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. 2007–38, page 1420.

Insurance companies; aggregation of multiple modified endowment contracts (MECs). This ruling holds that if a taxpayer that owns multiple modified endowment contracts issued by the same insurance company in the same calendar year exchanges some of those MECs for new MECs issued by a second insurance company, the new contracts are not aggregated with the remaining contracts.

Rev. Rul. 2007–40, page 1426.

Partnership property; transfer. This ruling concludes that a transfer of partnership property to a partner in satisfaction of a guaranteed payment under section 707(c) of the Code is a sale or exchange under section 1001, and not a distribution under section 731.

Notice 2007–48, page 1428.

This notice announces that the IRS and Treasury intend to issue regulations under section 367(b) of the Code to address certain triangular reorganizations involving foreign corporations. The regulations will apply to triangular reorganizations where either the parent corporation or its subsidiary are foreign and where the subsidiary acquires from shareholders of the parent, in exchange for property, parent stock that is used to acquire the stock or assets of a target corporation. The regulations make adjustments to the parent and the subsidiary corporations that have the effect of a distribution from the subsidiary to its parent of that amount of property that the subsidiary uses to acquire stock of its parent. Notice 2006–85 amplified.

Notice 2007–49, page 1429.

This notice provides guidance on identifying covered employees for purposes of section 162(m)(3) of the Code. In general, covered employees are the principal executive officer and those officers whose total compensation for that taxable year is required to be reported to shareholders under the Securities Exchange Act by reason of such employee being among the 3 highest compensated officers for the taxable year (other than the principal executive officer or the principal financial officer).

Notice 2007–50, page 1430.

This notice provides guidance relating to the percentage limitations imposed by section 170(b)(1)(E) of the Code on qualified conservation contributions made by individuals.

Rev. Proc. 2007–39, page 1446.

Addition of section 102(a) to the no-rule rev. proc. This procedure announces that the Service will not issue letter rulings or determination letters on whether a transfer is a gift within the meaning of section 102(a) of the Code. Rev. Proc. 2007–3 amplified.

EMPLOYEE PLANS

Rev. Proc. 2007–37, page 1433.

Funding; substitute mortality tables; non-multiemployer defined benefit plans. This procedure provides guidelines for requesting letter rulings for substitute mortality tables for certain defined benefit plans as a result of sections 112 and 102 of the Pension Protection Act of 2006, *i.e.*, section 430(h)(3)(C) of the Code and section 303(h)(3)(C) of the Employee Retirement Income Security Act of 1974.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Announcement 2007–59, page 1448.

Section 401(k) safe harbor plan; qualified Roth contribution program. This announcement provides that a plan will not fail to satisfy the requirements to be a section 401(k) safe harbor plan merely because of mid-year changes to implement a qualified Roth contribution program (as defined in section 402A) or the hardship withdrawals described in Part III of Notice 2007–7.

EXEMPT ORGANIZATIONS

Rev. Rul. 2007–41, page 1421.

Exempt organizations; political campaigns. This ruling provides 21 examples illustrating the application of the facts and circumstances to be considered to determine whether an organization exempt from income tax under section 501(a) of the Code as an organization described in section 501(c)(3) has participated in, or intervened in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

EMPLOYMENT TAX

Rev. Proc. 2007–38, page 1442.

This procedure provides the requirements for completing and submitting Form 8655, *Reporting Agent Authorization*. Rev. Proc. 2003–69 modified and superseded.

ADMINISTRATIVE

Rev. Proc. 2007–39, page 1446.

Addition of section 102(a) to the no-rule rev. proc. This procedure announces that the Service will not issue letter rulings or determination letters on whether a transfer is a gift within the meaning of section 102(a) of the Code. Rev. Proc. 2007–3 amplified.

Announcement 2007–58, page 1448.

This document contains corrections to final regulations (T.D. 9319, 2007–18 I.R.B. 1041) regarding the limitations of section 415 of the Code, including updates to the regulations for numerous statutory changes since comprehensive final regulations were last published under section 415.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

26 CFR 1.72 –1: Introduction.
(Also: § 7702A.)

Insurance companies; aggregation of multiple modified endowment contracts (MECs). This ruling holds that if a taxpayer that owns multiple modified endowment contracts issued by the same insurance company in the same calendar year exchanges some of those MECs for new MECs issued by a second insurance company, the new contracts are not aggregated with the remaining contracts.

Rev. Rul. 2007–38

ISSUE

If a taxpayer that owns multiple modified endowment contracts (MECs) issued by the same insurance company in the same calendar year exchanges some of those MECs for new MECs issued by a second insurance company, are the new contracts required to be aggregated with the remaining original contracts under § 72(e)(12) of the Internal Revenue Code?

FACTS

In Year 1, Original Company, an insurance company subject to tax under Part 1 of subchapter L, issued to Taxpayer multiple life insurance contracts (Original Contracts) that were modified endowment contracts (MECs) within the meaning of § 7702A. The Original Contracts covered the lives of employees, officers and directors who were employed by Taxpayer at the time the contracts were issued. Taxpayer appropriately treated the Original Contracts as a single MEC under the authority of § 72(e)(11) (redesignated as § 72(e)(12) by the Pension Protection Act of 2006, Pub. L. No. 109–280, § 844(a), 120 Stat. 780).

In Year 4, Taxpayer exchanged some of the Original Contracts for new life insurance contracts (New Contracts) issued by an unrelated life insurance company (New Company) in an exchange that qualified for nonrecognition of gain or loss under § 1035. The new contracts were also MECs within the meaning of § 7702A. Taxpayer received no consideration in the exchange.

LAW AND ANALYSIS

Section 1035 provides that no gain or loss is recognized on the exchange of a life insurance contract for another life insurance contract, or for an endowment or annuity contract. Under § 1.1035–1 of the Income Tax Regulations, nonrecognition of gain or loss on the exchange of life insurance contracts is limited to cases where the policies exchanged relate to the same insured.

Section 7702A defines a modified endowment contract (MEC) as a contract that meets the requirement of § 7702 but fails to meet the 7-pay test of § 7702A(b), or that is received in exchange for a contract that is a MEC. Under § 7702A(b), a contract fails to meet the 7-pay test if the accumulated amount paid under the contract at any time during the first seven contract years exceeds the sum of the net level premiums that would have been paid on or before that time if the contract provided for paid-up future benefits after the payment of seven level annual premiums.

Section 72(e)(10) provides that a MEC is subject to the rules of § 72(e)(2)(B) (which taxes non-annuity distributions on an income-out-first basis) and § 72(e)(4)(A) (which generally treats loans, assignments, or pledges of any portion of the value of a MEC as non-annuity distributions). Further, under § 72(v), an amount received under a MEC may be subject to a 10% additional tax.

Section 72(e)(12)(A)(i) provides that, for purposes of determining the amount that is includible in gross income under § 72(e), all MECs issued by the same company to the same policyholder during a calendar year are treated as a single MEC. Section 72(e)(12) was added to the Code by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), § 5012(d)(2), 1988–3 C.B. 324. The legislative history stated:

> In order to stop the marketing of serial contracts that are designed to avoid the rules applicable to modified endowment contracts, the conference agreement provides that all modified endowment contracts issued by the same insurer (or affiliates) to the same policyholder during any 12-month period are to be aggregated for purposes of determining the amount of any distribution that is includible in gross income. In addition, all annuity contracts issued by the same insurer (or affiliates) to the same policyholder during any 12-month period are to be aggregated for purposes of determining the amount of any distribution that is includible in gross income. Finally, the Treasury Department is provided regulatory authority to prevent the avoidance of the rules contained in section 72(e) through the serial purchase of contacts or otherwise.

H.R. Conf. Rep. No. 1104, 100th Cong., 2d Sess. II–103 (1988), 1988–3 C.B. 593. The provision was subsequently amended by the Omnibus Budget Reconciliation Act of 1989 (OBRA), Pub. L. No. 101–239, § 7815(a)(5), 103 Stat. 2414 (1989), to strike the term "12-month period" and in its place insert "calendar year." The OBRA conference report reiterates that the provision applies to contracts "that are issued by the same insurer (or affiliates.)" H. Conf. Rep. No. 386, 101st Cong., 1st Sess. 665 (1989).

In the present case, the Original Contracts were issued to Taxpayer by the same company in the same calendar year and were, accordingly, aggregated in accordance with § 72(e)(12). After the exchange of some of the Original Contracts for New Contracts, the remaining Original Contracts were still issued to Taxpayer by the same company (Original Company) in the same calendar year (Year 1) and, accordingly, are still treated as a single MEC. Likewise, the New Contracts received in the exchange were issued to Taxpayer by the same company (New Company) in the same calendar year (Year 4) and, accordingly, are also treated as a single MEC. The remaining Original Contracts and the New Contracts are not aggregated with each other, however, because they were

not issued to Taxpayer by the same company in the same calendar year. The result in this case would be the same if, instead of individually issued MECs, the Original Contracts and New Contracts were evidenced by certificates that were issued under a group contract or master contract and that were treated as separate contracts for purposes of §§ 817(h), 7702, and 7702A.

HOLDING

If a taxpayer that owns multiple modified endowment contracts (MECs) issued by the same insurance company in the same calendar year exchanges some of those MECs for new MECs issued by a second insurance company, the new contracts are not required to be aggregated with the remaining original contracts under § 72(e)(12).

DRAFTING INFORMATION

The principal author of this revenue ruling is Melissa S. Luxner of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Ms. Luxner at (202) 622–3970 (not a toll-free call).

Section 430.—Minimum Funding Standards for Single-Employer Defined Benefit Pension Plans

Procedures with respect to applications for requests for letter rulings on substitute mortality tables under section 430(h)(3)(C) of the Code and section 303(h)(3)(C) of the Employee Retirement Income Security Act of 1974 are set forth. See Rev. Proc. 2007-37, page 1433.

Section 501.—Exemption From Tax on Corporations, Certain Trusts, etc.

26 CFR 1.501(c)(3)–1: Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals.

Exempt organizations; political campaigns. This ruling provides 21 examples illustrating the application of the facts and circumstances to be considered to determine whether an organization exempt from income tax under section 501(a) of the Code as an organization described in section 501(c)(3) has participated in, or intervened in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Rev. Rul. 2007–41

Organizations that are exempt from income tax under section 501(a) of the Internal Revenue Code as organizations described in section 501(c)(3) may not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

ISSUE

In each of the 21 situations described below, has the organization participated or intervened in a political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of section 501(c)(3)?

LAW

Section 501(c)(3) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in section 501(h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 1.501(c)(3)–1(c)(3)(i) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes if it is an "action" organization.

Section 1.501(c)(3)–1(c)(3)(iii) of the regulations defines an "action" organization as an organization that participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" is defined as an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. The regulations further provide that activities that constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written statements or the making of oral statements on behalf of or in opposition to such a candidate.

Whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case. For example, certain "voter education" activities, including preparation and distribution of certain voter guides, conducted in a non-partisan manner may not constitute prohibited political activities under section 501(c)(3) of the Code. Other so-called "voter education" activities may be proscribed by the statute. Rev. Rul. 78–248, 1978–1 C.B. 154, contrasts several situations illustrating when an organization that publishes a compilation of candidate positions or voting records has or has not engaged in prohibited political activities based on whether the questionnaire used to solicit candidate positions or the voters guide itself shows a bias or preference in content or structure with respect to the views of a particular candidate. See also Rev. Rul. 80–282, 1980–2 C.B. 178, amplifying Rev. Rul. 78–248 regarding the timing and distribution of voter education materials.

The presentation of public forums or debates is a recognized method of educating the public. See Rev. Rul. 66–256, 1966–2 C.B. 210 (nonprofit organization formed to conduct public forums at which lectures and debates on social, political, and international matters are presented qualifies for exemption from federal income tax under section 501(c)(3)). Providing a forum for candidates is not, in and of itself, prohibited political activity. See Rev. Rul. 74–574, 1974–2 C.B. 160 (organization operating a broadcast station is not participating in political campaigns on behalf of public candidates by providing reasonable amounts of air time equally available to all legally qualified candidates for election to public office in compliance with the reasonable access provisions of the Communications Act of

1934). However, a forum for candidates could be operated in a manner that would show a bias or preference for or against a particular candidate. This could be done, for example, through biased questioning procedures. On the other hand, a forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office. See Rev. Rul. 86–95, 1986–2 C.B. 73 (organization that proposes to educate voters by conducting a series of public forums in congressional districts during congressional election campaigns is not participating in a political campaign on behalf of any candidate due to the neutral form and content of its proposed forums).

ANALYSIS OF FACTUAL SITUATIONS

The 21 factual situations appear below under specific subheadings relating to types of activities. In each of the factual situations, all the facts and circumstances are considered in determining whether an organization's activities result in political campaign intervention. Note that each of these situations involves only one type of activity. In the case of an organization that combines one or more types of activity, the interaction among the activities may affect the determination of whether or not the organization is engaged in political campaign intervention.

Voter Education, Voter Registration and Get Out the Vote Drives

Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) if they are carried out in a non-partisan manner. In addition, section 501(c)(3) organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted in a non-partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.

Situation 1. *B*, a section 501(c)(3) organization that promotes community involvement, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. *B* is not engaged in political campaign intervention when it operates this voter registration booth.

Situation 2. *C* is a section 501(c)(3) organization that educates the public on environmental issues. Candidate *G* is running for the state legislature and an important element of her platform is challenging the environmental policies of the incumbent. Shortly before the election, *C* sets up a telephone bank to call registered voters in the district in which Candidate *G* is seeking election. In the phone conversations, *C*'s representative tells the voter about the importance of environmental issues and asks questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, *C*'s representative thanks the voter and ends the call. If the voter appears to agree with Candidate *G*'s position, *C*'s representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. *C* is engaged in political campaign intervention when it conducts this get-out-the-vote drive.

Individual Activity by Organization Leaders

The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions of the organization.

Situation 3. President *A* is the Chief Executive Officer of Hospital *J*, a section 501(c)(3) organization, and is well known in the community. With the permission of five prominent healthcare industry leaders, including President *A*, who have personally endorsed Candidate *T*, Candidate *T* publishes a full page ad in the local newspaper listing the names of the five leaders. President *A* is identified in the ad as the CEO of Hospital *J*. The ad states, "Titles and affiliations of each individual are provided for identification purposes only." The ad is paid for by Candidate *T*'s campaign committee. Because the ad was not paid for by Hospital *J*, the ad is not otherwise in an official publication of Hospital *J*, and the endorsement is made by President *A* in a personal capacity, the ad does not constitute campaign intervention by Hospital *J*.

Situation 4. President *B* is the president of University *K*, a section 501(c)(3) organization. University *K* publishes a monthly alumni newsletter that is distributed to all alumni of the university. In each issue, President *B* has a column titled "My Views." The month before the election, President *B* states in the "My Views" column, "It is my personal opinion that Candidate *U* should be reelected." For that one issue, President *B* pays from his personal funds the portion of the cost of the newsletter attributable to the "My Views" column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university. Because the endorsement appeared in an official publication of University *K*, it constitutes campaign intervention by University *K*.

Situation 5. Minister *C* is the minister of Church *L*, a section 501(c)(3) organization and Minister *C* is well known in the community. Three weeks before the election, he attends a press conference at Candidate *V*'s campaign headquarters and states that Candidate *V* should be reelected. Minister *C* does not say he is speaking on behalf of Church *L*. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church *L*. Because Minister *C* did not make the endorsement at an official church function, in an official church publication or otherwise use the church's assets, and did not state that he was speaking as a representative of Church *L*, his actions do not constitute campaign intervention by Church *L*.

Situation 6. Chairman *D* is the chairman of the Board of Directors of *M*, a section 501(c)(3) organization that educates the public on conservation issues. During a regular meeting of *M* shortly before the election, Chairman *D* spoke on a number of issues, including the importance of voting in the upcoming election, and concluded by stating, "It is important that you all do your duty in the election and vote for Candidate *W*." Because Chairman *D*'s remarks indicating support for Candidate *W* were made during an official organization meeting, they constitute political campaign intervention by *M*.

Candidate Appearances

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or in their individual capacity (not as a candidate). Candidates may also appear without an invitation at organization events that are open to the public.

When a candidate is invited to speak at an organization event in his or her capacity as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- Whether the organization provides an equal opportunity to participate to political candidates seeking the same office;
- Whether the organization indicates any support for or opposition to the candidate (including candidate introductions and communications concerning the candidate's attendance); and
- Whether any political fundraising occurs.

In determining whether candidates are given an equal opportunity to participate, the nature of the event to which each candidate is invited will be considered, in addition to the manner of presentation. For example, an organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

When an organization invites several candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign intervention include the following:

- Whether questions for the candidates are prepared and presented by an independent nonpartisan panel,
- Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public,
- Whether each candidate is given an equal opportunity to present his or her view on each of the issues discussed,
- Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
- Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Situation 7. President *E* is the president of Society *N*, a historical society that is a section 501(c)(3) organization. In the month prior to the election, President *E* invites the three Congressional candidates for the district in which Society *N* is located to address the members, one each at a regular meeting held on three successive weeks. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members. Society *N*'s publicity announcing the dates for each of the candidate's speeches and President *E*'s introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate. Society *N*'s actions do not constitute political campaign intervention.

Situation 8. The facts are the same as in *Situation 7* except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Society *N* includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Society's invitation to speak. President *E* makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Society *N*'s actions do not constitute political campaign intervention.

Situation 9. Minister *F* is the minister of Church *O*, a section 501(c)(3) organization. The Sunday before the November election, Minister *F* invites Senate Candidate *X* to preach to her congregation during worship services. During his remarks, Candidate *X* states, "I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday." Minister *F* invites no other candidate to address her congregation during the Senatorial campaign. Because these activities take place during official church services, they are attributed to Church *O*. By selectively providing church facilities to allow Candidate *X* to speak in support of his campaign, Church *O*'s actions constitute political campaign intervention.

Candidate Appearances Where Speaking or Participating as a Non-Candidate

Candidates may also appear or speak at organization events in a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include the following:

- Whether the individual is chosen to speak solely for reasons other than candidacy for public office;
- Whether the individual speaks only in a non-candidate capacity;
- Whether either the individual or any representative of the organization

makes any mention of his or her candidacy or the election;
- Whether any campaign activity occurs in connection with the candidate's attendance;
- Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and
- Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

Situation 10. Historical society *P* is a section 501(c)(3) organization. Society *P* is located in the state capital. President *G* is the president of Society *P* and customarily acknowledges the presence of any public officials present during meetings. During the state gubernatorial race, Lieutenant Governor *Y*, a candidate, attends a meeting of the historical society. President *G* acknowledges the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have joining us this evening Lieutenant Governor *Y*." President *G* makes no reference in his welcome to the Lieutenant Governor's candidacy or the election. Society *P* has not engaged in political campaign intervention as a result of President *G*'s actions.

Situation 11. Chairman *H* is the chairman of the Board of Hospital *Q*, a section 501(c)(3) organization. Hospital *Q* is building a new wing. Chairman *H* invites Congressman *Z*, the representative for the district containing Hospital *Q*, to attend the groundbreaking ceremony for the new wing. Congressman *Z* is running for reelection at the time. Chairman *H* makes no reference in her introduction to Congressman *Z*'s candidacy or the election. Congressman *Z* also makes no reference to his candidacy or the election and does not do any political campaign fundraising while at Hospital *Q*. Hospital *Q* has not intervened in a political campaign.

Situation 12. University *X* is a section 501(c)(3) organization. *X* publishes an alumni newsletter on a regular basis. Individual alumni are invited to send in updates about themselves which are printed in each edition of the newsletter. After receiving an update letter from Alumnus *Q*, *X* prints the following: "Alumnus *Q*, class of 'XX is running for mayor of Metropolis." The newsletter does not contain any reference to this election or to Alumnus *Q*'s candidacy other than this statement of fact. University *X* has not intervened in a political campaign.

Situation 13. Mayor *G* attends a concert performed by Symphony *S*, a section 501(c)(3) organization, in City Park. The concert is free and open to the public. Mayor *G* is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the chairman of *S*'s board addresses the crowd and says, "I am pleased to see Mayor *G* here tonight. Without his support, these free concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please support Mayor *G* in November as he has supported us." As a result of these remarks, Symphony *S* has engaged in political campaign intervention.

Issue Advocacy vs. Political Campaign Intervention

Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate's name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate's platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.

Key factors in determining whether a communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates' positions and/or actions;
- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and
- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Situation 14. University *O*, a section 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in State *V* shortly before an election in which Senator *C* is a candidate for nomination in a party primary. Senator *C* represents State *V* in the United States Senate. The advertisement states that S. 24, a pending bill in the United States Senate, would provide additional opportunities for State *V* residents to attend college, but Senator *C* has opposed similar measures in the past. The advertisement ends with the statement "Call or write Senator *C* to tell him to vote for S. 24." Educational issues have not been raised as an issue distinguishing Senator *C* from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers. Even though the advertisement appears shortly before the election and iden-

tifies Senator *C*'s position on the issue as contrary to *O*'s position, University *O* has not violated the political campaign intervention prohibition because the advertisement does not mention the election or the candidacy of Senator *C*, education issues have not been raised as distinguishing Senator *C* from any opponent, and the timing of the advertisement and the identification of Senator *C* are directly related to the specifically identified legislation University *O* is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator *C*, is an officeholder who is in a position to vote on the legislation.

Situation 15. Organization *R*, a section 501(c)(3) organization that educates the public about the need for improved public education, prepares and finances a radio advertisement urging an increase in state funding for public education in State *X*, which requires a legislative appropriation. Governor *E* is the governor of State *X*. The radio advertisement is first broadcast on several radio stations in State *X* beginning shortly before an election in which Governor *E* is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by Organization *R* on the same issue. The advertisement cites numerous statistics indicating that public education in State *X* is under funded. While the advertisement does not say anything about Governor *E*'s position on funding for public education, it ends with "Tell Governor *E* what you think about our under-funded schools." In public appearances and campaign literature, Governor *E*'s opponent has made funding of public education an issue in the campaign by focusing on Governor *E*'s veto of an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State *X* legislature on state funding of public education. Organization *R* has violated the political campaign prohibition because the advertisement identifies Governor *E*, appears shortly before an election in which Governor *E* is a candidate, is not part of an ongoing series of substantially similar advocacy communications by Organization *R* on the same issue, is not timed to coincide with a non election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor *E*.

Situation 16. Candidate *A* and Candidate *B* are candidates for the state senate in District *W* of State *X*. The issue of State *X* funding for a new mass transit project in District *W* is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate *A* supports funding the new mass transit project. Candidate *B* opposes the project and supports State *X* funding for highway improvements instead. *P* is the executive director of *C*, a section 501(c)(3) organization that promotes community development in District *W*. At *C*'s annual fundraising dinner in District *W*, which takes place in the month before the election in State *X*, *P* gives a lengthy speech about community development issues including the transportation issues. *P* does not mention the name of any candidate or any political party. However, at the conclusion of the speech, *P* makes the following statement, "For those of you who care about quality of life in District *W* and the growing traffic congestion, there is a very important choice coming up next month. We need new mass transit. More highway funding will not make a difference. You have the power to relieve the congestion and improve your quality of life in District *W*. Use that power when you go to the polls and cast your vote in the election for your state senator." *C* has violated the political campaign intervention as a result of *P*'s remarks at *C*'s official function shortly before the election, in which *P* referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates.

Business Activity

The question of whether an activity constitutes participation or intervention in a political campaign may also arise in the context of a business activity of the organization, such as selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. In this context, some of the factors to be considered in determining whether the organization has engaged in political campaign intervention include the following:

- Whether the good, service or facility is available to candidates in the same election on an equal basis,
- Whether the good, service, or facility is available only to candidates and not to the general public,
- Whether the fees charged to candidates are at the organization's customary and usual rates, and
- Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.

Situation 17. Museum *K* is a section 501(c)(3) organization. It owns an historic building that has a large hall suitable for hosting dinners and receptions. For several years, Museum *K* has made the hall available for rent to members of the public. Standard fees are set for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall. Museum *K* rents the hall on a first come, first served basis. Candidate *P* rents Museum *K*'s social hall for a fundraising dinner. Candidate *P*'s campaign pays the standard fee for the dinner. Museum *K* is not involved in political campaign intervention as a result of renting the hall to Candidate *P* for use as the site of a campaign fundraising dinner.

Situation 18. Theater *L* is a section 501(c)(3) organization. It maintains a mailing list of all of its subscribers and contributors. Theater *L* has never rented its mailing list to a third party. Theater *L* is approached by the campaign committee of Candidate *Q*, who supports increased funding for the arts. Candidate *Q*'s campaign committee offers to rent Theater *L*'s mailing list for a fee that is comparable to fees charged by other similar organizations. Theater *L* rents its mailing list to Candidate *Q*'s campaign committee. Theater *L* declines similar requests from campaign committees of other candidates. Theater *L* has intervened in a political campaign.

Web Sites

The Internet has become a widely used communications tool. Section 501(c)(3) organizations use their own web sites to disseminate statements and information.

They also routinely link their web sites to web sites maintained by other organizations as a way of providing additional information that the organizations believe is useful or relevant to the public.

A web site is a form of communication. If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

An organization has control over whether it establishes a link to another site. When an organization establishes a link to another web site, the organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site. Because the linked content may change over time, an organization may reduce the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly.

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. All the facts and circumstances must be taken into account when assessing whether a link produces that result. The facts and circumstances to be considered include, but are not limited to, the context for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office.

Situation 19. M, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in Rev. Rul. 78–248. For each candidate covered in the voter guide, *M* includes a link to that candidate's official campaign web site. The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate *X*, you may consult [URL]." *M* has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office.

Situation 20. Hospital *N*, a section 501(c)(3) organization, maintains a web site that includes such information as medical staff listings, directions to Hospital *N*, and descriptions of its specialty health programs, major research projects, and other community outreach programs. On one page of the web site, Hospital *N* describes its treatment program for a particular disease. At the end of the page, it includes a section of links to other web sites titled "More Information." These links include links to other hospitals that have treatment programs for this disease, research organizations seeking cures for that disease, and articles about treatment programs. This section includes a link to an article on the web site of *O*, a major national newspaper, praising Hospital *N*'s treatment program for the disease. The page containing the article on *O*'s web site contains no reference to any candidate or election and has no direct links to candidate or election information. Elsewhere on *O*'s web site, there is a page displaying editorials that *O* has published. Several of the editorials endorse candidates in an election that has not yet occurred. Hospital *N* has not intervened in a political campaign by maintaining the link to the article on *O*'s web site because the link is provided for the exempt purpose of educating the public about Hospital *N*'s programs and neither the context for the link, nor the relationship between Hospital *N* and *O* nor the arrangement of the links going from Hospital *N*'s web site to the endorsement on *O*'s web site indicate that Hospital *N* was favoring or opposing any candidate.

Situation 21. Church *P*, a section 501(c)(3) organization, maintains a web site that includes such information as biographies of its ministers, times of services, details of community outreach programs, and activities of members of its congregation. *B*, a member of the congregation of Church *P*, is running for a seat on the town council. Shortly before the election, Church *P* posts the following message on its web site, "Lend your support to *B*, your fellow parishioner, in Tuesday's election for town council." Church *P* has intervened in a political campaign on behalf of B.

HOLDINGS

In situations 2, 4, 6, 9, 13, 15, 16, 18 and 21, the organization intervened in a political campaign within the meaning of section 501(c)(3). In situations 1, 3, 5, 7, 8, 10, 11, 12, 14, 17, 19 and 20, the organization did not intervene in a political campaign within the meaning of section 501(c)(3)

DRAFTING INFORMATION

The principal author of this revenue ruling is Judith Kindell of Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, contact Ms. Kindell at (202) 283–8964 (not a toll-free call).

Section 707.—Transactions Between Partner and Partnership

26 CFR 1.707–1: Transactions between partner and partnership.

Partnership property; transfer. This ruling concludes that a transfer of partnership property to a partner in satisfaction of a guaranteed payment under section 707(c) of the Code is a sale or exchange under section 1001, and not a distribution under section 731.

Rev. Rul. 2007–40

ISSUE

Is a transfer of partnership property to a partner in satisfaction of a guaranteed payment under section 707(c) a sale or exchange under section 1001, or a distribution under section 731?

FACTS

Partnership purchased Blackacre for $500x. *A*, a partner in *Partnership*, is entitled to a guaranteed payment under section 707(c) of $800x. Subsequently, when the fair market value of Blackacre is $800x and *Partnership*'s adjusted basis in Blackacre is $500x, *Partnership* transfers Blackacre to *A* in satisfaction of the guaranteed payment to *A*.

LAW AND ANALYSIS

Section 731(b) provides that no gain or loss shall be recognized to a partnership on a distribution to a partner of property, including money.

Section 707(c) provides that, to the extent determined without regard to the income of the partnership, payments to a partner for services or for the use of capital are considered as made to one who is not a member of the partnership, but only for the purposes of § 61(a) (relating to gross income) and, subject to § 263, for purposes of § 162(a) (relating to trade or business expenses).

Section 61(a)(3) provides the general rule that gross income includes gains derived from dealings in property. In addition, section 1001(a) provides that the gain from the sale or other disposition of property shall be the excess of the amount realized over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis over the amount realized.

Section 1001(b) further provides, in part, that the amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received.

A taxpayer that conveys appreciated or depreciated property in satisfaction of an obligation, or in exchange for the performance of services, recognizes gain or loss equal to the difference between the basis in the distributed property and the property's fair market value. *See*, *e.g.*, *International Freighting Corp., Inc. v. Commissioner*, 135 F.2d 310 (2d Cir. 1943), *United States v. General Shoe Corp.*, 282 F.2d 9 (6th Cir. 1960).

A transfer of partnership property in satisfaction of a partnership's obligation to make a guaranteed payment under section 707(c) is a sale or exchange under section 1001. Because the transfer is a sale or exchange under section 1001, it is not a distribution within the meaning of section 731. Accordingly, the nonrecognition rule in section 731(b) does not apply to the transfer.

Partnership realizes a $300x gain when *Partnership* transfers Blackacre in satisfaction of its section 707(c) guaranteed payment to *A*, the difference between the adjusted basis of the property ($500x) to the partnership and the property's fair market value ($800x).

HOLDING

A transfer of partnership property to a partner in satisfaction of a guaranteed payment under section 707(c) is a sale or exchange under section 1001, and not a distribution under section 731.

DRAFTING INFORMATION

The principal author of this revenue ruling is Jason T. Smyczek of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Smyczek at (202) 622–3050 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Treatment Under Section 367(b) of Property Used to Purchase Parent Stock From Parent Shareholders in Certain Triangular Reorganizations

Notice 2007–48

SECTION 1. OVERVIEW

On September 22, 2006, the Internal Revenue Service (IRS) and the Treasury Department (Treasury) issued Notice 2006–85, 2006–41 I.R.B. 677, to address certain transactions involving foreign corporations where a subsidiary acquires stock of its parent from its parent for use in a triangular reorganization. Comments were requested in section 7 of that notice regarding similar transactions, including transactions where a subsidiary acquires stock of its parent from a person unrelated to its parent (such as from the public on the open market).

For reasons similar to those discussed in section 2 of Notice 2006–85, the IRS and Treasury believe that taxpayers' characterization of these transactions, as well as other transactions involving acquisitions from related parties, raises significant policy concerns. Accordingly, this notice amplifies Notice 2006–85 by announcing that the IRS and Treasury will issue regulations under section 367(b) of the Internal Revenue Code to address these and similar transactions.

SECTION 2. REGULATIONS TO BE ISSUED UNDER SECTION 367(b)

The definitions provided in section 1 of Notice 2006–85 also apply for purposes of this notice.

The regulations will apply to triangular reorganizations where P or S (or both) is foreign and, pursuant to the reorganization, S acquires from one or more P shareholders, in exchange for property, all or a portion of the P stock that is used to acquire the stock or assets of T (T could be either related or unrelated to P and S before the transaction). In such a case, the regulations under section 367(b) will make adjustments with respect to P and S that will have the effect of a distribution of property from S to P under section 301(c). The amount of the distribution shall equal the amount of money plus the fair market value of other property transferred from S to P's shareholders in exchange for the P stock used to acquire the stock or assets of T. Therefore, the regulations will require, as appropriate, an inclusion in P's gross income as a dividend, a reduction in P's basis in its S stock (or, as appropriate, T stock), and the recognition of gain by P from the sale or exchange of property.

The adjustments also will provide, as appropriate, that the amount of property deemed distributed to P is considered to be contributed by P to S immediately thereafter and therefore increases P's basis in S. See, *e.g.*, Treas. Reg. § 1.367(b)–2(e)(3)(ii).

Finally, the regulations will provide for appropriate corresponding adjustments to be made, such as a reduction of S's earnings and profits as a result of the distribution (consistent with the principles of section 312).

The section 367(b) adjustments described above shall be made prior to the application of other provisions. For example, after giving effect to the 367(b) adjustments, S's purchase and transfer of P stock will then be taken into account under generally applicable rules, including sections 304, 358, and 368.

The regulations will address similar transactions in which S acquires the P stock used in the reorganization from a related party that purchased the P stock in a related transaction. The regulations also will include a rule that takes into account the earnings and profits of other corporations, as appropriate, if one of the principal purposes of creating, organizing, or funding S is to avoid the adjustments described in this notice or Notice 2006–85. See, *e.g.*, Treas. Reg. §§ 1.304–4T and 1.956–1T(b)(4).

SECTION 3. EFFECTIVE DATE

The regulations described in this notice will apply to transactions occurring on or after May 31, 2007. The regulations described in this notice will not, however, apply to a transaction that was completed on or after May 31, 2007, if the reorganization was entered into pursuant to a written agreement that was (subject to customary conditions) binding before May 31, 2007 and all times thereafter, but only to the extent that: (1) S acquired the P stock to be used in the reorganization prior to May 31, 2007, or (2) S had a commitment to acquire the P stock to be used in the reorganization from an unrelated party pursuant to a written agreement that was (subject to customary conditions) binding before May 31, 2007 and at all times thereafter, or pursuant to a tender offer announced prior to May 31, 2007 that is subject to section 14(d) of the Securities and Exchange Act of 1934 [15 U.S.C. 78n(d)(1)] and Regulation 14(D) (17 CFR 240.14d–1 through 240.14d–101) or that is subject to comparable foreign laws.

No inference is intended as to the treatment of transactions described herein under current law.

SECTION 4. COMMENTS

The IRS and Treasury request comments on the regulations to be issued under this notice and continue to request comments on those issues discussed in section 7 of Notice 2006–85, including, for example, any issues regarding the source and timing of the adjustments to be made with respect to P and S.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Notice 2006–85 is amplified.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Daniel McCall of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury participated in its development. For further information regarding this notice, contact Mr. McCall at (202) 622–3860 (not a toll-free call).

Covered Employees Under Section 162(m)(3)

Notice 2007–49

PURPOSE

This notice provides guidance on identifying covered employees for purposes of § 162(m)(3) of the Internal Revenue Code.

BACKGROUND

Section 162(a)(1) allows as a deduction all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Section 162(m)(1) provides, in general, that in the case of any publicly held corporation, no deduction shall be allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

Section 162(m)(3) defines a "covered employee" as any employee of the taxpayer if, (A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such a capacity, or (B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 4 highest compensated officers for the taxable year (other than the chief executive officer).

Section 1.162–27(c)(2)(ii) of the Income Tax Regulations provides that whether an individual is the chief executive officer or among the four highest compensated officers (other than the chief executive officer) is determined pursuant to the executive compensation disclosure rules under the Exchange Act.

The Securities and Exchange Commission's ("SEC") rules relating to executive compensation disclosure under the Exchange Act are contained in Item 402 of Regulation S-K, 17 CFR 229.402. A final rule amending the SEC executive compensation disclosure rules was published in the Federal Register on September 8, 2006 (71 FR 53158) ("amended disclosure rules"). Among other things, the amended disclosure rules altered the composition of the group of executives that are covered by the disclosure rules. Like the pre-amendment disclosure rules ("old disclosure rules"), the amended disclosure rules refer to these executives as "named executive officers." Companies must comply with the amended disclosure rules for fiscal years ending on or after December 15, 2006.

Under the amended disclosure rules, named executive officers consist of, in relevant part, (i) all individuals serving as the registrant's principal executive officer or acting in a similar capacity during the last completed fiscal year ("PEO"), regardless of compensation level; (ii) all individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year ("PFO"), regardless of compensation level; and (iii) the registrant's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year. Under the old disclosure rules, named executive officers consisted of, in relevant part, (i) all individuals serving as the registrant's chief executive officer or acting in a similar capacity during the last completed fiscal year ("CEO"), regardless of compensation level; and (ii) the registrant's four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year.

The definition of covered employee in § 162(m)(3) mirrored the definition of named executive officers under the old disclosure rules, but it is not the same as that definition under the amended disclosure rules. This is because the amended disclosure rules increase the number of executives who are named executive officers by virtue of their position from one to two, and reduce the number of executives who are named executive officers based on their compensation level from four to three. Thus, while the amended disclosure rules continue to require disclosure for five executive officers, two executives are now covered by the rules based on their positions, and three are covered by the rules based on their level of compensation. In contrast, a covered employee for purposes of § 162(m)(3) consists of only one executive officer based on his or her position and four officers based on their level of compensation.

Under § 162(m)(3) and § 1.162–27(c)(2)(ii), covered employees are determined by looking to the Exchange Act. Thus, guidance clarifying the meaning of covered employees is necessary because the definition in § 162(m)(3) does not track the definition of named executive officers in the amended disclosure rules. In particular, guidance is necessary because the amended disclosure rules (1) require disclosure for the principal executive officer, while the definition of covered employee in § 162(m)(3)(A) uses the term chief executive officer; (2) require disclosure based on compensation level for three executive officers, while the definition of covered employee in § 162(m)(3)(B) applies the deduction limitation by reason of compensation level to four officers; and (3) require disclosure with respect to the principal financial officer by reason of that officer's position (and not by reason of such officer being among the taxpayer's highest compensated officers), while the only officer within the scope of § 162(m) based on a specific position is the chief executive officer.

Accordingly, based upon the statutory language of § 162(m)(3), which has not been amended since the amended disclosure rules were promulgated, the following guidance is provided. The IRS will interpret the term "covered employee" for purposes of § 162(m) to mean any employee of the taxpayer if, as of the close of the taxable year, such employee is the principal executive officer (within the meaning of the amended disclosure rules) of the taxpayer or an individual acting in such a capacity, or if the total compensation of such employee for that taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the 3 highest compensated officers for the taxable year (other than the principal executive officer or the principal financial officer). Accordingly, the term covered employee for purposes of § 162(m) does not include those individuals for whom disclosure is required under the Exchange Act on account of the individual being the taxpayer's principal financial officer (within the meaning of the amended disclosure rules) or an individual acting in such a capacity.

The principal author of this notice is Jean Casey of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Jean Casey at (202) 622–6030 (not a toll-free call).

Guidance Regarding Deductions by Individuals for Qualified Conservation Contributions

Notice 2007–50

PURPOSE

This notice provides guidance relating to the percentage limitations imposed by § 170(b)(1)(E) of the Internal Revenue Code (Code) on "qualified conservation contributions" made by individuals. Section 170(b)(1)(E) was added to the Code by section 1206(a)(1) of the Pension Protection Act of 2006, Pub. L. No. 109–280, 120 Stat. 780 (2006) (PPA), and is effective for contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

BACKGROUND

A. Percentage limitations and carryover rules under § 170(b)(1) and § 170(d)(1) of the Code: General rules

Section 170(a) of the Code generally allows a deduction, subject to certain limitations, for any charitable contribution (as defined in § 170(c)), payment of which is made during the taxable year. Section 1.170A–1(c)(1) of the Income Tax Regulations provides that the amount of a contribution of property is generally the fair market value of the property at the time of the contribution, subject to certain limitations in § 170(e).

The amount of charitable contributions that an individual may deduct in a taxable year is limited to the applicable percentage of the individual's contribution base, pursuant to § 170(b)(1). Section 170(b)(1)(G) provides that the term "contribution base" means the individual's adjusted gross income, computed without regard to any net operating loss carryback.

The applicable percentage of an individual's contribution base varies, depending on the donee organization and the property contributed. For example, for cash contributions made to organizations described in § 170(b)(1)(A), the applicable percentage is 50 percent. For cash contributions to organizations described in § 170(b)(1)(B), and contributions of capital gain property to organizations described in § 170(b)(1)(A), the applicable percentage is generally 30 percent. The term "capital gain property" is defined in § 170(b)(1)(C)(iv) as any capital asset or property which is property used in the trade or business (as defined in § 1231(b)) the sale of which at its fair market value at the time of the contribution would have resulted in gain which would have been long-term capital gain.

Under § 170(b)(1) and (d)(1), any charitable contribution made during the taxable year in excess of the applicable contribution base generally is carried forward for up to 5 succeeding taxable years (after the contribution year) in order of time.

The total of all charitable contributions deducted in a taxable year may not exceed 50 percent of the individual's contribution base. The contributions that are deducted against the contribution base must follow the order of priority set forth in § 170(b)(1) and (d)(1). For example, if during a taxable year an individual makes a cash contribution and a capital gain property contribution to one or more organizations described in § 170(b)(1)(A), generally the cash contribution is taken into account before the capital gain property contribution in determining the allowable deduction for the year and any carryovers to future years. If the cash contribution equals 50 percent of the contribution base, the entire amount of the capital gain property contribution is carried forward for up to 5 succeeding taxable years (after the contribution year) in order of time. Furthermore, the capital gain property contribution carryover retains its character in the carryover years as a capital gain property contribution to which the 30 percent limitation applies. For additional details about the percentage limitations and carryover rules, see § 1.170A–8 and § 1.170A–10.

Different percentage limitations and carryover rules, which are not relevant here, apply to C corporations. See § 170(b)(2) and (d)(2).

B. Changes to § 170(b)(1) made by § 1206(a)(1) of the PPA, applicable to qualified conservation contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008

I. *General rule: 50 percent limitation*

Section 1206(a)(1) of the PPA added § 170(b)(1)(E) to the Code to increase the percentage limitations and carryover period applicable to qualified conservation contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008. Under § 170(b)(1)(E)(i), an individual may be allowed a deduction for any qualified conservation contribution to an organization described in § 170(b)(1)(A) to the extent the aggregate of such contributions does not exceed the excess of 50 percent of the individual's contribution base over the amount of all other charitable contributions allowed under § 170(b)(1) (the 50 percent limitation). Thus, the 30 percent limitation applicable to contributions of capital gain property under § 170(b)(1)(C) does not apply to qualified conservation contributions. If the aggregate amount of qualified conservation contributions exceeds the 50 percent limitation, § 170(b)(1)(E)(ii) provides that the excess will be treated (consistent with § 170(d)(1)) as a charitable contribution to which § 170(b)(1)(E)(i) applies in each of the 15 succeeding years in order of time.

II. *100 percent limitation applicable to certain qualified conservation contributions taken into account by individuals who are qualified farmers or ranchers*

Section 170(b)(1)(E)(iv) provides a special rule for a qualified conservation contribution taken into account by an individual who in the taxable year of the contribution is a qualified farmer or rancher, defined in § 170(b)(1)(E)(v) as a taxpayer whose gross income from the trade or business of farming (within the meaning of § 2032A(e)(5)) is greater than 50 percent of the taxpayer's gross income for the taxable year. For such an individual, § 170(b)(1)(E)(iv)(I) provides a general rule that the 50 percent limitation described above is increased to 100 percent (the 100 percent limitation).

However, for any contribution of property made after August 17, 2006, that is used or available for use in agriculture or livestock production, the 100 percent limitation applies only if the contribution is subject to a restriction that the property remain available for agriculture or livestock production. If the contribution is not subject to such a restriction, the 50 percent limitation applies.

III. *Effect of qualified conservation contributions on the computation of charitable contribution deductions and carryovers*

i) In general

Qualified conservation contributions are not taken into account in determining the amount of other allowable charitable contributions. Therefore, for purposes of applying § 170(b)(1)(E) and (d)(1), qualified conservation contributions are not treated as described in § 170(b)(1)(A), (B), (C), or (D). Moreover, § 170(b)(1)(A), (B), (C), and (D) apply without regard to contributions described in § 170(b)(1)(E)(i).

ii) Qualified conservation contributions taken into account by qualified farmers and ranchers

Section 170(b)(1)(E)(iv)(II) provides that the percentage limitations applicable to qualified conservation contributions taken into account by a qualified farmer or rancher are applied in the following order: First, contributions of property to which the 50 percent limitation applies are taken into account; then contributions of property to which the 100 percent limitation applies are taken into account.

QUESTIONS AND ANSWERS

Q–1. How do the percentage limitations and the carryover rules apply in a taxable year in which an individual has made a qualified conservation contribution and one or more contributions subject to the limitations in § 170(b)(1)(A), (B), (C), or (D)?

A–1. The qualified conservation contribution may be taken into account only after taking into account contributions subject to the limitations in § 170(b)(1)(A), (B), (C), and (D).

For example, in taxable year 2007 individual *B*, a calendar year taxpayer who is not a qualified farmer or rancher in 2007, has a contribution base of $100. During 2007 *B* makes $60 of cash contributions to organizations described in § 170(b)(1)(A) (that is, contributions to which the 50 percent limitation of § 170(b)(1)(A) applies), and a qualified conservation contribution of capital gain property under § 170(b)(1)(C)(iv) with a fair market value of $80. Assuming all other requirements of § 170 are met, in 2007 *B* may deduct $50 of the cash contributions. The unused $10 of cash contributions is carried forward for up to 5 years. No current deduction is allowed for the qualified conservation contribution, but the entire $80 qualified conservation contribution deduction is carried forward for up to 15 years.

Q–2. How do the percentage limitations and the carryover rules apply if the individual is a qualified farmer or rancher for the taxable year in which the contribution is made?

A–2. Using the example in A–1 of this notice, if in 2007 *B* is a qualified farmer or rancher eligible for the 100 percent limitation in § 170(b)(1)(E)(iv), *B* may deduct $50 for the qualified conservation contribution in addition to the $50 deduction for cash contributions. As in A–1, the unused $10 of cash contributions is carried forward for up to 5 years. The unused $30 of the qualified conservation contribution is carried forward for up to 15 years.

Q–3. Do the 50 percent and 100 percent limitations in § 170(b)(1)(E)(i) and (iv) apply to all contributions of real property interests?

A–3. No. The 50 and 100 percent limitations in § 170(b)(1)(E) apply only to qualified conservation contributions, defined in § 170(h)(1) as a contribution of a qualified real property interest to a qualified organization, exclusively for conservation purposes. A qualified real property interest is defined in § 170(h)(2) as any of the following interests: A) the entire interest of the taxpayer other than a qualified mineral interest; B) a remainder interest; and C) a restriction (granted in perpetuity) on the use which may be made of the real property.

For example, a qualified real property interest, as defined in § 170(h)(2), does not include the taxpayer's entire interest in real property. Consequently, a contribution of the taxpayer's entire interest in real property does not qualify for the 50 and 100 percent limitations under § 170(b)(1)(E). For purposes of determining whether an entire interest in real property has been contributed, the retention of an insubstantial right or interest in the real property is disregarded. *See* § 1.170A–7(b)(1)(i); *see also*, *e.g.*, Rev. Rul. 75–66, 1975–1 C.B. 85.

Q–4. How may an individual determine whether the individual is a qualified farmer or rancher for the taxable year of the contribution (and thus may be eligible for the 100 percent limitation)?

A–4. An individual is a qualified farmer or rancher if the individual's gross income from the trade or business of farming (as defined in § 2032A(e)(5)) in the taxable year of the contribution is greater than 50 percent of the individual's total gross income for the taxable year of the contribution.

Gross income includes all income from whatever source derived, except as otherwise provided. Section 61(a); § 1.61–3. Gross income from the trade or business of farming is the gross income from activities described in § 2032A(e)(5). Such activities include cultivating the soil; raising or harvesting any agricultural or horticultural commodity; raising, shearing, feeding, caring for, training, and management of animals; handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state but only if the owner, operator, or tenant of the farm regularly produces more than one-half of the commodity; and the planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market.

Q–5. If a qualified conservation contribution is made by a pass-through entity such as a partnership or S corporation, is the determination made at the entity level as to whether an individual who is a partner or shareholder is a qualified farmer or rancher for the taxable year of the contribution?

A–5. No. Section 170(b)(1)(E)(iv)(I) indicates that a qualified farmer or rancher must be an individual. Therefore, the determination is made at the partner or shareholder level as to whether an individual who is a partner or shareholder is a qual-

ified farmer or rancher for the taxable year of the contribution.

Q–6. Is income from a sale (including a bargain sale) of a conservation easement included in the individual's gross income from the trade or business of farming?

A–6. No. A sale (including a bargain sale) of a conservation easement is not an activity described in § 2032A(e)(5). Therefore, income derived from such a sale is not included in the individual's gross income from the trade or business of farming. However, the income from such a sale is included in the individual's gross income.

Q–7. Is income from the sale of timber included in the individual's gross income from the trade or business of farming?

A–7. Yes. The planting, cultivating, caring for, or cutting of trees, or the preparation (other than milling) of trees for market are activities described in § 2032A(e)(5). Therefore, income from the sale of timber is included in the individual's gross income from the trade or business of farming, and is also included in the individual's gross income.

Q–8. Is income from fees to permit hunting and fishing on the property included in an individual's gross income from the trade or business of farming?

A–8. No. Hunting and fishing activities are not activities described in § 2032A(e)(5). Therefore, income derived from permitting such activities is not included in the individual's gross income from the trade or business of farming. However, the income is included in the individual's gross income.

Q–9. Must a qualified conservation contribution be of property used or available for use in agriculture or livestock production in order for a qualified farmer or rancher to qualify for the 100 percent limitation under § 170(b)(1)(E)(iv)(I)?

A–9. No. Section 170(b)(1)(E)(iv)(I) requires that an individual be a qualified farmer or rancher to qualify for the 100 percent limitation. It does not require that the qualified conservation contribution be of property used or available for use in agriculture or livestock production. However, if the property is used or available for use in agriculture or livestock production, the restriction described in § 170(b)(1)(E)(iv)(II) may apply. See Q–10 and A–10 of this notice. See Q–13 of this notice for an example illustrating the application of § 170(b)(1)(E)(iv).

Q–10. If a qualified farmer or rancher makes a qualified conservation contribution of property used or available for use in agriculture or livestock production, must the contribution be subject to a restriction that the property remain available for such use in order to qualify for the 100 percent limitation?

A–10. The answer depends on the date of the contribution. If the contribution was made after August 17, 2006, the contribution must be subject to such a restriction in order to qualify for the 100 percent limitation. The contribution may qualify for the 50 percent limitation if the contribution lacks such a restriction. If the contribution was made on or before August 17, 2006, no such restriction is required in order to qualify for the 100 percent limitation.

Q–11. Does property used or available for use in agriculture or livestock production include the portions of the property upon which the following types of improvements are located: Dwellings used for family living by the farmer or rancher, a lessee that operates the property, or their employees; other types of buildings used for agriculture or livestock purposes; and roads throughout the property?

A–11. Yes. The portions of the property upon which such improvements are located are treated as property used or available for use in agriculture or livestock production. *See*, *e.g.*, § 1.170A–14(f), Example 5. To qualify for the 100 percent limitation, a qualified conservation contribution of the property made after August 17, 2006, by a qualified farmer or rancher must include a restriction that the entire property, including the portions upon which the improvements are located, remain available for agriculture or livestock production. If the contribution is not subject to such a restriction over the entire property, the contribution will not qualify for the 100 percent limitation, but may qualify for the 50 percent limitation.

Q–12. How may a qualified farmer or rancher comply with the requirement that a qualified conservation contribution of property used or available for use in agriculture or livestock production be subject to a restriction that the property (including the portions of the property upon which improvements described in Q–11 of this notice are located) remain available for such production?

A–12. The qualified conservation contribution must include a restriction that the property remain available for agriculture or livestock production, and must ensure that the property is protected from any use that would interfere with agriculture or livestock production. For example, a qualified conservation contribution of property used or available for use in agriculture or livestock production might include in the document of conveyance prohibitions against construction or placement of buildings (except those used for agriculture or livestock production purposes, or dwellings used for family living by the qualified farmer or rancher, a lessee that operates the property, or their employees); removal of mineral substances in any manner that adversely affects the property's agriculture or livestock production potential; and other uses detrimental to retention of the property for use in agriculture or livestock production. *See*, *e.g.*, § 1.170A–14(f), Example 5.

Q–13. Individual *B*, a calendar year taxpayer who is a qualified farmer or rancher for 2007, makes qualified conservation contributions during that year with respect to *B*'s 1,000 acre property. Of *B*'s 1,000 acres, 950 acres are used (or available for use) in agriculture or livestock production, and 50 acres are used as a game preserve that is unavailable for use in agriculture or livestock production. *B* contributes a qualified conservation contribution with respect to the 950 acre property, and a separate qualified conservation contribution with respect to the 50 acre property. The contribution with respect to the 950 acre property includes a restriction that the property remain available for use in agriculture or livestock production. Provided *B* meets all requirements of § 170, do both contributions qualify for the 100 percent limitation under § 170(b)(1)(E)(iv)?

A–13. Yes.

DRAFTING INFORMATION

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26 CFR 601.201: Rulings and determination letters. (Also Part I, § 430.)

Rev. Proc. 2007–37

SECTION 1. PURPOSE

The purpose of this revenue procedure is to set forth the procedure by which the sponsor of a defined benefit plan, other than a multiemployer plan, may request and obtain approval for the use of plan-specific substitute mortality tables in accordance with § 430(h)(3)(C) of the Internal Revenue Code (Code) and section 303(h)(3)(C) of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

SECTION 2. BACKGROUND INFORMATION

.01 Section 412 of the Code provides minimum funding requirements for defined benefit pension plans. Section 430, which was added by the Pension Protection Act of 2006, Pub. L. No. 109–280, 120 Stat. 780, specifies the minimum funding requirements for defined benefit plans other than multiemployer plans pursuant to § 412 and is generally effective for plan years beginning on or after January 1, 2008. Section 430(h)(3)(A) sets forth rules regarding the use of generally applicable mortality tables for purposes of § 430. Section 430(h)(3)(C) and section 303(h)(3)(C) of ERISA provide that the Secretary of the Treasury may approve substitute mortality tables to be used in determining any present value or making any computation under those sections for a period not to exceed ten years. Mortality tables meet the requirements for substitute mortality tables if the pension plan has a sufficient number of plan participants and the plan has been maintained for a sufficient period of time in order to have credible mortality experience, and such tables reflect the actual experience of the plan and projected trends in general mortality experience of participants in pension plans. Except as provided by the Secretary, a plan sponsor cannot use substitute mortality tables for any plan unless substitute mortality tables are established and used for each other plan subject to § 430 of the Code that is maintained by the plan sponsor and the plan sponsor's controlled group.

.02 Proposed regulation § 1.430(h)(3)–1, which sets forth proposed rules regarding the use of generally applicable mortality tables for purposes of § 430, and proposed regulation § 1.430(h)(3)–2, which sets forth proposed rules for the use of substitute mortality tables under § 430(h)(3)(C) (referred to elsewhere in this revenue procedure as the "proposed regulations"), were published in the Federal Register on May 29, 2007, at 72 FR 29456. Under the proposed regulations (REG–143601–06, 2007–24 I.R.B. 1398), substitute mortality tables must reflect the actual mortality experience of the pension plan maintained by the plan sponsor for which the tables are to be used and that mortality experience must be credible. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality experience with respect to that gender. If the mortality experience for one gender is credible but the mortality experience for the other gender is not credible, then the substitute mortality tables are used for the gender that has credible mortality experience, and the mortality tables under proposed regulation § 1.430(h)(3)–1 are used for the gender that does not have credible mortality experience. If separate mortality tables under § 430(h)(3)(D) are used for certain disabled individuals under a plan, then those individuals are disregarded for all purposes with respect to substitute mortality tables under § 430(h)(3)(C). Thus, if the mortality tables under § 430(h)(3)(D) are used for certain disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in determining mortality rates for substitute mortality tables with respect to a plan.

Under the proposed regulations, a substitute mortality table is based on credible mortality experience for a gender within a plan if and only if the mortality experience is based on at least 1,000 deaths within that gender over the period covered by the experience study. The experience study must be based on mortality experience data over a 2, 3, or 4-consecutive year period, the last day of which must be less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply.

Development of a substitute mortality table under the proposed regulations requires creation of a base table (Base Table) and identification of a base year (Base Year), which are then used to determine generational substitute mortality tables. The Base Table must be developed from a study of the mortality experience of the plan using amounts-weighted data. The proposed regulations also set forth rules regarding development of amounts-weighted mortality rates for an age and the determination of the Base Year. The proposed regulations provide that amounts-weighted mortality rates may be derived from amounts-weighted mortality rates for age groups.

The proposed regulations provide that Base Tables may be constructed either directly through graduation of amounts-weighted mortality rates or indirectly by applying a level percentage to tables prescribed by § 430(h)(3)(A), provided that the resulting tables sufficiently reflect the plan's mortality experience. The Service may permit the construction of Base Tables through application of a level percentage to other recognized mortality tables, applying similar standards to ensure that the resulting tables are sufficiently reflective of the plan's mortality experience.

As noted above, except as provided by the Secretary, a plan sponsor cannot use substitute mortality tables for any plan unless substitute mortality tables are established and used for each other plan subject to § 430 that is maintained by the plan sponsor and the plan sponsor's controlled group. Under the proposed regulations, the use of substitute mortality tables for one plan would not be prohibited merely because another plan maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) cannot use substitute mortality tables because neither the males nor the females under that other plan have credible mortality experience for a plan year. Thus, if a sponsor's controlled group maintains two pension plans subject to § 430, each of which has credible mortality experience for at least one gender, then either both plans must obtain approval

from the Service to use substitute mortality tables or neither plan may use substitute mortality tables. By contrast, if, for one of those plans, neither males nor females have credible mortality experience, then the plan without credible mortality experience will not interfere with the ability of the plan with credible mortality experience to use substitute mortality tables.

SECTION 3. GENERAL ADMINISTRATIVE PROCEDURES

.01 *Compliance with Regulations*. Until final regulations under § 430(h)(3)(C) are issued, requests for the use of substitute mortality tables must satisfy the requirements of proposed regulation § 1.430(h)(3)–2. After those final regulations are issued, requests must satisfy the requirements of the final regulations.

.02 *Submission*. Requests for the use of substitute mortality tables must be submitted to:

Internal Revenue Service
Attention: EP Letter Rulings
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

The user fee required by section 6.01(10) (All other letter rulings) of Rev. Proc. 2007–8, 2007–1 I.R.B. 230, or its successors, must be sent with such requests.

.03 *Necessary Procedural Documents*. A request will not be considered unless it complies with (1) through (3) below.

(1) The request (and any subsequently provided additional information) must be signed by the employer maintaining the plan(s) (the "applicant") or an authorized representative of the applicant who must be identified in (a), (b), (c), (d) or (e) of section 9.02(11) of Rev. Proc. 2007–4, 2007–1 I.R.B. 118, or its successors. Where an authorized representative signs the request or will appear before the Service in connection with the request, a properly signed and dated Form 2848, *Power of Attorney and Declaration of Representative*, must be submitted with the request. An individual is not an authorized representative of the applicant merely on account of being the administrator or trustee of the plan.

(2) The request also must contain a declaration in the following form: "Under penalties of perjury, I declare that I have examined this request, or this modification to the request, including accompanying documents, and, to the best of my knowledge and belief, the request or the modification contains all the relevant facts relating to the request, and such facts are true, correct, and complete." This declaration must be signed by the applicant (*e.g.*, an authorized officer of a corporation). The signature of an individual with a power of attorney will not suffice for the declaration. See section 9.02(13) of Rev. Proc. 2007–4.

(3) Because a request for the use of substitute mortality tables constitutes a request for a ruling, compliance with § 6110 of the Code is also required. Section 601.201 of the Statement of Procedural Rules sets forth the requirements applicable to requests for rulings and determination letters which are subject to § 6110. Section 601.201(e) furnishes specific instructions to applicants.

The applicant must provide with the request either a statement of proposed deletions and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted.

.04 *Checklist*. A checklist has been provided in Appendix A for the convenience of the applicant submitting the request. This checklist should be signed, by the applicant or authorized representative, and dated and placed on top of the request.

SECTION 4. DEADLINE FOR REQUESTING THE USE OF SUBSTITUTE MORTALITY TABLES

.01 *In General*. A request for the use of substitute mortality tables generally must be submitted at least 7 months prior to the first day of the first plan year for which the substitute mortality tables are to apply. Thus, for example, if the first plan year to which substitute mortality tables are to apply is the plan year that begins January 1, 2009, then the deadline is June 1, 2008. Notwithstanding the generally applicable deadline, a request to use substitute mortality tables is timely if it is submitted on or before October 1, 2007.

.02 *Incomplete Requests*. Generally, an incomplete request for the use of substitute mortality tables will be summarily denied absent mutual agreement of the Service and the applicant to extend the 180-day period specified under § 430(h)(3)(C)(v)(II). Except as provided in section 5.06 of this revenue procedure, the applicant should not assume that the Service will agree to extend the 180-day period for a request that does not include substantially all of the applicable information specified in sections 5 through 13 of this revenue procedure.

SECTION 5. GENERAL RULES

.01 The Service will deny a request if the request fails to meet the requirements of this revenue procedure or if the Service determines that a substitute mortality table does not sufficiently reflect the mortality experience of the applicable plan population.

.02 If separate mortality tables are used for disabled individuals pursuant to § 430(h)(3)(D), then those individuals are disregarded for all purposes under this revenue procedure.

.03 A separate request must be made with respect to each plan (the "Plan"), or group of plans that are permissively aggregated (the "Permissive Group"), for which the use of a substitute mortality table or tables is requested. The request must include a complete copy of the Base Tables that will form the basis for the substitute mortality tables that will be used. The request must state the first day of the first plan year for which the substitute mortality tables are to be applicable (the "Requested Effective Plan Year") and must state the term of years (not more than 10) that the tables are requested to be used. Each request also must identify the Base Year of the Base Tables.

.04 The request must include a description of the populations within the Plan (or the Permissive Group) for which the use of substitute mortality tables is requested and a description of the populations, if any, for which the use of substitute mortality tables is not requested.

For example, if the use of substitute mortality tables is requested for nondisabled female individuals (but for no other individuals) where separate mortality tables are used for disabled individuals pursuant to § 430(h)(3)(D), then the population for whom the use of substitute mortality tables is requested would be described

as "Nondisabled Females" and the population for whom the use of substitute mortality tables is not requested would be described as "Nondisabled Males."

Similarly, if the use of substitute mortality tables is requested for male annuitants (but not male non-annuitants) and for females on a combined annuitant/nonannuitant basis, in each case including disabled individuals, then the populations for whom the use of substitute mortality tables is requested would be described as "Male Annuitants" and "Females", and the population for whom the use of substitute mortality tables is not requested would be described as "Male Nonannuitants."

.05 The request must include the plan identification information described in Section 6, the credible mortality experience demonstrations described in Section 7, the stability demonstrations described in Section 8, the lack of credible mortality experience demonstrations described in Section 9, the unadjusted mortality experience described in Section 10, the Base Table construction methods as set forth in Section 11 or 12, and the demonstrations with respect to the Base Tables described in Section 13.

.06 If there are other plans subject to § 430 maintained by the applicant, or members of the applicant's controlled group, that have credible mortality experience for which the use of substitute mortality tables will be requested in a separate request, then the Service will not summarily deny the request for the use of substitute mortality tables on the grounds that all plans with credible mortality experience maintained by the applicant would not be using substitute mortality tables, but only if the applicant requests that the 180-day review period provided under § 430(h)(3)(C)(v)(II) not begin for the initial request and any such separate request until the date all such separate requests have been received, and only if those separate requests are submitted within 90 days after the receipt of the initial request (and no later than the deadline that applies to each such separate request under section 4 of this revenue procedure). In the absence of such a request for a delay in the start of the 180-day review period, or if all such separate requests are not submitted within 90 days after the receipt of the initial request, the Service will summarily deny the request for the use of substitute mortality tables on the grounds that all plans with credible mortality experience maintained by the applicant would not be using substitute mortality tables.

Example. Employer E maintains Plans A and B, both of which are calendar year plans that have each had over 2,500 deaths in each of the last five years. Employer E submits a request for the use of substitute mortality tables for Plan A for the 2009 plan year that is received on February 15, 2008 (the "A Request"). To avoid denial of the A Request on the grounds that all plans with credible mortality experience maintained by the applicant would not be using substitute mortality tables, Employer E requests that the 180-day review period of the A Request not begin until the receipt of a separate request for the 2009 plan year from Employer E for the use of substitute mortality tables by Plan B. The Service agrees to defer commencement of the 180-day period, but will summarily deny the application unless Employer E submits a separate request for the use of substitute mortality tables for Plan B no later than May 15, 2008.

.07 If two or more plans are permissively aggregated for the purpose of constructing substitute mortality tables, then such plans are treated as a single plan for all purposes of this revenue procedure. Accordingly, if two or more plans are permissively aggregated, then all populations within the plans must be so aggregated.

Example. Employer F maintains Plans C, D, and E, each of which had 500 male deaths and 100 female deaths in each of the last five years. Employer F may request to use one substitute male mortality table and one substitute female mortality table for the aggregation of Plans C, D, and E. However, Employer F may not aggregate Plans C, D, and E and request to use one substitute female mortality table for Plans C, D, and E, and three separate substitute male mortality tables for Plans C, D, and E.

SECTION 6. IDENTIFICATION OF PLANS

.01 The following plan information must be provided for the Plan (or for each plan within the Permissive Group) for which the use of substitute mortality tables is requested:

(1) Plan name;

(2) Plan number;

(3) Plan year (*i.e.*, calendar, or if fiscal, the first and last day);

(4) Employer identification number;

(5) Date of plan establishment; and

(6) Copies of the actuarial valuation reports for each plan year which begins or ends during the Experience Study Period as defined in section 7.01 of this revenue procedure.

.02 The following information must be provided for each plan that is subject to § 430 maintained by the applicant, or members of the applicant's controlled group, for which the use of substitute mortality tables is not requested:

(1) Plan name;

(2) Plan number;

(3) Plan year (*i.e.*, calendar, or if fiscal, the first and last day);

(4) Employer identification number;

(5) Date of plan establishment;

(6) If the plan is newly acquired, the date of the merger, acquisition, or similar transaction described in § 1.410(b)–2(f) of the regulations, and the date described in § 410(b)(6)(C)(ii)(II); and

(7) The Lack of Credible Mortality Experience Demonstration Period, or, if the plan is not required to identify such a period, the applicable exception. (See section 9 of this revenue procedure.)

.03 The following additional information must be provided with respect to each plan that is subject to § 430 that is maintained by the applicant, or member of the applicant's controlled group, that was spun off from another plan that is maintained by the applicant within the five-year period preceding the date of the request:

(1) The plan name and the plan number of the spun off plan, and the plan name and number of the plan from which the spinoff occurred;

(2) The employer identification number of the employer maintaining the spun off plan and the employer identification number of the employer maintaining the plan from which the spinoff occurred;

(3) The date of the spinoff;

(4) The approximate number of individuals covered by the spun off plan as of the date of the spinoff and the approximate number of individuals covered by the plan from which the spinoff occurred, prior to the spinoff; and

(5) The reason for the spinoff.

SECTION 7. DEMONSTRATIONS OF CREDIBLE MORTALITY EXPERIENCE

.01 The applicant's request must identify the period of time covered by the mortality experience study (the "Experience Study Period") used to develop the Base Table(s) and must identify the Base Year. Different Experience Study Periods for different populations within a plan are not permitted. Except as provided in subsection .02 of this section, different

Experience Study Periods for different plans within the Permissive Group are not permitted. Thus, a plan that does not have mortality experience for the entire Experience Study Period may not be included in the Permissive Group. Similarly, a plan that was acquired subsequent to the first day of the Experience Study Period may be included in the Permissive Group only if the applicant includes mortality experience for the full Experience Study Period. Thus, in such cases, the mortality experience study must include mortality experience that occurred before the date of acquisition.

.02 A plan that came into existence by reason of a spinoff from the Plan (or from a plan within the Permissive Group) during the Experience Study Period may be included in the Permissive Group. In such a case, the period of time covered by the mortality experience study with respect to the spun off plan will begin as of the date of the spinoff. However, the mortality experience of the individuals covered by the spun off plan from the first day of the Experience Study Period to the date of the spinoff would be included as part of the experience of the single plan that existed before the spinoff.

.03 In order to demonstrate credible mortality experience, the number of deaths during each year of the Experience Study Period (and, in total, for the entire Experience Study Period) within each population for which the use of substitute mortality tables is requested must be provided in tabular form.

SECTION 8. DEMONSTRATION OF STABILITY

.01 The following information must be provided in tabular form for each population within the Plan (or plans within the Permissive Group) for which the use of a substitute mortality table is requested, aggregating all plans that have the same plan year:

(1) The average number of individuals within the population during the Experience Study Period; and

(2) The number of individuals within the population as of the last day of the plan year immediately preceding the plan year during which the use of substitute mortality tables is requested.

A reasonable estimate of the number of plan individuals, such as the estimated number of participants and beneficiaries used for purposes of PBGC Form 1–ES, may be used to provide the information requested in subsection .01(1) of this section.

.02 If the difference between (1) and (2) of subsection .01 of this section within any population, for any plan year, reflects a difference of 20 percent or more, then an analysis that shows that the mortality experience during the Experience Study Period is still accurately predictive of the future mortality of the population must be submitted.

SECTION 9. DEMONSTRATIONS OF LACK OF CREDIBLE MORTALITY EXPERIENCE

.01 *General Rule*. For all plans maintained by the applicant, except as described in subsections .02 and .03 of this section, the 4-year period of time used to demonstrate a lack of credible mortality experience must be identified (the "Lack of Credible Mortality Experience Demonstration Period").

.02 *General Exception*. Plans described in paragraphs (1), (2), or (3) are not required to identify a Lack of Credible Mortality Experience Demonstration Period.

(1) Plans for which the use of substitute mortality tables is requested for all populations (other than disabled populations for whom the tables prescribed under § 430(h)(3)(D) are used);

(2) Plans for which the use of substitute mortality tables has previously been approved by the Service and the term of years of such approval ends subsequent to the last day of the Requested Effective Plan Year; and

(3) Newly acquired plans for which the last day of the period described in § 410(b)(6)(C) is a date on or after the first day of the plan year for which the use of substitute mortality tables is requested.

.03 *Exception for Certain Newly Acquired Plans*. Newly acquired plans (as defined in § 1.430(h)(3)–2) for which the last day of the period described in § 410(b)(6)(C) is a date prior to the first day of the plan year for which the use of substitute mortality tables is requested, and for which the applicant has elected not to include mortality experience prior to the date of the acquisition, may identify a Lack of Credible Mortality Experience Demonstration Period less than 4 years in length. For such plans, the Lack of Credible Mortality Experience Demonstration Period must begin no later than the date of acquisition of the plan and end not more than one year and one day before the first day of the plan year for which the use of substitute mortality tables is requested.

.04 *Demonstrations of Plan-Wide Lack of Credible Mortality Experience*. The following information must be provided in tabular form for each plan that is not within the Permissive Group and which does not fall within one of the exceptions provided in subsection .02 of this section:

(1) The number of male deaths during the Lack of Credible Mortality Experience Demonstration Period; and

(2) The number of female deaths during the Lack of Credible Mortality Experience Demonstration Period.

.05 *Demonstrations of Lack of Credible Mortality Experience for Certain Populations*. The number of deaths for the population during the Lack of Credible Mortality Experience Demonstration Period must be provided in tabular form for each relevant population within the Plan (or plans within the Permissive Group) for which the use of substitute mortality tables is not requested.

The relevant populations for this purpose would, for example, be nondisabled females if the request was to use a substitute mortality table for nondisabled males (but for no other individuals) where separate mortality tables were used for disabled individuals pursuant to § 430(h)(3)(D). Similarly, the relevant populations would be male non-annuitants and females, in each case including disabled individuals, if the request was to use a substitute mortality table for male annuitants (but not for male non-annuitants) where separate mortality tables were not used for disabled individuals pursuant to § 430(h)(3)(D).

SECTION 10. UNADJUSTED MORTALITY EXPERIENCE

.01 *In General*. The following information must be provided in tabular form for all individuals within each population for whom the use of a separate mortality table is requested, for each year of the Experience Study Period, and for the Experience Study Period in its entirety, for all ages be-

tween 18 and 100 (except as provided in subsection .03 of this section):

(1) The sum of the accrued benefits (or payable benefits, in the case of individuals in pay status) of all individuals at that age at the beginning of the year, other than individuals who left the population during the year for reasons other than death;

(2) The sum of the accrued (or payable) benefits of all individuals at that age at the beginning of the year who left the population during the year for reasons other than death, adjusted to reflect exposure periods of less than one year;

(3) The sum of the accrued (or payable) benefits of all individuals at that age at the beginning of the year who died during the year;

(4) The quotient determined by dividing the sum of the accrued (or payable) benefits of all individuals at that age who died during the year by the sum of the accrued (or payable) benefits for all individuals at that age adjusted for individuals at that age who left the population for reasons other than death (*i.e.*, the amount determined in paragraph (3), divided by the total of the amounts determined in paragraphs (1) and (2);

(5) The total number of individuals at that age at the beginning of the year;

(6) The total number of individuals at that age at the beginning of the year who left the population for reasons other than death;

(7) The total number of individuals at that age at the beginning of the year who died during the year; and

(8) The average accrued benefit of all individuals at that age at the beginning of the year.

.02 *Adjustment for Exposure Periods of Less than One Year*. The request must include a description of the method(s) used to adjust the accrued benefits of individuals who left for reasons other than death to reflect exposure periods of less than one year.

.03 *Grouping of Ages*. The information requested in subsection .01 of this section may be presented in five-year age groups. In such cases, the groups at the extreme ages may include more than five ages provided such groups either do not include ages greater than age 24 or do not include ages less than age 95. Thus, for example, an age group consisting of all ages 24 and lower would be permissible whereas an age group consisting of all ages 25 and lower would not be permissible.

.04 *Unadjusted Base Tables*. An Unadjusted Base Table for each population for which the use of substitute mortality tables is requested shall, for all ages or all groups of ages, consist of the quotients determined in paragraph (4) of subsection .01 of this section for the Experience Study Period in its entirety. The request must include a complete copy of each such Unadjusted Base Table.

SECTION 11. BASE TABLE CONSTRUCTION – GENERAL METHOD

.01 *In General*. Except as otherwise provided in Section 12 of this revenue procedure, a Base Table for a population must be created from the Unadjusted Base Table for the population through the application of a graduation method generally used by the actuarial profession in the United States (*e.g.*, Whittaker-Henderson Type B, Karup-King). Section 12 of this revenue procedure provides for an alternate method of constructing a Base Table through the application of a fixed percentage to the mortality rates of a Standard Mortality Table, projected to the Base Year.

.02 *Information Regarding Graduation Methods*. The graduation method must be identified and the parameters of the graduation method used must be specified (*e.g.*, for Whittaker-Henderson Type B, the number of differences and the "h" value must be specified). If more than one graduation is performed, then the parameters must be specified for each such graduation.

.03 *Intermediate Values*. If more than one graduation is performed in the process of adjusting an Unadjusted Base Table to a Base Table, then a copy of each intermediate table so created must be provided.

.04 *Rationale*. The rationale for the selection of each particular graduation method used must be provided along with the rationale for the selection of the particular parameters used as part of the method.

.05 *Extension to Extreme Ages*. At extreme ages for which insufficient data exists, the Base Tables must be extended to blend into the applicable Standard Mortality Table, provided in subsection .06 of this section, projected to the Base Year using Projection Scale AA, as set forth in the proposed regulations. In such cases, the method (and the rationale for the method) used for the extension must be described.

.06 *Standard Mortality Tables*. For purposes of this revenue procedure, the following are the Standard Mortality Tables:

(1) The Male Base Non-Annuitant Mortality Table (Year 2000) as set forth in § 1.430(h)(3)–1;

(2) The Male Base Annuitant Mortality Table (Year 2000) as set forth in § 1.430(h)(3)–1;

(3) The Female Base Non-Annuitant Mortality Table (Year 2000) as set forth in § 1.430(h)(3)–1;

(4) The Female Base Annuitant Mortality Table (Year 2000) as set forth in § 1.430(h)(3)–1;

(5) The Male Base Combined Mortality Table (Year 2000) determined in accordance with subsection .07 of this section; and

(6) The Female Base Combined Mortality Table (Year 2000) determined in accordance with subsection .07 of this section.

.07 *Gender-Specific Base (Year 2000) Mortality Combined Tables*. For purposes of this revenue procedure, the Male Base Combined Mortality Table (Year 2000) is the table determined through application of the male Weighting Factors for Small Plans (the "Weights") to the Male Base Non-Annuitant and Annuitant Mortality Tables (Year 2000) as set forth in § 1.430(h)(3)–1. Similarly, the Female Base Combined Mortality Table (Year 2000) is the table determined through application of the female Weights to the Female Base Non-Annuitant and Annuitant Mortality Tables (Year 2000) as set forth in § 1.430(h)(3)–1.

SECTION 12. BASE TABLE CONSTRUCTION – ALTERNATE METHOD

.01 *General Rule*. A Base Table for a population may be created by applying a fixed percentage (the "Fixed Percentage") to the mortality rates in the Projected Applicable Standard Mortality Table, only if the requirements of subsections .02 and .03 of this section are satisfied and the Service determines that the resulting Base Table sufficiently reflects the mortality experience of the applicable plan population. For this purpose the Projected Applicable Standard Mortality Table is the applicable Standard Mortality Table, projected to the

Base Year using Projection Scale AA, as set forth in § 1.430(h)(3)–1. See subsection .05 of this section with regard to the possible use of other mortality tables for this purpose.

Under this section 12, the Unadjusted Base Mortality Tables must be constructed using five-year age groups. For each Base Table constructed using the alternate method described in this section, the Fixed Percentage and the mortality table to which such percentage is to be applied must be identified. In addition, for each so constructed Base Table, the ratios of the mortality rates from the Unadjusted Base Mortality Table for the population to the central age mortality rates (*i.e.*, the mortality rates for the ages that are the midpoints of the age ranges) from the Projected Applicable Standard Mortality Table must be provided, in tabular form, for all five-year age groups for which mortality experience is available.

.02 *Selection of the Fixed Percentage*.

(1) If the applicable Standard Mortality Table for a population is the table provided in either section 11.06(1) or section 11.06(3) of this revenue procedure, then the Fixed Percentage must be within two percentage points of the arithmetic average of the ratios of the mortality rates from the Unadjusted Base Mortality Table for the population to the central age mortality rates from the Projected Applicable Standard Mortality Table of each of the five-year age groups from the 35–39 age group to the 60–64 age group, inclusive, unless the applicant can demonstrate that a different set of five-year age groups (consisting of no less than six such groups) is more appropriate for this purpose.

(2) If the applicable Standard Mortality Table for a population is the table provided in either section 11.06(2) or section 11.06(4) of this revenue procedure, then the Fixed Percentage must be within two percentage points of the arithmetic average of the ratios of the mortality rates from the Unadjusted Base Mortality Table for the population to the central age mortality rates from the Projected Applicable Standard Mortality Table of each of the five-year age groups from the 55–59 age group to the 80–84 age group, inclusive, unless the applicant can demonstrate that a different set of five-year age groups (consisting of no less than six such groups) is more appropriate for this purpose.

(3) If the applicable Standard Mortality Table for a population is the table provided in either section 11.06(5) or section 11.06(6) of this revenue procedure, then the Fixed Percentage must be within two percentage points of the arithmetic average of the ratios of the mortality rates from the Unadjusted Base Mortality Table for the population to the central age mortality rates from the Projected Applicable Standard Mortality Table of each of the five-year age groups from the 45–49 age group to the 80–84 age group, inclusive, unless the applicant can demonstrate that a different set of five-year age groups (consisting of no less than eight such groups) is more appropriate for this purpose.

.03 *Consistency Requirement*. The consistency requirement of this subsection .03 is satisfied only if each of the applicable ratios described in subsection .02 of this section is within 10 percentage points of the Fixed Percentage.

.04 *Terminal Age*. Notwithstanding subsection .01 of this section, the mortality rate for the terminal age in any Base Table created by applying a Level Percentage to a Standard Mortality Table shall be 1.000.

.05 *Other Mortality Tables*. The Service will consider requests for the approval of Base Tables constructed through the application of a fixed percentage to the mortality rates of other published generally accepted mortality tables (*e.g.*, the 1983 Group Annuity Mortality Table) using standards similar to those provided in subsections .01 through .04 of this section.

.06 *Example*. The age group rates from the Male Unadjusted Base Table (determined in accordance with section 10 of this revenue procedure), the central age rates from the Male Base Combined Mortality Table (Year 2000), projected to the Base Year, and the ratios of such rates are as follows:

	A	**B**	**C**
Age Group	Mortality Rate from Unadjusted Base Mortality Table	Base Combined Mortality Table (Year 2000), Projected to the Base Year, Age Group Mortality Rate	Ratio of Mortality Rate from Unadjusted Mortality Table to Base Mortality Rate (Year 2000)
45 to 49	0.00163	0.00165	98.79%
50 to 54	0.00211	0.00241	87.55%
55 to 59	0.00376	0.00431	87.24%
60 to 64	0.00765	0.00812	94.21%
65 to 69	0.01569	0.01506	104.18%
70 to 74	0.02439	0.02502	97.48%
75 to 79	0.03768	0.04387	85.89%
80 to 84	0.07948	0.07732	102.79%
Arithmetic Average Percentage			**94.77%**

In accordance with subsection .02 of this section, the Fixed Percentage to be applied to the Male Base Mortality Table (Year 2000), projected to the Base Year, must be between 92.77% and 96.77%. However, a Fixed Percentage that is less than 94.18% would fail to satisfy the requirements of subsection .03 of this section because the ratio for the 65–69 Age Group (*i.e.*, 104.18%) would then not be within 10 percentage points of a Fixed Percentage less than 94.18%. Similarly, a Fixed Percentage that is greater than 95.89% would fail the requirements of subsection .03 because the ratio for the 75–79 Age Group (*i.e.*, 85.89%) would then not be within 10 percentage points of a Fixed Percentage greater than 95.89%. Accordingly, under the facts in this example, if the applicant were to request the use of a Base Table constructed through the application of a percentage to the Male Base Mortality Table (Year 2000) that is a fixed integer, the applicant would be limited to a Fixed Percentage of 95%.

SECTION 13. DEMONSTRATIONS WITH RESPECT TO BASE TABLES

The following information must be provided with respect to each population for which the use of substitute mortality tables is requested:

.01 *Generational Mortality Tables*. Sample generational mortality tables, as of the Requested Effective Plan Year, for individuals whose years of birth are 1940, 1950, and 1960, constructed from the Base Tables using methodology in accordance with § 1.430(h)(3)–1 (except that the projection period used to determine each particular mortality improvement factor is the number of years between the Base Year and the year for which the probability of death is determined).

.02 *Funding Target Comparisons*. The liability of the plan(s) for which the use of substitute mortality tables is requested as of the valuation date for a plan year ending no earlier than one year and one day before the first plan year to which the substitute mortality tables will apply (the "Comparison Year"). The liability is to be measured using generational mortality tables determined in accordance with the methodology described in subsection .01 of this section. The liability is to be provided separately for active participants, terminated vested participants, and retirees and beneficiaries in pay status, and is to be determined as follows:

(1) For Comparison Years beginning in 2006, the liability to be reported is the Current Liability recalculated using the mortality tables published in § 1.412(l)(7)–1 of the regulations, and, for comparison, what the Current Liability would have been if the substitute mortality table(s) had been used to determine Current Liability, in each case holding all other assumptions constant.

(2) For Comparison Years beginning in 2007, the liability to be reported is the Current Liability and, for comparison, what the Current Liability would have been if the substitute mortality table(s) had been used to determine Current Liability, holding all other assumptions constant.

(3) For Comparison Years beginning after 2007, the liability to be reported is the Funding Target, determined without regard to at-risk assumptions under § 430(i), and, for comparison, what the Funding Target would have been if the substitute mortality table(s) had been used to determine the Funding Target, holding all other assumptions constant.

.03 *Annuity Factors*. The following annuity factors based on generational mortality tables for individuals whose year of birth is 1950, determined using interest and mortality assumptions consistent with those used under subsection .02 of this section.

(1) For all Base Tables with the exception of annuitant Base Tables:

(a) Deferred to age 55 factors at quinquennial ages from 20 to 50; and

(b) Deferred to age 65 factors at quinquennial ages from 20 to 60.

(2) For all Base Tables with the exception of nonannuitant Base Tables, immediate annuity factors at quinquennial ages from 50 to 90.

.04 *Graphical Displays*. A comparison in the form of graphs with the X-axis representing age and the Y-axis representing the mortality rate, for each of the following pairs of mortality rates, for each population for which the use of substitute mortality tables is requested:

(1) The mortality rates from the Base Unadjusted Mortality Table and the mortality rates from the proposed Base Table; and

(2) The mortality rates from the proposed Base Table and from the applicable Standard Mortality Table (as described in section 11.06 of this revenue procedure), projected to the Base Year.

SECTION 14. EFFECTIVE DATE

This revenue procedure is effective for all requests for the use of plan-specific substitute mortality tables in accordance with § 430(h)(3)(C) of the Code and section 303(h)(3)(C) of ERISA.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. section 3507) under control number 1545–2073.

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

The collection of information in this revenue procedure is in sections 3 through 13. This collection of information is required to evaluate, process and obtain approval of the request for the use of substitute mortality tables. This information will be used to make determinations under § 430(h)(3) of the Code. The likely respondents are businesses or other for-profit institutions and nonprofit institutions.

The estimated total annual reporting/recordkeeping burden is 25,400 hours.

The estimated annual burden per respondent/recordkeeper varies from 335 to 681 hours, depending on individual circumstances, with an estimated average burden of 508 hours. The estimated annual number of respondents/recordkeepers is 50.

The estimated annual frequency of responses is once every 10 years.

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

DRAFTING INFORMATION

The principal author of this revenue procedure is Lawrence E. Isaacs of the

Employee Plans, Tax Exempt and Government Entities Division. For further information regarding how this revenue procedure applies to employee plans matters, contact the Employee Plans Customer Assistance Service between the hours of 9 a.m. and 4:30 p.m. Eastern time, Monday through Friday at 1–877–829–5500 (a toll-free call). Mr. Isaacs may be reached at *retirementplanquestions@irs.gov* and his telephone number is (202) 283–9710 (not a toll-free call).

Appendix A

REQUEST FOR THE USE OF SUBSTITUTE MORTALITY TABLES CHECKLIST
IS YOUR SUBMISSION COMPLETE?

Instructions

The Service will be able to respond more quickly to your request for the use of substitute mortality tables if it is carefully prepared and complete. To ensure your request is in order, use this checklist. Answer each question in the checklist by indicating Y for yes, N for no, or N/A for not applicable. Explanations must be provided for N or N/A responses. **Sign and date the checklist (as taxpayer or authorized representative) and place it on top of your request.**

You must submit a completed copy of this checklist with your request. If a completed checklist is not submitted with your request or if explanations are not provided for N and N/A responses, then your submission will be considered incomplete for purposes of determining the first day of the 180-day period described in § 430(h)(3)(C)(v)(II) of the Code.

1. If you want to designate an authorized representative, have you included a properly executed Form 2848 (*Power of Attorney and Declaration of Representative*)?
2. Have you satisfied all the requirements of Rev. Proc. 2007–4 or its successors (especially concerning signatures and penalties of perjury statement)? (See sections 3.03(1) and (2))
3. Have you included statement of proposed deletions? (See section 3.03(3))
4. Have you included the user fee required under Rev. Proc. 2007–8 or its successors? (See section 3.02)
5. Have you included a copy of the Base Tables which will form the basis for the substitute mortality tables whose use is requested? (See section 5.03)
6. Have you identified the first day of the first plan year for which the use of substitute mortality tables is requested? (See section 5.03)
7. Have you stated the number of years for which the use of substitute mortality tables is requested? (See section 5.03)
8. Have you identified the Base Year of the Base Tables? (See section 5.03)
9. Have you included a description of the populations for which the use of substitute mortality tables is requested? (See section 5.04)
10. Have you included a description of the populations for which the use of substitute mortality tables is not requested? (See section 5.04)
11. Have you requested that the 180-day review period not begin until a separate request is received for another plan(s) maintained by the applicant is received? (See section 5.06)
12. Have you identified all plans subject to § 430 maintained by the applicant, or members of the applicant's controlled group, including the additional information required for spun-off plans under section 6.03? (See section 6)
13. Have you identified the Experience Study Period? (See section 7.01)
14. Have you included a table showing the number of deaths, for each applicable population within the Plan (or within the Permissive Group), for each year (and in total) of the Experience Study Period? (See section 7.03)
15. Have you included a table showing the average number of individuals during the Experience Study Period and the number of individuals within the population as of the last day of the plan year immediately preceding the plan year during which the use of substitute mortality tables is requested for each population within the Plan (or plans within the Permissive Group) for which the use of a substitute mortality table is requested? (See section 8)
16. Have you included a table for each plan that is not within the Permissive Group showing the number of male and female deaths during the plan's Lack of Credible Mortality Experience Demonstration Period, including identification of the Lack of Credible Mortality Experience Demonstration Period? (See sections 9.01 and 9.04)

17. Have you included a table for each population within the Plan (or plans within the Permissive Group) for which the use of substitute mortality tables is not requested, showing the number of deaths within the population? (See section 9.05)

18. Have you included a table showing the accrued benefits, counts of individuals covered under the plan, and other information for all ages (or groups of ages) for each year (and in total) of the Experience Study Period? (See section 10.01)

19. Have you included a description of the method(s) used to adjust the accrued benefits of individuals who left for reasons other than death? (See section 10.02)

20. Have you included complete copies of each Unadjusted Base Table? (See section 10.04)

21. Have you identified the graduation method(s) used to create the Base Table(s) from the Unadjusted Base Table(s), along with any intermediate tables resulting from applying the graduation method(s)? (See sections 11.02 and 11.03)

22. Have you provided the rationale(s) for use of the particular graduation method(s) selected? (See section 11.04)

23. Have you described the method used to extend the Base Tables to extreme ages? (See section 11.05)

24. Have you identified a Fixed Percentage and a mortality table associated with all Base Tables constructed using the alternate method provided in section 12? (See section 12.01)

25. Have you included a table showing the ratios of the mortality rates from the Unadjusted Base Mortality Table to the central age mortality rates from the Projected Applicable Standard Mortality Table for each Base Table constructed using the alternate method of section 12? (See section 12.01)

26. Have you included (three) sample generational mortality tables as of the Requested Effective Plan Year? (See section 13.01)

27. Have you included a comparison of hypothetical funding targets determined using standard mortality tables and generational tables developed from the proposed Base Tables? (See section 13.02)

28. Have you included annuity factors based on generational mortality tables for individuals whose year of birth is 1950 for each population for which the use of substitute mortality factors is requested? (See section 13.03)

29. Have you included graphical displays of the rates from the Base Unadjusted Mortality Tables, the proposed Base Tables, and the applicable Standard Mortality Tables? (See section 13.04)

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26 CFR 601.602: Tax forms and instructions.
(Also Part 1, §§ 3504, 6011, 6061, 6302; 31.3504–1, 31.6011(a)–7, 31.6061–1, 31.6302–1.)

Rev. Proc. 2007–38

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SECTION 1. PURPOSE

.01 This revenue procedure provides the requirements for completing and submitting Form 8655, *Reporting Agent Authorization* (Authorization). An Authorization allows a taxpayer to designate a Reporting Agent to perform the following acts on behalf of a taxpayer:

(1) Sign and electronically file Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*; Form 941, *Employer's QUARTERLY Federal Tax Return*; Form 944, *Employer's ANNUAL Federal Tax Return*; and those forms set forth in section 4.02(1) of this revenue procedure.

(2) Sign and file on paper the tax returns set forth in section 4.02(2) of this revenue procedure.

(3) Make federal tax deposits (FTDs) and other federal tax payments (FTPs) and submit FTD information and FTP information electronically as described in section 4.02(3) of this revenue procedure.

(4) Receive duplicate copies of official notices, correspondence, deposit requirements, transcripts, or other information as described in section 4.02(4) of this revenue procedure.

(5) Receive duplicate copies of official notices, correspondence, deposit requirements, transcripts, or other information with respect to FTDs and FTPs as described in section 4.02(5) of this revenue procedure.

.02 The technical specifications for filing Authorization information are published separately in Publication 1474, *Technical Specifications Guide For Reporting Agent Authorization and Federal Tax Depositors*.

SECTION 2. BACKGROUND

.01 Section 1.6011–1 of the Income Tax Regulations and § 31.6011(a)–7 of the Employment Taxes and Collection of Income Tax at Source Regulations (Employment Tax Regulations) provide that each return required under the regulations, together with any prescribed copies or supporting data, must be filled in and disposed of in accordance with applicable forms, instructions, and regulations. Section 31.6011(a)–7 provides that the return may be made by an agent authorized by the person required to make the return.

.02 Section 31.6061–1 of the Employment Tax Regulations provides that a return may be signed for the taxpayer by an agent duly authorized in accordance with § 31.6011(a)–7 to make the return. Section 1.6061–1 of the Income Tax Regulations provides that a return may be signed

by an agent who is duly authorized under § 1.6012–1(a)(5) or (b) to make the return.

.03 Section 31.6302–1 of the Employment Tax Regulations provides the rules for depositing employment taxes. Section 31.6302–1(h) implements section 6302(h) of the Internal Revenue Code, which requires the use of an electronic fund transfer system for the collection of federal depository taxes. The Electronic Federal Tax Payment System (EFTPS) is the electronic fund transfer system developed to collect these taxes. Rev. Proc. 97–33, 1997–2 C.B. 371, provides general information about EFTPS, and Rev. Proc. 98–32, 1998–1 C.B. 935, provides information about EFTPS programs for Reporting Agents making FTDs and FTPs on behalf of multiple taxpayers.

.04 The Service has prescribed Form 8655 as the appropriate authorization form for a taxpayer to use to designate a Reporting Agent to perform the actions set forth in section 4.02 of this revenue procedure.

.05 All references in this revenue procedure to forms and publications include all future revisions and successor forms and publications.

SECTION 3. SIGNIFICANT CHANGES TO REV. PROC. 2003–69

.01 This revenue procedure modifies and supersedes Rev. Proc. 2003–69, 2003–2 C.B. 403, by making the following changes to Rev. Proc. 2003–69.

(1) Form 8655 may now be used to authorize Reporting Agents to:

(a) Sign and file Form 944, *Employer's ANNUAL Federal Tax Return*; Forma 944–PR, *Planilla Para La Declaración ANUAL Del Patrono*; Forma 944(SP), *Declaración Federal ANUAL de Impuestos del Patrono o Empleador*; Form 944–SS, *Employer's Annual Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)*; additional forms set forth on Form 8655; and amended forms and any successor forms that replace those listed.

(b) Make FTDs and FTPs and submit FTD and FTP information electronically for the tax deposits and payments reported on Form 944.

(c) Receive confidential taxpayer information from the Service to assist in responding to notices relating to Form W–2 and Form 1099 Series information returns filed by the Reporting Agent on behalf of the taxpayer.

(2) Section 5.09 has been added to provide that a Reporting Agent must provide the taxpayer with a complete copy of any return filed by the Reporting Agent.

(3) Section 6.01 has been revised to provide that an Authorization must be made on a Form 8655 with a revision date of May 2005 or later, or on an approved substitute form.

(4) Section 6.02 has been revised to provide that an Authorization may be signed and submitted electronically under procedures promulgated by the Service.

(5) Sections 8 through 11 set forth reasons for suspending a Reporting Agent from the Reporting Agent program, the administrative review process for proposed suspensions, the effect of a suspension, and the procedures for administratively appealing a suspension.

(6) Section 13 (former section 9) updates the list of other related documents.

SECTION 4. DEFINITIONS

.01 *Reporting Agent*. A Reporting Agent is an accounting service, franchiser, bank, service bureau, or other entity authorized to perform on behalf of a taxpayer one or more of the acts described in this revenue procedure.

.02 *Authorization*. An Authorization allows a taxpayer to designate a Reporting Agent to:

(1) Sign and file electronically Form 940, Form 941, Form 944; and those forms set forth on Form 8655, and amended and any successor forms.

(2) Sign and file on paper Form 944, Forma 940–PR, *Planilla Para La Declaración ANUAL Del Patrono—La Contribución Federal Para El Desempleo (FUTA)*; Forma 941–PR, *Planilla Para La Declaración Federal Trimestral Del Patrono—La Contribución Federal Al Seguro Social Y Al Seguro Medicare*; Form 941–SS, *Employer's QUARTERLY Federal Tax Return*; Form 943, *Employer's Annual Federal Tax Return for Agricultural Employees*; Forma 943–PR, *Planilla Para La Declaración Anual De La Contribución Federal Del Patrono De Empleados Agrícolas*; Forma 944–PR, *Planilla Para La Declaración ANUAL Del Patrono*; Forma 944(SP), *Declaración Federal ANUAL de Impuestos del Patrono o Empleador*; Form 944–SS, *Employer's Annual Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands)*; Form 945, *Annual Return of Withheld Federal Income Tax*; Form 1042, *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*; and Form CT–1, *Employer's Annual Railroad Retirement Tax Return*, and any amended and successor forms.

(3) Make FTDs and FTPs and submit FTD information and FTP information electronically for the taxes deposited and payments reported on applicable returns set forth on Form 8655.

(4) Receive duplicate copies of official notices, correspondence, deposit requirements, transcripts, or other information with respect to the tax returns described in section 4.01(1) or (2) of this revenue procedure.

(5) Receive duplicate copies of official notices, correspondence, deposit requirements, transcripts, or other information with respect to FTDs and FTPs.

.03 *Reporting Agent's List*. A Reporting Agent's List (Agent's List) identifies all taxpayers for whom a Reporting Agent will file tax returns, make FTDs and FTPs, or submit FTD information and FTP information electronically. A separate Authorization must be submitted for each taxpayer on the Agent's List.

SECTION 5. SCOPE OF REPORTING AGENT AUTHORIZATION

.01 The scope of an Authorization for the filing of returns listed on Form 8655 is as follows:

(1) A taxpayer may authorize a Reporting Agent to sign and file on the taxpayer's behalf any or all of the returns listed on Form 8655 and any amended and successor forms. A Form 8655 that authorizes a Reporting Agent to sign and file a Form 941, Form 941–SS, Forma 941–PR, Form 944, Form 944–SS, Forma 944(SP), or Forma 944–PR also authorizes the Reporting Agent to sign any other form in the Form 941 or 944 series of returns.

(2) A taxpayer may authorize a Reporting Agent to receive duplicate copies of notices, correspondence, deposit requirements, transcripts, or other information

with respect to the returns filed by the Reporting Agent.

(3) A taxpayer may authorize a Reporting Agent to receive confidential taxpayer information from the Service to assist in responding to notices relating to the Form W–2 or Form 1099 series of information returns.

(4) An Authorization that permits a Reporting Agent to make returns also permits a Reporting Agent to request information from the Service or submit information to the Service about the returns filed by the Reporting Agent. This authority extends to any information concerning penalties that may arise from the returns, including information that may assist the Service in determining whether it would be appropriate to grant relief from any penalties arising from the returns. This authority continues regardless of a change in filing requirements. For instance, if a Reporting Agent, pursuant to an Authorization, made and filed a Form 941 on behalf of a taxpayer prior to the Service notifying the taxpayer that the taxpayer's filing requirements was changed from Form 941 to Form 944, the Reporting Agent has authority to continue to request information from the Service or submit information to the Service about the previously-filed Form 941, assuming the Reporting Agent's authorization remains in effect.

(5) An Authorization, however, does not permit the Reporting Agent to request the abatement of any penalties that may arise from the returns filed by the Reporting Agent or to perform in any other way any acts that constitute representation of the taxpayer within the meaning of § 601.501(b)(13) of the Statement of Procedural Rules.

.02 The scope of an Authorization for making FTDs and FTPs and submitting FTD information and FTP information electronically is as follows:

(1) A taxpayer may authorize a Reporting Agent to make FTDs and FTPs for any taxes reported on any of the returns listed on Form 8655 and to submit FTD information and FTP information electronically on the taxpayer's behalf. A Form 8655 that authorizes a Reporting Agent to prepare and make FTDs and FTPs on Form 990–C, *Farmers' Cooperative Association Income Tax Return*, also authorizes a Reporting Agent to prepare and make FTDs and FTPs on Form 1120–C, *U.S. Income Tax Return for Cooperative Associations*.

(2) A taxpayer may authorize a Reporting Agent to receive duplicate copies of notices and correspondence for FTDs and FTPs made by the Reporting Agent for the taxpayer.

(3) Regardless of the method designated by the taxpayer, a Reporting Agent must make FTDs and submit FTD information through the EFTPS for a taxpayer that is required to make FTDs and submit FTD information through the EFTPS pursuant to section 6302(h).

(4) An Authorization that permits a Reporting Agent to make FTDs and FTPs also permits the Reporting Agent to request information from the Service or submit information to the Service on the FTDs and FTPs submitted by the Reporting Agent. It further permits the Reporting Agent to submit any information concerning penalties that may arise from the returns, including information that may assist the Service in determining whether it would be appropriate to grant relief from penalties. This authority continues regardless of a change in forms. For instance, if a Reporting Agent had authority to make FTDs and FTPs in connection with Form 990–C and did so, and the Service later replaces Form 990–C with Form 1120–C, absent a change to the Authorization, the Reporting Agent has authority to make FTDs and FTPs on behalf of the taxpayer in connection with Form 1120–C. The Reporting Agent also retains authority to request information from the Service or submit information to the Service about the FTDs and FTPs relating to Form 990–C.

(5) An Authorization does not permit the Reporting Agent to request the abatement of any penalties that may arise from the FTDs or FTPs made by the Reporting Agent or to perform in any other way any acts that constitute representation of the taxpayer within the meaning of § 601.501(b)(13) of the Statement of Procedural Rules.

.03 An Authorization becomes effective for the tax period(s) designated by the Reporting Agent and taxpayer and remains in effect for subsequent periods until revoked by the taxpayer or terminated by the Reporting Agent or the Service, subject to the following:

(1) The Service must accept the Authorization and Agent's List before the Reporting Agent may file a return on behalf of a taxpayer.

(2) The Reporting Agent must comply with the requirements of Rev. Proc. 98–32, 1998–1 C.B. 935, before the Reporting Agent may make electronic FTDs or FTPs on behalf of a taxpayer or submit FTD information or FTP information electronically.

(3) See section 13 of this revenue procedure for a list of other applicable guidance.

.04 A new Authorization must be submitted to the Service for any increase or decrease in the scope of the authority of a Reporting Agent to act on behalf of the taxpayer, or if the taxpayer appoints a new Reporting Agent. Receipt by the Service of an Authorization designating a new Reporting Agent terminates the authority of the prior Reporting Agent for all purposes for tax periods beginning on or after the effective date of the new Authorization. An Authorization designating a new Reporting Agent also terminates the authority of the prior Reporting Agent to receive duplicate copies of notices. For the tax periods beginning before the effective date of the new Authorization, the prior Reporting Agent retains the authority specified in the prior Authorization unless the taxpayer explicitly revokes the prior Authorization.

.05 An Authorization does not relieve the taxpayer of the responsibility (or from liability for failing) to ensure that all tax returns are filed timely and that all FTDs and FTPs are made timely.

.06 A Reporting Agent may use an Authorization to file paper returns listed on Form 8655 on behalf of a taxpayer only if:

(1) The late receipt of payroll information from a taxpayer has jeopardized the timely electronic filing of the taxpayer's return;

(2) The paper return amends Form 940 filed under the magnetic tape or electronic filing programs referenced in section 13 of this revenue procedure;

(3) The Service's rejection of an electronic filing has jeopardized the timely filing of the taxpayer's return;

(4) The returns are listed in section 4.02(2) of this revenue procedure; or

(5) The electronic filing coordinator for a Reporting Agent participating in an electronic filing program referenced in section

13 of this revenue procedure has requested paper returns.

.07 A Reporting Agent authorized by Form 8655 may prepare a paper tax return for the taxpayer's signature.

.08 Each paper tax return must be signed by the taxpayer, by the taxpayer's authorized representative, or by a Reporting Agent permitted in section 5.06 of this revenue procedure to file paper returns on behalf of the taxpayer.

.09 The Reporting Agent must provide the taxpayer with a complete copy of any returns filed by the Reporting Agent. This information may be provided on a replica of an official form or in any other format that provides all of the return information and references the line numbers of the official form.

.10 A Reporting Agent must keep a copy of each Authorization designating that Reporting Agent as an agent for a taxpayer at the Reporting Agent's principal place of business and make it available for examination by the Service until the period of limitations for assessment of tax for the last return filed pursuant to the Authorization expires.

SECTION 6. COMPLETING AN AUTHORIZATION

.01 An Authorization must be submitted on Form 8655 with a revision date of May 2005 or later or on an approved substitute form as described in Publication 1167, *General Rules and Specifications for Substitute Forms and Schedules*. When completing Form 8655, a taxpayer may strike out any non-applicable portions of the form. Once completed, a Reporting Agent may fax the Authorization to the Service.

.02 An Authorization must be signed by the taxpayer or an authorized representative holding a power of attorney that specifically authorizes the representative to sign returns on behalf of the taxpayer. If the Authorization provides that the Reporting Agent is authorized to receive tax return notices, correspondence, deposit requirements, and transcripts from the Service, or discuss taxpayer account information with Service representatives and is signed by a person other than the taxpayer, the authorized representative must be authorized both to receive, and to designate others to receive, tax return information (as defined in section 6103(b)(2)) of the taxpayer. The Authorization may be signed and submitted electronically under procedures promulgated by the Service.

.03 Except to the extent provided in section 6.04 of this revenue procedure, an Authorization will remain in effect until the Service receives a revocation of the Authorization or a new Authorization or a Reporting Agent is suspended.

.04 A new Authorization is not required to replace an Authorization made on Form 8655 with a revision date before October 1995 (or made on an equivalent substitute) that was previously submitted to the Service by a Reporting Agent if the Authorization places no restriction on the medium for filing Forms 940 or 941 and the Reporting Agent advises the taxpayer that its Forms 940 and 941 may be filed electronically and that the taxpayer has the option to reject electronic filing. A Reporting Agent may use whatever method the Reporting Agent deems the most efficient and timely method to convey the advice. A taxpayer's rejection of electronic filing of Forms 940 or 941 must be submitted in writing to the Reporting Agent, and upon receipt the Reporting Agent must immediately remove the taxpayer from the Agent's List or database of taxpayers for which the Reporting Agent files returns electronically.

SECTION 7. SUBMITTING A REPORTING AGENT AUTHORIZATION

.01 A Reporting Agent that intends to use an Authorization to electronically file Forms 940, Forms 941, or Forms 944, or make FTDs or FTPs (and submit related information) electronically must formally apply to the Service for these privileges. The application process for permission to electronically file Forms 940, 941, and 944 and for participation in EFTPS is contained in the documents (or their successors) listed in section 13 of this revenue procedure. Applications must be accompanied by individual Authorizations, signed as provided in section 6.02 of this revenue procedure, and an Agent's List (if required by the applicable guidance document).

.02 An Agent's List must contain each taxpayer's employer identification number. Agent's Lists may be filed electronically, as appropriate, but if the number of taxpayers/clients exceeds 100, the Agent's List must be filed electronically. For specific information concerning the requirements for filing and updating Agent's Lists, see Publication 1474 and the documents listed in section 13 of this revenue procedure. The Service contacts listed in section 13 of this revenue procedure may also be contacted for this information.

SECTION 8. SUSPENSION

.01 The Service reserves the right to suspend a Reporting Agent from the Reporting Agent program for the following reasons (this list is not all inclusive):

(1) Failing to perform the acts described in section 4.02 of this revenue procedure or Publication 1474.

(2) Submitting payment information on behalf of taxpayers for which the Reporting Agent did not receive Authorizations.

(3) Failing to comply with the requirements of any regulation, revenue procedure, or other published guidance applicable to Reporting Agents.

(4) Failing to cooperate with the Service's efforts to monitor Reporting Agents and investigate abuse in the Reporting Agent program.

(5) Receiving significant complaints about the Reporting Agent's performance in the Reporting Agent program.

.02 If the Service informs a Reporting Agent that a certain action is a reason for suspension and the action continues, the Service may send the Reporting Agent a notice proposing suspension of the Reporting Agent from the Reporting Agent program. A notice proposing suspension, however, may be sent without a warning if the Reporting Agent's actions indicate an intentional disregard of the rules. A notice proposing suspension will describe the reasons for the proposed suspension, the length of the suspension, and the conditions that need to be met before the suspension will terminate.

SECTION 9. ADMINISTRATIVE REVIEW PROCESS FOR PROPOSED SUSPENSION

.01 A Reporting Agent that receives a notice proposing suspension from the Reporting Agent program, as described in section 8.02 of this revenue procedure,

may request an administrative review prior to the suspension taking effect.

.02 The request for an administrative review must be in writing and contain detailed reasons, with supporting documentation, for withdrawal of the proposed suspension.

.03 The written request for an administrative review and a copy of the notice proposing suspension must be delivered to the address designated in the notice within 30 days of the effective date on the notice.

.04 If a written request for administrative review is timely submitted, the Service will, after consideration of the request, either issue a suspension letter or notify the Reporting Agent in writing that the proposed suspension is withdrawn.

.05 Failure to submit a timely written request for an administrative review irrevocably terminates the Reporting Agent's right to an administrative review of the proposed suspension, and the Service will issue a suspension letter.

SECTION 10. EFFECT OF SUSPENSION

.01 The Reporting Agent's suspension will continue for the length of time specified in the suspension letter, or until the conditions for terminating the suspension have been met, whichever is later. If a Reporting Agent is suspended, the Service's subsequent determination of whether a reason for suspension has been corrected is not subject to administrative review or appeal.

.02 After suspension, a Reporting Agent may not perform the acts described in this revenue procedure. As an exception, a Reporting Agent may submit an FTD if the FTD is due not more than 30 days after the effective date on the suspension letter. A Reporting Agent, however, cannot submit FTPs during the suspension period.

.03 A Reporting Agent must provide written notification of a suspension from the Reporting Agent program to each taxpayer in the program within 10 days from the date on the suspension letter. This notification must be provided irrespective of the length of the suspension or how quickly the Reporting Agent believes it may meet the conditions for terminating the suspension.

.04 A Reporting Agent will be able to perform the acts described in section 4.02 of this revenue procedure without re-registering in the Reporting Agent program after the stated suspension period expires; and the reason(s) for suspension are corrected.

SECTION 11. APPEAL OF A SUSPENSION

.01 If a Reporting Agent receives a suspension letter from the Service, the Reporting Agent is entitled to appeal, by written protest, to the Service. The written protest must be delivered to the address designated on the suspension letter. During the appeals process, the suspension remains in effect.

.02 The written protest must be received by the Service within 30 days of the effective date on the suspension letter. The written protest must contain detailed reasons, with supporting documentation, for withdrawal of the suspension.

.03 Failure to appeal within the 30-day period described in section 11.02 of this revenue procedure irrevocably terminates the Reporting Agent's right to appeal the suspension under section 11.01.

SECTION 12. INTERNAL REVENUE SERVICE CONTACTS

Publication 1474 and Publication 1167 may be obtained electronically via the Service's website at *http://www.irs.gov*. In addition, requests for Publication 1474 and questions regarding this revenue procedure may be addressed to the Service at:

Internal Revenue Service
Accounts Management Service Center
MS 6748 RAF Team
1973 N Rulon White Blvd
Ogden, UT 84201

SECTION 13. OTHER RELATED DOCUMENTS

These documents describe programs that require an Authorization as a prerequisite to participation:

(1) For rules regarding Form 944, see §§ 31.6011(a)–1T, 31.6011(a)–4T, and 31.6302–1T of the Employment Tax Regulations.

(2) For electronic filing of Form 940 and 941, see Rev. Proc. 2005–60, 2005–2 C.B. 449.

(3) For participation in EFTPS, see Rev. Proc. 98–32, 1998–1 C.B. 935.

(4) For the Service's e-file program generally, see Publication 3112, *IRS e-file Application and Participation*.

SECTION 14. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Proc. 2003–69, 2003–2 C.B. 403.

SECTION 15. EFFECTIVE DATE

This revenue procedure is effective June 18, 2007.

SECTION 16. DRAFTING INFORMATION

The principal author of this revenue procedure is Michael Hara of the Office of Associate Chief Counsel (Procedure and Administration). Mr. Hara may be contacted at (202) 622–4910 (not a toll-free number).

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26 CFR 601.201: Rulings and determination letters. (Also Part I, § 102.)

Rev. Proc. 2007–39

SECTION 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 2007–3, 2007–1 I.R.B. 108, which sets forth areas of the Internal Revenue Code in which the Internal Revenue Service will not issue letter rulings or determination letters.

SECTION 2. BACKGROUND

Section 3 of Rev. Proc. 2007–3 sets forth a list of those areas of the Internal Revenue Code under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure

and Administration), and the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) relating to issues on which the Internal Revenue Service will not issue letter rulings or determination letters.

SECTION 3. PROCEDURE

Rev. Proc. 2007–3 is amplified by adding the following to section 3.01: Section 102. Gifts and Inheritances. Whether a transfer is a gift within the meaning of § 102(a).

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2007–3 is amplified.

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to all ruling requests pending or received in the National Office on or after June 1, 2007.

SECTION 6. DRAFTING INFORMATION

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

Part IV. Items of General Interest

Limitations on Benefits and Contributions Under Qualified Plans; Correction

Announcement 2007–58

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations (T.D. 9319, 2007–18 I.R.B. 1041) that were published in the **Federal Register** on Thursday, April 5, 2007 (72 FR 16878) regarding the limitations of section 415, including updates to the regulations for numerous statutory changes since comprehensive final regulations were last published under section 415.

DATES: This correction is effective May 23, 2007.

FOR FURTHER INFORMATION CONTACT: Vernon S. Carter at (202) 622–6060 or Linda S. F. Marshall at (202) 622–6090 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under sections 401(a), 401(a)(4), 401(a)(9), 401(k), 402, 414(s), 415, 416, 457, and 924 of the Internal Revenue Code.

Need for Correction

As published, final regulations (T.D. 9319) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (T.D. 9319), which was the subject of FR Doc. E7–5750, is corrected as follows:

On page 16883, column 2, in the preamble, under the paragraph heading "*C. Determination of High-3 Average Compensation*", first line from the bottom of the last paragraph of that heading, the language "participant in rehired." is corrected to read "participant is rehired."

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

(Filed by the Office of the Federal Register on May 22, 2007, 8:45 a.m., and published in the issue of the Federal Register for May 23, 2007, 72 F.R. 28854)

Guidance for Employers Concerned About Certain Mid-Year Changes to a Section 401(k) Safe Harbor Plan

Announcement 2007–59

The Internal Revenue Service has learned that some employers have concerns about adding provisions during a plan year to their § 401(k) safe harbor plans (described in § 401(k)(12) of the Internal Revenue Code) in order to take advantage of recently effective changes to the rules for § 401(k) plans, such as a qualified Roth contribution program (as defined in § 402A) or hardship withdrawals described in part III of Notice 2007–7, 2007–5 I.R.B. 395, when the pre-year safe harbor notice required by § 401(k)(12)(D) does not include information about the added provisions.

This announcement provides that a plan will not fail to satisfy the requirements to be a § 401(k) safe harbor plan merely because of mid-year changes to implement a qualified Roth contribution program (as defined in § 402A) or the hardship withdrawals described in part III of Notice 2007–7.

Comments are requested as to whether additional guidance is needed with respect to mid-year changes to a § 401(k) safe harbor plan (other than changes described in this announcement or in § 1.401(k)–3(f) of the Income Tax Regulations (relating to mid-year amendments to become a safe harbor plan using nonelective contributions) and § 1.401(k)–3(g) (relating to mid-year amendments to suspend or reduce safe harbor matching contributions)). Written comments should be submitted by September 17, 2007. Send submissions to CC:PA:LPD:DRU (Announcement 2007–59), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered to CC:PA:LPD:DRU (Announcement 2007–59), Room 5203, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, comments may be submitted via the Internet at *notice.comments@irscounsel.treas.gov* (Announcement 2007–59). All comments will be available for public inspection.

Drafting Information

The principal authors of this announcement are Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division and Cathy Vohs and Bill Gibbs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement, please contact the Employee Plans taxpayer assistance answering service between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday at 1–877–829–5500 (a toll-free call) or Mr. Kuehnle at *retirementplanquestions@irs.gov*.
Ms. Vohs may be reached at 202–622–6090 and Mr. Gibbs may be reached at 202–622–6060 (not toll-free calls).

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2006–27 through 2006–52 is in Internal Revenue Bulletin 2006–52, dated December 26, 2006.

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

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