35 I.R.B. *435*
9215, 2005-36 I.R.B. *468*
9216, 2005-36 I.R.B. *461*
9217, 2005-37 I.R.B. *498*
9218, 2005-37 I.R.B. *503*
9219, 2005-38 I.R.B. *538*
9220, 2005-39 I.R.B. *596*
9221, 2005-39 I.R.B. *604*
9222, 2005-40 I.R.B. *614*
9223, 2005-39 I.R.B. *591*
9224, 2005-41 I.R.B. *688*
9225, 2005-42 I.R.B. *716*
9226, 2005-43 I.R.B. *772*
9227, 2005-45 I.R.B. *924*
9228, 2005-47 I.R.B. *972*
9229, 2005-48 I.R.B. *1051*

Finding List of Current Actions on Previously Published Items[1]

Bulletins 2005–27 through 2005–51

Announcements:

84-26
Obsoleted by
REG-149436-04, 2005-35 I.R.B. *454*

2004-72
Updated and superseded by
Ann. 2005-59, 2005-37 I.R.B. *524*

2005-36
Modified by
Rev. Proc. 2005-66, 2005-37 I.R.B. *509*

2005-53
Corrected by
Ann. 2005-61, 2005-36 I.R.B. *495*

Notices:

89-111
Amplified by
Notice 2005-61, 2005-39 I.R.B. *607*

2001-42
Modified by
Rev. Proc. 2005-66, 2005-37 I.R.B. *509*

2004-43
Amplified by
Notice 2005-83, 2005-49 I.R.B. *1075*

2004-57
Superseded by
Notice 2005-79, 2005-46 I.R.B. *952*

2004-84
Modified by
Notice 2005-95, 2005-51 I.R.B. *1172*

2005-4
Modified by
Notice 2005-62, 2005-35 I.R.B. *443*
Notice 2005-80, 2005-46 I.R.B. *953*

2005-5
Modified by
Notice 2005-95, 2005-51 I.R.B. *1172*

2005-10
Clarified by
Notice 2005-64, 2005-36 I.R.B. *471*

2005-38
Modified by
Notice 2005-64, 2005-36 I.R.B. *471*

2005-42
Amplified by
Notice 2005-86, 2005-49 I.R.B. *1075*

Notices— Continued:

2005-51
Modified and superseded by
Notice 2005-57, 2005-32 I.R.B. *267*

2005-60
Superseded by
Notice 2005-84, 2005-46 I.R.B. *959*

2005-66
Supplemented by
Notice 2005-81, 2005-47 I.R.B. *977*

Proposed Regulations:

REG-108524-00
Corrected by
Ann. 2005-68, 2005-39 I.R.B. *613*

REG-142686-01
Withdrawn by
Ann. 2005-55, 2005-33 I.R.B. *317*

REG-100420-03
Corrected by
Ann. 2005-57, 2005-33 I.R.B. *318*

REG-102144-04
Corrected by
Ann. 2005-56, 2005-33 I.R.B. *318*

Revenue Procedures:

64-54
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

66-33
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

69-13
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

70-8
Modified by
Rev. Proc. 2005-46, 2005-30 I.R.B. *142*

71-1
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

72-22
Obsoleted by
Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

83-77
Superseded by
Rev. Proc. 2005-63, 2005-36 I.R.B. *491*

87-8
Obsoleted by
Rev. Proc. 2005-44, 2005-29 I.R.B. *110*

Revenue Procedures— Continued:

87-9
Obsoleted by
Rev. Proc. 2005-44, 2005-29 I.R.B. *110*

89-20
Superseded by
Rev. Proc. 2005-52, 2005-34 I.R.B. *326*

90–11
Modified by
Rev. Proc. 2005-40, 2005-28 I.R.B. *83*

90-30
Section 4 superseded by
Rev. Proc. 2005-54, 2005-34 I.R.B. *353*
Section 5 superseded by
Rev. Proc. 2005-55, 2005-34 I.R.B. *367*
Section 6 superseded by
Rev. Proc. 2005-56, 2005-34 I.R.B. *383*
Section 7 superseded by
Rev. Proc. 2005-58, 2005-34 I.R.B. *402*
Section 8 superseded by
Rev. Proc. 2005-59, 2005-34 I.R.B. *412*

90-31
Section 4 superseded by
Rev. Proc. 2005-52, 2005-34 I.R.B. *326*
Section 5 superseded by
Rev. Proc. 2005-54, 2005-34 I.R.B. *353*
Section 6 superseded by
Rev. Proc. 2005-55, 2005-34 I.R.B. *367*
Section 7 superseded by
Rev. Proc. 2005-56, 2005-34 I.R.B. *383*
Section 8 superseded by
Rev. Proc. 2005-58, 2005-34 I.R.B. *402*
Section 9 superseded by
Rev. Proc. 2005-59, 2005-34 I.R.B. *412*

93-22
Obsoleted by
Rev. Proc. 2005-44, 2005-29 I.R.B. *110*

98-18
Obsoleted by
Rev. Proc. 2005-45, 2005-30 I.R.B. *141*

99-39
Superseded by
Rev. Proc. 2005-60, 2005-35 I.R.B. *449*

2000-27
Modified and superseded by
Rev. Proc. 2005-66, 2005-37 I.R.B. *509*

2000-31
Superseded by
Rev. Proc. 2005-60, 2005-35 I.R.B. *449*

2000-49
Superseded by
Rev. Proc. 2005-41, 2005-29 I.R.B. *90*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.

Revenue Procedures— Continued:

2001-9

Superseded by

Rev. Proc. 2005-60, 2005-35 I.R.B. *449*

2001-16

Superseded by

Rev. Proc. 2005-42, 2005-30 I.R.B. *128*

2002-9

Modified and amplified by

Rev. Rul. 2005-42, 2005-28 I.R.B. *67*
Rev. Proc. 2005-35, 2005-28 I.R.B. *76*
Rev. Proc. 2005-43, 2005-29 I.R.B. *107*
Rev. Proc. 2005-47, 2005-32 I.R.B. *269*

2002-49

Modified, amplified, and superseded by

Rev. Proc. 2005-62, 2005-37 I.R.B. *507*

2003-64

Modified by

Rev. Proc. 2005-77, 2005-51 I.R.B. *1176*

2004-50

Superseded by

Rev. Proc. 2005-49, 2005-31 I.R.B. *165*

2004-54

Superseded by

Rev. Proc. 2005-65, 2005-38 I.R.B. *564*

2004-58

Superseded by

Rev. Proc. 2005-69, 2005-44 I.R.B. *864*

2004-59

Modified by

Rev. Proc. 2005-71, 2005-47 I.R.B. *985*

2004-62

Superseded by

Rev. Proc. 2005-74, 2005-50 I.R.B. *1098*

2004-64

Modified by

Ann. 2005-71, 2005-41 I.R.B. *714*
As modified by Announcement 2005-71, superseded by

Rev. Proc. 2005-78, 2005-51 I.R.B. *1177*

2004-73

Updated by

Rev. Proc. 2005-75, 2005-50 I.R.B. *1137*

2005-1

Amplified by

Rev. Proc. 2005-68, 2005-41 I.R.B. *694*

2005-3

Amplified by

Rev. Proc. 2005-61, 2005-37 I.R.B. *507*

Rev. Proc. 2005-68, 2005-41 I.R.B. *694*

2005-6

Modified by

Rev. Proc. 2005-66, 2005-37 I.R.B. *509*

Revenue Procedures— Continued:

2005-10

Superseded by

Rev. Proc. 2005-67, 2005-42 I.R.B. *729*

2005-16

Modified by

Rev. Proc. 2005-66, 2005-37 I.R.B. *509*

2005-23

Modified by

Rev. Proc. 2005-76, 2005-50 I.R.B. *1139*

2005-65

Corrected by

Ann. 2005-78, 2005-44 I.R.B. *918*

Revenue Rulings:

65-109

Obsoleted by

Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

68-549

Obsoleted by

Rev. Rul. 2005-43, 2005-29 I.R.B. *88*

74-203

Revoked by

Rev. Rul. 2005-59, 2005-37 I.R.B. *505*

82-29

Modified and clarified by

Rev. Proc. 2005-39, 2005-28 I.R.B. *82*

2004-45

Amplified by

Notice 2005-86, 2005-49 I.R.B. *1075*

2004-107

Supplemented and superseded by

Rev. Rul. 2005-76, 2005-49 I.R.B. *1072*

2004-108

Supplemented and superseded by

Rev. Rul. 2005-75, 2005-49 I.R.B. *1073*

2005-41

Corrected by

Ann. 2005-50, 2005-30 I.R.B. *152*

Treasury Decisions:

9149

Removed by

T.D. 9221, 2005-39 I.R.B. *604*

9186

Corrected by

Ann. 2005-53, 2005-31 I.R.B. *258*

9193

Corrected by

Ann. 2005-62, 2005-36 I.R.B. *495*

9205

Corrected by

Ann. 2005-63, 2005-36 I.R.B. *496*

Treasury Decisions— Continued:

9206

Corrected by

Ann. 2005-49, 2005-29 I.R.B. *119*

9207

Corrected by

Ann. 2005-52, 2005-31 I.R.B. *257*

9210

Corrected by

Ann. 2005-64, 2005-37 I.R.B. *537*

U.S. GPO: 2005—320–797/20036