

## **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. 2007-39, page 1449.**

**Interest rates; underpayments and overpayments.** The rate of interest determined under section 6621 of the Code for the calendar quarter beginning July 1, 2007, will be 8 percent for overpayments (7 percent in the case of a corporation), 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 5.5 percent.

#### **REG-143797-06, page 1495.**

Proposed regulations provide guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G of the Code in instances where an employee has not established an HSA by December 31st and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses. A public hearing is scheduled for September 27, 2007.

#### **Notice 2007-52, page 1456.**

This notice updates the procedures for the allocation of credits after 2006 under the qualifying advanced coal project program of section 48A of the Code, and defines certain terms for purposes of section 48A. Notice 2006-24 clarified, modified, amplified, and superseded.

#### **Notice 2007-53, page 1474.**

This notice updates the procedures for the allocation of credits after 2006 under the qualifying gasification project program of section 48B of the Code, and defines certain terms for purposes of section 48B. Notice 2006-25 clarified, modified, amplified, and superseded.

#### **Rev. Proc. 2007-40, page 1488.**

This procedure specifies the requirements for participating as an Authorized IRS *e-file* Provider and is the official set of rules that govern participation in IRS *e-file*. The procedure revises Rev. Proc. 2005-60, 2005-2 C.B. 449, by providing for denial of application or revocation of an Authorized IRS *e-file* Provider's participation in IRS *e-file* if it has been enjoined from filing returns by a federal or state court injunction or other legal action that would prevent its participation in the program. Rev. Proc. 2005-60 superseded.

#### **Rev. Proc. 2007-41, page 1492.**

This procedure designates the securities and commodities that are eligible positions for purposes of the safe harbor valuation regulations. It also illustrates the application of the safe harbor to taxpayers who are both dealers and traders.

### **EMPLOYEE PLANS**

#### **Notice 2007-51, page 1456.**

**Weighted average interest rate update; corporate bond indices; 30-year Treasury securities.** The weighted average interest rate for June 2007 and the resulting permissible range of interest rates used to calculate current liability and to determine the required contribution are set forth.

(Continued on the next page)

Finding Lists begin on page ii.

Index for January through June begins on page vii.



Department of the Treasury  
Internal Revenue Service

## EXEMPT ORGANIZATIONS

### **Rev. Proc. 2007-40, page 1488.**

This procedure specifies the requirements for participating as an Authorized IRS *e-file* Provider and is the official set of rules that govern participation in IRS *e-file*. The procedure revises Rev. Proc. 2005-60, 2005-2 C.B. 449, by providing for denial of application or revocation of an Authorized IRS *e-file* Provider's participation in IRS *e-file* if it has been enjoined from filing returns by a federal or state court injunction or other legal action that would prevent its participation in the program. Rev. Proc. 2005-60 superseded.

### **Announcement 2007-60, page 1499.**

A list is provided of organizations now classified as private foundations.

## EMPLOYMENT TAX

### **Rev. Proc. 2007-40, page 1488.**

This procedure specifies the requirements for participating as an Authorized IRS *e-file* Provider and is the official set of rules that govern participation in IRS *e-file*. The procedure revises Rev. Proc. 2005-60, 2005-2 C.B. 449, by providing for denial of application or revocation of an Authorized IRS *e-file* Provider's participation in IRS *e-file* if it has been enjoined from filing returns by a federal or state court injunction or other legal action that would prevent its participation in the program. Rev. Proc. 2005-60 superseded.

## EXCISE TAX

### **Rev. Proc. 2007-40, page 1488.**

This procedure specifies the requirements for participating as an Authorized IRS *e-file* Provider and is the official set of rules that govern participation in IRS *e-file*. The procedure revises Rev. Proc. 2005-60, 2005-2 C.B. 449, by providing for denial of application or revocation of an Authorized IRS *e-file* Provider's participation in IRS *e-file* if it has been enjoined from filing returns by a federal or state court injunction or other legal action that would prevent its participation in the program. Rev. Proc. 2005-60 superseded.

## ADMINISTRATIVE

### **Rev. Proc. 2007-40, page 1488.**

This procedure specifies the requirements for participating as an Authorized IRS *e-file* Provider and is the official set of rules that govern participation in IRS *e-file*. The procedure revises Rev. Proc. 2005-60, 2005-2 C.B. 449, by providing for denial of application or revocation of an Authorized IRS *e-file* Provider's participation in IRS *e-file* if it has been enjoined from filing returns by a federal or state court injunction or other legal action that would prevent its participation in the program. Rev. Proc. 2005-60 superseded.

# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

## Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**Place missing child here.**

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

## Section 6621.—Determination of Rate of Interest

26 CFR 301.6621-1: Interest rate.

**Interest rates; underpayments and overpayments.** The rate of interest determined under section 6621 of the Code for the calendar quarter beginning July 1, 2007, will be 8 percent for overpayments (7 percent in the case of a corporation), 8 percent for underpayments, and 10 percent for large corporate underpayments. The rate of interest paid on the portion of a corporate overpayment exceeding \$10,000 will be 5.5 percent.

### Rev. Rul. 2007-39

Section 6621 of the Internal Revenue Code establishes the rates for interest on tax overpayments and tax underpayments. Under section 6621(a)(1), the overpayment rate is the sum of the federal short-term rate plus 3 percentage points (2 percentage points in the case of a corporation), except the rate for the portion of a corporate overpayment of tax exceeding \$10,000 for a taxable period is the sum of the federal short-term rate plus 0.5 of a percentage point for interest computations made after December 31, 1994. Under section 6621(a)(2), the underpayment rate is the sum of the federal short-term rate plus 3 percentage points.

Section 6621(c) provides that for purposes of interest payable under section 6601 on any large corporate underpayment, the underpayment rate under section

6621(a)(2) is determined by substituting “5 percentage points” for “3 percentage points.” See section 6621(c) and section 301.6621-3 of the Regulations on Procedure and Administration for the definition of a large corporate underpayment and for the rules for determining the applicable date. Section 6621(c) and section 301.6621-3 are generally effective for periods after December 31, 1990.

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

Section 6621(b)(2)(A) provides that the federal short-term rate determined under section 6621(b)(1) for any month applies during the first calendar quarter beginning after such month.

Section 6621(b)(3) provides that the federal short-term rate for any month is the federal short-term rate determined during such month by the Secretary in accordance with § 1274(d), rounded to the nearest full percent (or, if a multiple of 1/2 of 1 percent, the rate is increased to the next highest full percent).

Notice 88-59, 1988-1 C.B. 546, announced that, in determining the quarterly interest rates to be used for overpayments and underpayments of tax under section 6621, the Internal Revenue Service will use the federal short-term rate based on daily compounding because that rate is most consistent with section 6621 which, pursuant to section 6622, is subject to daily compounding.

Rounded to the nearest full percent, the federal short-term rate based on daily compounding determined during the month of April 2007 is 5 percent. Accordingly, an overpayment rate of 8 percent (7 percent in the case of a corporation) and an underpayment rate of 8 percent are established for the calendar quarter beginning July 1, 2007. The overpayment rate for the portion of a corporate overpayment exceeding \$10,000 for the calendar quarter beginning July 1, 2007, is 5.5 percent. The underpayment rate for large corporate underpayments for the calendar quarter beginning July 1, 2007, is 10 percent. These rates apply to amounts bearing interest during that calendar quarter.

Interest factors for daily compound interest for annual rates of 5.5 percent, 7 percent, 8 percent, and 10 percent are published in Tables 16, 19, 21, and 25 of Rev. Proc. 95-17, 1995-1 C.B. 556, 570, 573, 575, and 579.

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

### DRAFTING INFORMATION

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

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

TABLE OF INTEREST RATES

PERIODS BEFORE JUL. 1, 1975 — PERIODS ENDING DEC. 31, 1986 – Continued

OVERPAYMENTS AND UNDERPAYMENTS

PERIOD	RATE	In 1995-1 C.B.
		DAILY RATE TABLE
Jan. 1, 1984—Jun. 30, 1984	11%	Table 75, pg. 629
Jul. 1, 1984—Dec. 31, 1984	11%	Table 75, pg. 629
Jan. 1, 1985—Jun. 30, 1985	13%	Table 31, pg. 585
Jul. 1, 1985—Dec. 31, 1985	11%	Table 27, pg. 581
Jan. 1, 1986—Jun. 30, 1986	10%	Table 25, pg. 579
Jul. 1, 1986—Dec. 31, 1986	9%	Table 23, pg. 577

TABLE OF INTEREST RATES

FROM JAN. 1, 1987 — DEC. 31, 1998

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1987—Mar. 31, 1987	8%	21	575	9%	23	577
Apr. 1, 1987—Jun. 30, 1987	8%	21	575	9%	23	577
Jul. 1, 1987—Sep. 30, 1987	8%	21	575	9%	23	577
Oct. 1, 1987—Dec. 31, 1987	9%	23	577	10%	25	579
Jan. 1, 1988—Mar. 31, 1988	10%	73	627	11%	75	629
Apr. 1, 1988—Jun. 30, 1988	9%	71	625	10%	73	627
Jul. 1, 1988—Sep. 30, 1988	9%	71	625	10%	73	627
Oct. 1, 1988—Dec. 31, 1988	10%	73	627	11%	75	629
Jan. 1, 1989—Mar. 31, 1989	10%	25	579	11%	27	581
Apr. 1, 1989—Jun. 30, 1989	11%	27	581	12%	29	583
Jul. 1, 1989—Sep. 30, 1989	11%	27	581	12%	29	583
Oct. 1, 1989—Dec. 31, 1989	10%	25	579	11%	27	581
Jan. 1, 1990—Mar. 31, 1990	10%	25	579	11%	27	581
Apr. 1, 1990—Jun. 30, 1990	10%	25	579	11%	27	581
Jul. 1, 1990—Sep. 30, 1990	10%	25	579	11%	27	581
Oct. 1, 1990—Dec. 31, 1990	10%	25	579	11%	27	581
Jan. 1, 1991—Mar. 31, 1991	10%	25	579	11%	27	581
Apr. 1, 1991—Jun. 30, 1991	9%	23	577	10%	25	579
Jul. 1, 1991—Sep. 30, 1991	9%	23	577	10%	25	579
Oct. 1, 1991—Dec. 31, 1991	9%	23	577	10%	25	579
Jan. 1, 1992—Mar. 31, 1992	8%	69	623	9%	71	625
Apr. 1, 1992—Jun. 30, 1992	7%	67	621	8%	69	623
Jul. 1, 1992—Sep. 30, 1992	7%	67	621	8%	69	623
Oct. 1, 1992—Dec. 31, 1992	6%	65	619	7%	67	621
Jan. 1, 1993—Mar. 31, 1993	6%	17	571	7%	19	573
Apr. 1, 1993—Jun. 30, 1993	6%	17	571	7%	19	573
Jul. 1, 1993—Sep. 30, 1993	6%	17	571	7%	19	573
Oct. 1, 1993—Dec. 31, 1993	6%	17	571	7%	19	573
Jan. 1, 1994—Mar. 31, 1994	6%	17	571	7%	19	573
Apr. 1, 1994—Jun. 30, 1994	6%	17	571	7%	19	573
Jul. 1, 1994—Sep. 30, 1994	7%	19	573	8%	21	575
Oct. 1, 1994—Dec. 31, 1994	8%	21	575	9%	23	577
Jan. 1, 1995—Mar. 31, 1995	8%	21	575	9%	23	577
Apr. 1, 1995—Jun. 30, 1995	9%	23	577	10%	25	579
Jul. 1, 1995—Sep. 30, 1995	8%	21	575	9%	23	577
Oct. 1, 1995—Dec. 31, 1995	8%	21	575	9%	23	577
Jan. 1, 1996—Mar. 31, 1996	8%	69	623	9%	71	625
Apr. 1, 1996—Jun. 30, 1996	7%	67	621	8%	69	623
Jul. 1, 1996—Sep. 30, 1996	8%	69	623	9%	71	625
Oct. 1, 1996—Dec. 31, 1996	8%	69	623	9%	71	625

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

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1997—Mar. 31, 1997	8%	21	575	9%	23	577
Apr. 1, 1997—Jun. 30, 1997	8%	21	575	9%	23	577
Jul. 1, 1997—Sep. 30, 1997	8%	21	575	9%	23	577
Oct. 1, 1997—Dec. 31, 1997	8%	21	575	9%	23	577
Jan. 1, 1998—Mar. 31, 1998	8%	21	575	9%	23	577
Apr. 1, 1998—Jun. 30, 1998	7%	19	573	8%	21	575
Jul. 1, 1998—Sep. 30, 1998	7%	19	573	8%	21	575
Oct. 1, 1998—Dec. 31, 1998	7%	19	573	8%	21	575

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

	RATE	1995-1 C.B.	PAGE
		TABLE	
Jan. 1, 1999—Mar. 31, 1999	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	8%	21	575

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

	OVERPAYMENTS			UNDERPAYMENTS		
	1995-1 C.B.			1995-1 C.B.		
	RATE	TABLE	PG	RATE	TABLE	PG
Jan. 1, 1999—Mar. 31, 1999	6%	17	571	7%	19	573
Apr. 1, 1999—Jun. 30, 1999	7%	19	573	8%	21	575
Jul. 1, 1999—Sep. 30, 1999	7%	19	573	8%	21	575
Oct. 1, 1999—Dec. 31, 1999	7%	19	573	8%	21	575
Jan. 1, 2000—Mar. 31, 2000	7%	67	621	8%	69	623
Apr. 1, 2000—Jun. 30, 2000	8%	69	623	9%	71	625
Jul. 1, 2000—Sep. 30, 2000	8%	69	623	9%	71	625
Oct. 1, 2000—Dec. 31, 2000	8%	69	623	9%	71	625
Jan. 1, 2001—Mar. 31, 2001	8%	21	575	9%	23	577
Apr. 1, 2001—Jun. 30, 2001	7%	19	573	8%	21	575
Jul. 1, 2001—Sep. 30, 2001	6%	17	571	7%	19	573
Oct. 1, 2001—Dec. 31, 2001	6%	17	571	7%	19	573
Jan. 1, 2002—Mar. 31, 2002	5%	15	569	6%	17	571
Apr. 1, 2002—Jun. 30, 2002	5%	15	569	6%	17	571
Jul. 1, 2002—Sep. 30, 2002	5%	15	569	6%	17	571
Oct. 1, 2002—Dec. 31, 2002	5%	15	569	6%	17	571
Jan. 1, 2003—Mar. 31, 2003	4%	13	567	5%	15	569
Apr. 1, 2003—Jun. 30, 2003	4%	13	567	5%	15	569
Jul. 1, 2003—Sep. 30, 2003	4%	13	567	5%	15	569
Oct. 1, 2003—Dec. 31, 2003	3%	11	565	4%	13	567
Jan. 1, 2004—Mar. 31, 2004	3%	59	613	4%	61	615
Apr. 1, 2004—Jun. 30, 2004	4%	61	615	5%	63	617
Jul. 1, 2004—Sep. 30, 2004	3%	59	613	4%	61	615
Oct. 1, 2004—Dec. 31, 2004	4%	61	615	5%	63	617
Jan. 1, 2005—Mar. 31, 2005	4%	13	567	5%	15	569
Apr. 1, 2005—Jun. 30, 2005	5%	15	569	6%	17	571
Jul. 1, 2005—Sep. 30, 2005	5%	15	569	6%	17	571
Oct. 1, 2005—Dec. 31, 2005	6%	17	571	7%	19	573
Jan. 1, 2006—Mar. 31, 2006	6%	17	571	7%	19	573
Apr. 1, 2006—Jun. 30, 2006	6%	17	571	7%	19	573
Jul. 1, 2006—Sep. 30, 2006	7%	19	573	8%	21	575
Oct. 1, 2006—Dec. 31, 2006	7%	19	573	8%	21	575
Jan. 1, 2007—Mar. 31, 2007	7%	19	573	8%	21	575
Apr. 1, 2007—Jun. 30, 2007	7%	19	573	8%	21	575
Jul. 1, 2007—Sep. 30, 2007	7%	19	573	8%	21	575

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

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



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

	RATE	1995-1 C.B. TABLE	PG
Apr. 1, 1993—Jun. 30, 1993	9%	23	577
Jul. 1, 1993—Sep. 30, 1993	9%	23	577
Oct. 1, 1993—Dec. 31, 1993	9%	23	577
Jan. 1, 1994—Mar. 31, 1994	9%	23	577
Apr. 1, 1994—Jun. 30, 1994	9%	23	577
Jul. 1, 1994—Sep. 30, 1994	10%	25	579
Oct. 1, 1994—Dec. 31, 1994	11%	27	581
Jan. 1, 1995—Mar. 31, 1995	11%	27	581
Apr. 1, 1995—Jun. 30, 1995	12%	29	583
Jul. 1, 1995—Sep. 30, 1995	11%	27	581
Oct. 1, 1995—Dec. 31, 1995	11%	27	581
Jan. 1, 1996—Mar. 31, 1996	11%	75	629
Apr. 1, 1996—Jun. 30, 1996	10%	73	627
Jul. 1, 1996—Sep. 30, 1996	11%	75	629
Oct. 1, 1996—Dec. 31, 1996	11%	75	629
Jan. 1, 1997—Mar. 31, 1997	11%	27	581
Apr. 1, 1997—Jun. 30, 1997	11%	27	581
Jul. 1, 1997—Sep. 30, 1997	11%	27	581
Oct. 1, 1997—Dec. 31, 1997	11%	27	581
Jan. 1, 1998—Mar. 31, 1998	11%	27	581
Apr. 1, 1998—Jun. 30, 1998	10%	25	579
Jul. 1, 1998—Sep. 30, 1998	10%	25	579
Oct. 1, 1998—Dec. 31, 1998	10%	25	579
Jan. 1, 1999—Mar. 31, 1999	9%	23	577
Apr. 1, 1999—Jun. 30, 1999	10%	25	579
Jul. 1, 1999—Sep. 30, 1999	10%	25	579
Oct. 1, 1999—Dec. 31, 1999	10%	25	579
Jan. 1, 2000—Mar. 31, 2000	10%	73	627
Apr. 1, 2000—Jun. 30, 2000	11%	75	629
Jul. 1, 2000—Sep. 30, 2000	11%	75	629
Oct. 1, 2000—Dec. 31, 2000	11%	75	629
Jan. 1, 2001—Mar. 31, 2001	11%	27	581
Apr. 1, 2001—Jun. 30, 2001	10%	25	579
Jul. 1, 2001—Sep. 30, 2001	9%	23	577
Oct. 1, 2001—Dec. 31, 2001	9%	23	577
Jan. 1, 2002—Mar. 31, 2002	8%	21	575
Apr. 1, 2002—Jun. 30, 2002	8%	21	575
Jul. 1, 2002—Sep. 30, 2002	8%	21	575
Oct. 1, 2002—Dec. 31, 2002	8%	21	575
Jan. 1, 2003—Mar. 31, 2003	7%	19	573
Apr. 1, 2003—Jun. 30, 2003	7%	19	573
Jul. 1, 2003—Sep. 30, 2003	7%	19	573
Oct. 1, 2003—Dec. 31, 2003	6%	17	571
Jan. 1, 2004—Mar. 31, 2004	6%	65	619
Apr. 1, 2004—Jun. 30, 2004	7%	67	621
Jul. 1, 2004—Sep. 30, 2004	6%	65	619
Oct. 1, 2004—Dec. 31, 2004	7%	67	621
Jan. 1, 2005—Mar. 31, 2005	7%	19	573
Apr. 1, 2005—Jun. 30, 2005	8%	21	575
Jul. 1, 2005—Sep. 30, 2005	8%	21	575
Oct. 1, 2005—Dec. 31, 2005	9%	23	577
Jan. 1, 2006—Mar. 31, 2006	9%	23	577
Apr. 1, 2006—Jun. 30, 2006	9%	23	577
Jul. 1, 2006—Sep. 30, 2006	10%	25	579
Oct. 1, 2006—Dec. 31, 2006	10%	25	579
Jan. 1, 2007—Mar. 31, 2007	10%	25	579

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

	RATE	1995-1 C.B. TABLE	PG
Apr. 1, 2007—Jun. 30, 2007	10%	25	579
Jul. 1, 2007—Sep. 30, 2007	10%	25	579

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

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

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

	RATE	1995-1 C.B. TABLE	PG
Jan. 1, 2006—Mar. 31, 2006	4.5%	14	568
Apr. 1, 2006—Jun. 30, 2006	4.5%	14	568
Jul. 1, 2006—Sep. 30, 2006	5.5%	16	570
Oct. 1, 2006—Dec. 31, 2006	5.5%	16	570
Jan. 1, 2007—Mar. 31, 2007	5.5%	16	570
Apr. 1, 2007—Jun. 30, 2007	5.5%	16	570
Jul. 1, 2007—Sep. 30, 2007	5.5%	16	570

# Part III. Administrative, Procedural, and Miscellaneous

## Weighted Average Interest Rates Update

### Notice 2007-51

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code. In addition, it provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II).

#### CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding

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

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the

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

The composite corporate bond rate for May 2007 is 6.01 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

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

Month	For Plan Years Beginning in:	Year	Corporate Bond Weighted Average	90% to 100% Permissible Range
June		2007	5.81	5.23 to 5.81

#### 30-YEAR TREASURY SECURITIES INTEREST RATE

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

The rate of interest on 30-year Treasury securities for May 2007 is 4.90 percent. The Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2037.

#### Drafting Information

The principal authors of this notice are Paul Stern and Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 877-829-5500 (a toll-free number), between the hours of 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday. Mr. Stern may be reached at 202-283-9703. Mr. Montanaro may be reached at 202-283-9714. The telephone numbers in the preceding sentences are not toll-free.

#### Qualifying Advanced Coal Project Program

### Notice 2007-52

#### SECTION 1. PURPOSE

This notice updates the procedures for the allocation of credits under the qualifying advanced coal project program of § 48A of the Internal Revenue Code

and defines certain terms for purposes of § 48A. The purpose of the qualifying advanced coal project program is the deployment of advanced coal-based generation technologies. To further this purpose, the method of allocation is being modified for allocation rounds after 2006. Under the modified method of allocation, the U.S. Department of Energy ("DOE") will rank a certified project relative to other certified projects in each pool and credits will be allocated to projects based on the DOE ranking. The modified allocation method will substantially favor projects that capture and sequester carbon dioxide emissions and will favor to a lesser extent projects optimized for future carbon dioxide capture.

#### SECTION 2. BACKGROUND AND CHANGES

.01 Section 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. That list includes the qualifying advanced coal project credit.

.02 The qualifying advanced coal project credit is provided under § 48A.

Section 48A(a) provides that the qualifying advanced coal project credit for a taxable year is an amount equal to (1) 20 percent of the qualified investment (as defined in § 48A(b)) for that taxable year in certified qualifying advanced coal projects (as defined in § 48A(c)(1) and (e)) using an integrated gasification combined cycle (IGCC) (as defined in § 48A(c)(7)), and (2) 15 percent of the qualified investment for that taxable year in other certified qualifying advanced coal projects.

.03 Section 48A(d)(3)(A) provides that the aggregate credits allowed under § 48A(a) may not exceed \$1.3 billion. Section 48A(d)(3)(B) provides that (i) \$800 million of credits are to be allocated to IGCC projects, and (ii) \$500 million of credits are to be allocated to projects that use other advanced coal-based generation technologies (as defined in § 48A(c)(2) and (f)).

.04 Section 48A(e)(3)(A) provides that the credits for IGCC projects must be allocated in accordance with the procedures set forth in § 48A(d), and in relatively equal amounts to (i) projects using bituminous coal as a primary feedstock, (ii) projects using subbituminous coal as a primary feedstock, and (iii) projects using lignite as a primary feedstock. Further, § 48A(e)(3)(B) provides that IGCC projects that include (i) greenhouse gas capture capability (as defined in § 48A(c)(5)), (ii) increased by-product utilization, and (iii) other benefits must be given high priority in the allocation of credits for IGCC projects.

.05 Section 48A(f) prescribes the requirements that must be satisfied to qualify as an advanced coal-based generation technology. These include requirements that the unit be designed to attain specified standards for emissions or removal of certain pollutants. As originally enacted, § 48A(f) required that a unit be designed to achieve 99-percent removal of sulfur dioxide. Section 203(a) of the Tax Relief and Health Care Act of 2006, Pub. L. 109-432, 120 Stat. 2922 (December 20, 2006), modified this test for units designed for the use of feedstock substantially all of which is subbituminous coal. Such a unit satisfies the modified test if it achieves either 99-percent removal of sulfur dioxide or an emission level of not more than 0.04 pounds of sulfur dioxide per million Btu, determined on a 30-day average.

.06 The at-risk rules in § 49 and the recapture and other special rules in § 50 apply to the qualifying advanced coal project credit. Further, the qualifying advanced coal project credit generally is allowed in the taxable year in which the eligible property (as defined in § 48A(c)(3)) is placed in service (as defined in section 3.04 of this notice) by the taxpayer. Pursuant to § 48A(d)(2)(E), a taxpayer that receives a certification under § 48A(d)(2)(D) has 5 years from the date of issuance of the certification to place the qualifying advanced coal project in service.

.07 Section 48A(d)(1) provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying advanced coal project program for the deployment of advanced coal-based generation technologies. The Treasury Department and the Internal Revenue Service established this program in Notice 2006-24, 2006-11 I.R.B. 595.

.08 This notice modifies the qualifying advanced coal project program established in Notice 2006-24 in a number of respects. The significant changes made by this notice include the following:

(1) The Large and Mid-Size Business Division (LMSB) of the Service will allocate the advanced coal project credits and issue the certification under § 48A(d)(2). The filing instructions in section 5.04 provide LMSB addresses to reflect this change.

(2) Section 3 defines certain terms for purposes of § 48A.

(3) The method of allocation is modified for allocation rounds after 2006. Under the modified method of allocation, the DOE will rank a certified project relative to other certified projects in each pool and credits will be allocated to projects based on the DOE ranking. The modified allocation method will substantially favor projects that capture and sequester carbon dioxide emissions and will favor to a lesser extent projects optimized for future carbon dioxide capture. Sections 4.02(3) and (4) reflect this change in the method by which credits under § 48A are allocated to projects.

(4) Section 4.02(8) provides that the period for submitting the application for § 48A certification (i) ends on March 3, 2008, for the 2007-08 allocation round and (ii) begins on March 4, 2008, and ends on March 2, 2009, for the 2008-09 allocation

round. Changes also are made to the dates in sections 4.02(10) and (11) for accepting or rejecting a taxpayer's application for § 48A certification and for executing closing agreements.

(5) Section 4.02(9) provides that the due date for the application for DOE certification is October 31, that DOE will rank certified projects, and that the due date for the DOE certification and ranking is March 1. Section 4.02(9) also clarifies that the DOE certification and ranking (for projects determined to be feasible) are provided to the Service.

(6) Section 4.02(11) provides that a successor in interest must execute a new closing agreement with the Service no later than the due date (including extensions) of the successor in interest's Federal income tax return for the taxable year in which the transfer occurs.

(7) The information required to be included in the application for DOE certification is modified. Section 5.02 requires submission of additional information regarding the number and types of turbines to be used in the project and with respect to the sulfur dioxide removal. Appendix B provides additional information regarding program policy factors. Applicants will no longer be required to submit independent financial reports.

(8) Section 5.02(13) defines the term "substantially all" for purposes of determining whether a project's subbituminous coal usage qualifies it for the modified sulfur dioxide removal test provided in § 48A(f)(1).

(9) Section 5.03 requests that a taxpayer submit with the application for § 48A certification a declaration consenting to the disclosure by the Service of certain return information if the taxpayer is awarded an allocation of qualifying advanced coal project credits. The form of the declaration is set forth in Appendix C.

(10) Sections 5.03(1) and 5.04 require that a taxpayer submit one paper copy and one electronic version on a floppy disc or a CD of the application for § 48A certification (including the application for DOE certification).

(11) Section 7.02 provides more details on who may sign the penalties of perjury statement.

(12) Section 7.03 provides that the Service and the DOE must be informed if the plans for the project change in any signifi-

cant respect from the plans set forth in the applications for § 48A and DOE certification, and also provides the consequences of any significant change to the plans set forth in the applications.

(13) Section 7.06 provides that the DOE will offer debriefings to applicants that submitted an application for DOE certification.

(14) Section 10 provides guidance regarding Freedom of Information Act requests for records relating to the qualifying advanced coal project program.

### SECTION 3. DEFINITIONS

The following definitions apply for purposes of § 48A and this notice:

.01 *Coal*. Section 48A(c)(4) defines the term “coal” as meaning anthracite, bituminous coal, subbituminous coal, lignite, and peat. Coal includes waste coal (that is, usable material that is a byproduct of the previous processing of anthracite, bituminous coal, subbituminous coal, lignite, or peat). Examples of waste coal include fine coal of any of the listed ranks, coal of any of the listed ranks obtained from a refuse bank or slurry dam, anthracite culm, bituminous gob, and lignite waste.

.02 *Total Nameplate Generating Capacity*.

(1) Except as provided in section 3.02(2) of this notice, the total nameplate generating capacity of a project is the aggregate of the numbers (in megawatts) stamped on the nameplate of each generator to be used in the project.

(2) If the number stamped on the nameplate of a generator is not determined at the International Standard Organization (ISO) optimal conditions of 59 degrees Fahrenheit, 60% relative humidity, and 14.7 psia at sea level, the number stamped on the nameplate is disregarded and the generator’s capacity (in megawatts) determined at such optimal conditions is used in its place.

.03 *Fuel Input*.

(1) *In general*. The term “fuel input” means, with respect to any type of fuel, the amount of such fuel used during normal plant operations. The amounts of the fuel used are measured (i) in British thermal units (Btus) on an energy input basis and (ii) pursuant to applicable standards prescribed by the American Society for Testing and Materials (ASTM). For example,

§ 48A(e)(1)(B) provides that the fuel input for the project, when completed, must be at least 75 percent coal. This requirement is satisfied if, after completion and during normal plant operations, coal provides 75 percent of the project’s fuel measured in Btus on an energy input basis and pursuant to applicable ASTM standards.

(2) *Only normal plant operations taken into account*. Only fuel used during normal plant operations is taken into account for purposes of § 48A and sections 5.02(5) and 5.02(13) of this notice. Normal plant operations are operations other than during periods of initial plant certification, plant startup, plant shutdown, integrated gasifier shutdown for gasification system maintenance, or interruption of the coal supply to the project resulting from an event of force majeure (including an act of God, war, strike, or other similar event beyond the control of the taxpayer). For example, the fuel input during the initial plant certification may consist entirely of natural gas or other non-coal fuels because fuel used during initial plant certification is disregarded in determining whether the 75-percent coal usage requirement of § 48A(e)(1)(B) is satisfied.

.04 *Placed In Service*. For purposes of § 48A, property is placed in service in the taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function. See § 1.46–3(d)(1)(ii) of the Income Tax Regulations. Thus, a qualifying advanced coal project or eligible property (as defined in § 48A(c)(3)) that is a part of the project is placed in service in the taxable year in which the project is placed in a condition or state of readiness and availability for producing electricity from coal.

### SECTION 4. QUALIFYING ADVANCED COAL PROJECT PROGRAM

.01 *In General*. The Service will consider a project under the qualifying advanced coal project program only if the DOE provides a certification (“DOE certification”) and ranking (if any) for the project. Accordingly, a taxpayer must submit, for each qualifying advanced coal project: (1) an application for certification by the DOE (“application for DOE certification”), and (2) an application for certification under § 48A(d)(2)

by the Service (“application for § 48A certification”). Both applications may be submitted only during the 3-year period beginning on February 21, 2006. Certifications will be issued and credits will be allocated to projects in annual allocation rounds. The initial allocation round was conducted in 2006. Additional allocation rounds will be conducted in 2007–08 and, if necessary, in 2008–09.

.02 *Program Specifications*.

(1) The Service determines the amount of the qualifying advanced coal project credits allocated to a qualifying advanced coal project at the time the Service accepts the application for § 48A certification for that project in accordance with section 4.02(10) of this notice (see section 5 of this notice for the requirements applicable to the application for DOE certification and the application for § 48A certification).

(2) The qualifying advanced coal project credits of \$1.3 billion and the applications for certification are separated into the following four pools:

(a) Projects using an advanced coal-based generation technology other than IGCC. The aggregate amount of qualifying advanced coal project credit for this pool is \$500 million. The maximum amount of credits that will be allocated to a project is \$125 million. In the 2006 allocation round, \$250 million of credits was allocated from this pool. Therefore, \$250 million of credits is available for allocation from this pool in 2007–08.

(b) IGCC projects using bituminous coal as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is \$267 million. The maximum amount of credits that will be allocated to a project is \$133.5 million. In the 2006 allocation round, \$267 million of credits (the entire amount available) was allocated from this pool. Accordingly, no allocation round for this pool will be conducted in 2007–08.

(c) IGCC projects using subbituminous coal as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is \$267 million. The maximum amount of credits that will be allocated to a project is \$133.5 million. In the 2006 allocation round, no credits were allocated from this pool. Therefore, \$267 million of credits is available for allocation from this pool in 2007–08.

(d) IGCC projects using lignite as a primary feedstock. The aggregate amount of qualifying advanced coal project credit for this pool is \$266 million. The maximum amount of credits that will be allocated to a project is \$133 million. In the 2006 allocation round, \$133 million of credits was allocated from this pool. Accordingly, \$133 million of credits is available for allocation from this pool in 2007–08.

(3) For projects using an advanced coal-based generation technology other than IGCC, DOE will rank the certified projects in descending order (that is, first, second, third, etc.) and the \$250 million available for allocation will be allocated as follows in the allocation round in 2007–08:

(a) If the requested allocation of credits for projects that DOE has certified for this pool does not exceed the amount available for allocation, each certified project will be allocated the full amount of credit requested.

(b) If the requested allocation of credits for projects that DOE has certified for this pool exceeds the amount available for allocation, the amount available for allocation will be allocated as follows:

(i) The project receiving the highest ranking (that is, first) will be allocated the full amount of credit requested (but not exceeding the amount available for allocation) before any credit is allocated to a lower-ranked project. The amount available for allocation is reduced by the amount of credit so allocated and only the remainder is available for allocation to a lower-ranked project.

(ii) Second and lower-ranked projects will be entitled to similar priority in the allocation of credits and allocations to such projects will similarly reduce the remainder of the amount available for allocation until the amount available for allocation from the pool is exhausted.

(4) For each IGCC pool described in section 4.02(2)(c) or (d) of this notice, DOE will rank the certified projects in descending order (that is, first, second, third, etc.) and the amount available for allocation from the pool will be allocated as follows in the allocation round in 2007–08:

(a) If the requested allocation of credits for projects that DOE has certified for an IGCC pool described in section 4.02(2)(c) or (d) of this notice does not exceed the amount available for allocation from that

pool, each certified project will be allocated the full amount of credit requested.

(b) If the requested allocation of credits for projects that DOE has certified for an IGCC pool described in section 4.02(2)(c) or (d) of this notice exceeds the amount available for allocation from that pool, the amount available for allocation will be allocated as follows:

(i) The project receiving the highest ranking (that is, first) will be allocated the full amount of credit requested (but not exceeding the amount available for allocation from the pool) before any credit is allocated to a lower-ranked project. The amount available for allocation from the pool is reduced by the amount of credit so allocated and only the remainder is available for allocation to a lower-ranked project.

(ii) Second and lower-ranked projects will be entitled to similar priority in the allocation of credits and allocations to such projects will similarly reduce the remainder of the amount available for allocation from the pool until the amount available for allocation from the pool is exhausted.

(5) If the amount available for allocation from a pool is not fully allocated in the 2007–08 allocation round, a similar allocation round will be conducted in 2008–09. Generally, the results of each year will be announced. See section 5.03(2) of this notice for further information about this announcement.

(6) If the same project would otherwise be allocated credits under both the qualifying advanced coal project program under this notice and the qualifying gasification project program under Notice 2007–53, 2007–26 I.R.B. 1474, the following rules apply:

(a) The qualifying gasification project credit may not be allocated to the project with respect to any qualified investment under § 48B for which a qualifying advanced coal project credit is allowed under § 48A; and

(b) The qualifying gasification project credit may be allocated to the project with respect to the qualified investment under § 48B for which a qualifying advanced coal project credit is not allowed under § 48A.

(7) For each allocation round there will be an annual application period during which a taxpayer may file its application for § 48A certification. The Service will

consider a project in an allocation round only if the application for § 48A certification for the project is submitted during the application period for that round and the DOE provides the DOE certification and the DOE ranking (if any) for the project before the end of the application period.

(8) For the allocation round conducted in 2007–08, the application period begins on October 3, 2006, and ends on March 3, 2008, and any completed application for § 48A certification received by the Service after October 2, 2006, and before March 4, 2008, will be deemed to be submitted by the taxpayer on March 3, 2008. For the allocation round to be conducted in 2008–09, the application period begins on March 4, 2008, and ends on March 2, 2009, and any completed application for § 48A certification received by the Service after March 3, 2008, and before March 3, 2009, will be deemed to be submitted by the taxpayer on March 2, 2009. For purposes of this notice, an application that is submitted by U.S. mail will be treated as received by the Service on the date of the postmark and an application submitted by a private delivery service will be treated as received by the Service on the date recorded or the date marked in accordance with § 7502(f)(2)(C).

(9) See section 5.02 of this notice and Appendix B to this notice for the information to be submitted to the DOE in an application for DOE certification. Appendix B to this notice also provides the instructions and address for filing the application for DOE certification. The DOE will determine the feasibility of the project and, if the project is determined to be feasible, will provide a DOE certification for the project to the Service. If the DOE certifies two or more projects in a pool described in section 4.02(2) of this notice, the DOE also will rank each of the projects it certifies (for example, first, second, third, etc.) relative to other certified projects in the same pool. If an application for DOE certification is postmarked on or before October 31 of a calendar year, the DOE will determine the feasibility of the project and (for projects determined to be feasible) provide the DOE certification and the DOE ranking (if any) to the Service by March 1 of the year following that calendar year.

(10) By April 30 of the calendar year in which an application for § 48A certification is deemed to be submitted (as de-

terminated under section 4.02(8) of this notice), the Service will accept or reject the taxpayer's application for § 48A certification and will notify the taxpayer, by letter, of its decision.

(11) If the taxpayer's application for § 48A certification is accepted, the acceptance letter will state the amount of the credit allocated to the project. If a credit is allocated to a taxpayer's project, the taxpayer will be required to execute a closing agreement in the form set forth in Appendix A to this notice. By June 30 of the calendar year in which an application for § 48A certification is accepted, the taxpayer must execute and return the closing agreement to the Service at the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin. The Service will execute and return the closing agreement to the taxpayer by August 31 of such calendar year. The executed closing agreement applies only to the accepted taxpayer. Accordingly, any successor in interest must execute a new closing agreement with the Service no later than the due date (including extensions) of the successor in interest's Federal income tax return for the taxable year in which the transfer occurs. If the successor in interest does not execute a new closing agreement, the following rules apply:

(a) In the case of an interest acquired at or before the time the qualifying advanced coal project is placed in service, any credit allocated to the project will be fully forfeited (and rules similar to the recapture rules of § 50(a) apply with respect to qualified progress expenditures); and

(b) In the case of an interest acquired after the qualifying advanced coal project is placed in service, the project ceases to be investment credit property and the recapture rules of § 50(a) (and similar rules with respect to qualified progress expenditures) apply.

## SECTION 5. APPLICATIONS FOR CERTIFICATIONS

.01 *In General.* An application for § 48A certification and a separate application for DOE certification must be submitted for each qualifying advanced coal project. If an application for DOE certification does not include all of the information required by section 5.02 of this

notice and meet the requirements in sections 7.01 and 7.02 of this notice, the DOE may decline to accept the application. If an application for § 48A certification does not include all of the information listed in section 5.03(1) of this notice and meet the requirements in sections 7.01 and 7.02 of this notice, the application will not be accepted by the Service.

.02 *Information Required in the Application for DOE Certification.* An application for DOE certification must include all of the information requested in Appendix B to this notice and all of the following:

(1) The name, address, and taxpayer identification number of the taxpayer. If the taxpayer is a member of an affiliated group filing consolidated returns, also provide the name, address, and taxpayer identification number of the common parent of the group.

(2) The name and telephone number of a contact person.

(3) The name and address (or other unique identifying designation) of the qualifying advanced coal project.

(4) A statement specifying whether the project is an IGCC project or a qualifying advanced coal project that uses another advanced coal-based technology.

(5) In the case of an IGCC project, a statement specifying the type of coal (bituminous coal, subbituminous coal, or lignite) that will be the primary feedstock. An application for DOE certification with respect to an IGCC project will not be considered unless one of these types of coal is the primary feedstock. For purposes of § 48A(e)(3)(A), a type of coal is the primary feedstock only if at all times more than 50 percent of the cumulative total fuel input (coal and any other fuel input) used in normal plant operations (as defined in section 3.03(2) of this notice) of the project will consist of that type of coal.

(6) The estimated total cost of the project and the estimated total qualified investment in the eligible property that will be part of the project.

(7) The amount of the qualifying advanced coal project credit requested for the project. The amount requested must not exceed the maximum amount provided in section 4.02(2) of this notice.

(8) If the taxpayer is or will be requesting an amount of the qualifying gasification project credit under § 48B for the same project, a statement specifying the amount

of credit the taxpayer is or will be requesting under § 48B.

(9) A statement specifying whether the project is a new electric generation unit (as defined in § 48A(c)(6)), a retrofit of an existing electric generation unit, or a repower of an existing electric generation unit.

(10) In the case of an IGCC project, a statement specifying whether the project is entitled to priority for greenhouse gas capture capability (as defined in § 48A(c)(5)) or increased by-product utilization and, if entitled to priority, a statement identifying which of these priorities apply to the IGCC project.

(11) A statement specifying the number and types of generators to be used in the project (for example, two combustion turbine generators and one steam turbine generator).

(12) The exact total nameplate generating capacity (as defined in section 3.02 of this notice) of the project.

(13) In the case of a project that will not achieve 99-percent removal of sulfur dioxide, a statement that the project is designed for the use of a feedstock substantially all of which is subbituminous coal and will achieve an emission level of not more than 0.04 pounds of sulfur dioxide per million Btu, determined on a 30-day average. For this purpose, a project is designed for the use of feedstock substantially all of which is subbituminous coal if at all times 80 percent or more of the cumulative total fuel input (coal and any other fuel input) used in normal plant operations (as defined in section 3.03(2) of this notice) of the project will be subbituminous coal. Such a project meets the requirements in § 48A(f)(1) by achieving either 99-percent removal of sulfur dioxide or an emission level of not more than 0.04 pounds of sulfur dioxide per million Btu, determined on a 30-day average. All other qualifying advanced coal projects must achieve 99-percent removal of sulfur dioxide.

.03 *Information To Be Included in the Application for § 48A Certification.*

(1) *Information required in the application for § 48A certification.* Pursuant to § 48A(d)(2)(B), an application for § 48A certification must include all of the following:

(a) The name, address, and taxpayer identification number of the taxpayer. If the taxpayer is a member of an affiliated



group filing consolidated returns, also provide the name, address, and taxpayer identification number of the common parent of the group.

(b) The name, telephone number, and fax number of a contact person. For such person, attach a properly executed power of attorney, preferably on Form 2848, *Power of Attorney and Declaration of Representative*.

(c) One paper copy and one electronic version on a floppy disc or a CD of the completed application for DOE certification submitted with respect to the project in accordance with section 5.02 of this notice.

(2) *Consent to disclosure of allocation.* In order to provide the public with information on how the qualifying advanced coal project credits authorized by Congress have been allocated and facilitate oversight of the qualifying advanced coal project program, the Service intends to publish the results of the allocation process. The Service expects that a list identifying the taxpayers and projects to which credits are allocated and specifying the amount of credit allocated to each would be of particular interest to the public. Pursuant to § 6103, consent is required in order to disclose any return information with respect to taxpayers awarded an allocation. Therefore, the Service requests that each taxpayer submit with the application for § 48A certification a declaration, consenting to the disclosure by the Service of the following return information in the event a qualifying advanced coal project credit is allocated to the taxpayer's project: (a) the name of the taxpayer; (b) if the taxpayer is a member of an affiliated group filing consolidated returns, the name of the common parent of the group; (c) the type and location of the project to which the application relates; and (d) the amount of the qualifying advanced coal project credit allocated to the project. To provide a valid consent, the declaration must be in the form set forth in Appendix C. A taxpayer is not required to consent to disclosure of this information in order to receive an allocation of the qualifying advanced coal project credit, and neither the presence nor the absence of such a consent will be taken into account in the evaluation of a taxpayer's application. The Service will not publish any return information relating to a taxpayer if the

taxpayer does not consent to disclosure of this information or does not receive an allocation of the qualifying advanced coal project credit.

.04 *Instructions and Address for Filing § 48A Application.* One paper copy and one electronic version on a floppy disc or a CD of the application for § 48A certification must be submitted. Applications for § 48A certification should be marked: SECTION 48A APPLICATION FOR CERTIFICATION. There is no user fee for these applications.

(1) Applications submitted by U.S. mail must be sent to:

Internal Revenue Service  
Industry Director, Natural Resources  
and Construction  
Attn: Executive Assistant  
1919 Smith Street  
Stop HOU 1000  
Houston, TX 77002

Applications submitted by a private delivery service must be sent to:

Internal Revenue Service  
Industry Director, Natural Resources  
and Construction  
Attn: Executive Assistant  
1919 Smith Street, Floor P2  
Stop HOU 1000  
Houston, TX 77002

(2) Applications may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. Central time to:

Internal Revenue Service  
Industry Director, Natural Resources  
and Construction  
Attn: Executive Assistant  
1919 Smith Street, Floor P2  
Stop HOU 1000  
Houston, TX 77002

## SECTION 6. ISSUANCE OF CERTIFICATION

.01 *In General.* Section 48A(d)(2)(D) provides that a taxpayer shall have 2 years from the date of acceptance of the § 48A application during which to provide evidence that the criteria set forth in § 48A(e)(2) have been met. Pursuant to § 48A(e)(2), a project shall be eligible for

certification only if (A) the taxpayer has received all federal and state environmental authorizations or reviews necessary to commence construction of the project, and (B) the taxpayer, except in the case of a retrofit or repower of an existing generation unit, has purchased or entered into a binding contract for the purchase of the main steam turbine or turbines for the project, except that this contract may be contingent upon receipt of a certification under § 48A(d)(2). Section 48A(d)(2)(E) provides that a taxpayer that receives a certification has 5 years from the date of issuance of the certification to place the project in service and that the certification is void if the project is not placed in service by the end of that five-year period.

.02 *Requirements for Certification.* Within 2 years from the date that the Service accepts the taxpayer's application for § 48A certification under section 4.02(10) of this notice, the taxpayer must submit to the Service documentation establishing that the requirements of § 48A(e)(2) are satisfied. See also sections 7.01 and 7.02 of this notice for other requirements that must be satisfied. The taxpayer should mark the package "SECTION 48A CERTIFICATION REQUIREMENTS" and send it to the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin.

.03 *Service's Action on Certification.* After receiving the material in section 6.02 of this notice, the Service will decide whether or not to certify the project and will notify the taxpayer, by letter, of that decision. If the Service certifies the project, the date of this letter is the date of issuance of the certification.

## SECTION 7. OTHER REQUIREMENTS

.01 *Signature.* Each submission under sections 5 and 6 of this notice must be signed and dated by the taxpayer. A stamped signature or faxed signature is not permitted.

.02 *Penalties of Perjury Statement.*

(1) Each submission under sections 5 and 6 of this notice must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, all of the

facts contained herein are true, correct, and complete.”

(2) The declaration must be signed and dated by the taxpayer. The person signing for the taxpayer must have personal knowledge of the facts. Further, the declaration must be signed by an officer on behalf of a corporation, a general partner on behalf of a state-law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, and the proprietor in the case of a sole proprietorship. If the taxpayer is a member of an affiliated group filing consolidated returns, the declaration also must be signed by a duly authorized officer of the common parent of the group. A stamped signature or faxed signature is not permitted.

.03 *Significant Change in Plans.* The Service and DOE must be informed if the plans for the project change in any significant respect from the plans set forth in the applications for § 48A and DOE certification. Any significant change to the plans set forth in the applications will have the following effects:

(1) The Service will disregard any certification or ranking provided by DOE unless DOE is informed of the change before the date on which DOE provides the certification or ranking (that is, the Service will not consider the project unless DOE provides a new, timely certification and ranking (if any) on or after the date on which DOE is informed of the change); and

(2) Any acceptance provided by the Service and any allocation or certification based on that acceptance will be void unless the Service is informed of the change before the date on which the acceptance is provided under section 4.02(10) of this notice.

.04 *Effect of an Acceptance, Allocation, or Certification.* An acceptance, allocation, or certification by the Service under this notice is not a determination that a project qualifies for the qualifying advanced coal project credit under § 48A. The Service may, upon examination (and after any appropriate consultation with DOE), determine that the project does not qualify for this credit.

.05 *No Right to a Conference or Appeal.* A taxpayer does not have a right to a conference relating to any matters under this notice. Further, a taxpayer does not have a right to appeal the decisions made under this notice (including the acceptance or re-

jection of the application for DOE or § 48A certification, the amount of credit allocated to the project, or whether or not to certify the project) to an Associate Chief Counsel or any other official of the Service.

.06 *DOE Debriefings.* Although a taxpayer does not have a right to a conference relating to any matters under this notice, the DOE will offer debriefings to all applicants that submitted an application for DOE certification. This debriefing will be held by the DOE after the Service has accepted the applications for § 48A certification (as determined under section 4.02(10) of this notice). The sole purpose of the debriefing is to enable applicants to develop better proposals in future allocation rounds by providing DOE’s review of the strengths and weaknesses of their application for DOE certification.

## SECTION 8. REVIEW AND REDISTRIBUTION

.01 *In General.* Section 48A(d)(4)(A) provides that the credits allocated under § 48A must be reviewed not later than August 8, 2011. Pursuant to § 48A(d)(4)(B), credits available under § 48A(d)(3)(B)(i) and (ii) may be reallocated if (i) there is an insufficient quantity of qualifying applications for certification pending at the time of the review; or (ii) any certification made pursuant to § 48A(d)(2) has been revoked pursuant to § 48A(d)(2)(D). If credits under § 48A(d)(3)(B)(i) and (ii) are available for reallocation, § 48A(d)(4)(C) authorizes the conduct of an additional program for applications for certification.

.02 *Review and Redistribution of Credits.*

(1) *In general.* If, after the allocation round in 2008–09, the entire credit for a pool is not fully subscribed (that is, the aggregate credit for the pool has not been fully allocated), the remaining credits from that pool will be reallocated to pools that have been fully subscribed. Credits from pools not fully subscribed will be reallocated to fully subscribed pools in proportion to the aggregate amounts of credit specified for the fully subscribed pools in section 4.02(2) of this notice. Future guidance will prescribe the procedures applicable to applications for certification with respect to the reallocated credits.

(2) *Reduction or forfeiture of allocated credits.* Under the closing agreement set

forth in Appendix A to this notice, the qualifying advanced coal project credits allocated under section 4 of this notice will be reduced or forfeited in certain situations. A taxpayer must notify the Service of the amount of any reduction or forfeiture required under the closing agreement. This notification must be sent to the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin.

The amount of any reduction or forfeiture of the allocated credits will be returned to the appropriate allocation pool and included in the aggregate credit remaining to be allocated in the allocation round following the reduction or forfeiture. If the reduction or forfeiture occurs after the allocation round in 2008–09, future guidance will prescribe procedures applicable to applications for certification with respect to the returned credits.

## SECTION 9. QUALIFIED PROGRESS EXPENDITURES

.01 Section 48A(b)(3) provides that rules similar to the rules of § 46(c)(4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of § 48A. Former §§ 46(c)(4) and 46(d) provided the rules for claiming the investment credit on qualified progress expenditures (as defined in former § 46(d)(3)) made by a taxpayer during the taxable year for the construction of progress expenditure property (as defined in former § 46(d)(2)).

.02 In the case of self-constructed property (as defined in former § 46(d)(5)(A)), former § 46(d)(3)(A) defined qualified progress expenditures to mean the amount that is properly chargeable (during the taxable year) to capital account with respect to that property. With respect to a qualifying advanced coal project that is self-constructed property, amounts paid or incurred are chargeable to capital account at the time and to the extent they are properly includible in computing basis under the taxpayer’s method of accounting (for example, after applying the requirements of § 461, including the economic performance requirement of § 461(h)).

.03 To claim the qualifying advanced coal project credit on the qualified progress expenditures paid or incurred by a taxpayer during the taxable year for

construction of a qualifying advanced coal project, the taxpayer must make an election under the rules set forth in § 1.46–5(o) of the Income Tax Regulations. A taxpayer may not make the qualified progress expenditures election for a qualifying advanced coal project until the taxpayer has received an acceptance letter for the project under section 4.02(10) of this notice.

.04 If a taxpayer makes the qualified progress expenditures election pursuant to section 9.03 of this notice, rules similar to the recapture rules in § 50(a)(2)(A)-(D) apply. In addition to the cessation events listed in § 50(a)(2)(A), examples of other events that will cause the project to cease being a qualifying advanced coal project are:

(1) Failure to satisfy any of the certification requirements in § 48A(e)(2) within 2 years from the date that the Service accepted the taxpayer's application for § 48A certification for the project under section 4.02(10) of this notice;

(2) Failure to receive a certification for the project in accordance with section 6.03 of this notice;

(3) Failure to place the project in service within 5 years from the date of issuance of the certification under section 6.03 of this notice; or

(4) A significant change to the plans for the project as set forth in the applications for § 48A and DOE certification if, under section 7.03 of this notice, the Service's acceptance of the project is void as a result of the change.

#### SECTION 10. DISCLOSURE OF INFORMATION

.01 *In general.* Any information contained in the application for DOE certification, the application for § 48A certification, or the documentation submitted by the taxpayer pursuant to section 6.02 of this notice is subject to § 6103 and to any other applicable exemption set forth in the

Freedom of Information Act (the FOIA). Examples of FOIA exemptions include the FOIA trade secrets and commercial or financial information exemption of 5 U.S.C. 552(b)(4) and the FOIA personal privacy exemption of 5 U.S.C. 552(b)(6).

.02 *FOIA requests.* Anyone interested in submitting a request for records under the FOIA with respect to the qualifying advanced coal project program under § 48A (including a request for records relating to the application for DOE certification) should direct a request that conforms to the Service's FOIA regulations, found at 26 C.F.R. § 601.702, to the following address:

IRS FOIA Request  
Baltimore Disclosure Office  
Room 940  
31 Hopkins Plaza  
Baltimore, MD 21201

#### SECTION 11. EFFECT ON OTHER DOCUMENTS

Notice 2006–24 is clarified, modified, amplified, and superseded.

#### SECTION 12. EFFECTIVE DATE

This notice is effective June 7, 2007.

#### SECTION 13. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2003.

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 collections of information in this notice are in sections 4, 5, 6, 7, 8, and Appendix B of this notice. This information

is required to obtain an allocation of qualifying advanced coal project credits. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying advanced coal project credits. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 4,950 hours.

The estimated annual burden per respondent varies from 70 to 150 hours, depending on individual circumstances, with an estimated average of 110 hours. The estimated number of respondents is 45.

The estimated annual frequency of responses is on occasion.

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

#### SECTION 14. DRAFTING INFORMATION

The principal author of this notice is Ruba Nasrallah of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Jaime Park of the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 622–3110 (not a toll-free call). For further information regarding the application for § 48A certification, the documentation to be submitted to the Service establishing that the requirements of § 48A(e)(2) are satisfied, and the issuance of the certification that the requirements of § 48A(e)(2) are satisfied, contact Kimberly Edwards, Executive Assistant, Office of the Industry Director, Natural Resources and Construction, at (713) 209–3615 (not a toll-free number).

APPENDIX A  
CLOSING AGREEMENT

Under § 7121 of the Internal Revenue Code, [insert taxpayer's name, address, and identifying number] ("Taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

**WHEREAS:**

1. On or before March [insert date and year], Taxpayer submitted to the Internal Revenue Service ("IRS"), an application for certification under the qualifying advanced coal project program described in Notice 2007-52 ("Application for § 48A Certification");

2. Taxpayer's Application for § 48A Certification is for the qualifying advanced coal project (the "Project") described below—

(1) The Project will use [insert either "an integrated gasification combined cycle (as defined in § 48A(c)(7))" or "an advanced coal-based technology (as defined in § 48A(c)(2) and (f)) other than an integrated gasification combined cycle"];

(2) The Project will be located at [insert address or other identifying designation];

(3) The Project is [insert either: "a new electric generation unit (as defined in § 48A(c)(6))"; "a retrofit of an existing electric generation unit (as defined in § 48A(c)(6))"; or "a repower of an existing electric generation unit (as defined in § 48A(c)(6))"];

(4) The Project will have a total nameplate generating capacity (as defined in section 3.02 of Notice 2007-52) of at least [insert number] megawatts;

**[If the Project is an integrated gasification combined cycle project, insert:**

(5) At all times more than 50 percent of the cumulative total fuel input (as defined in section 3.03(1) of Notice 2007-52 and including coal and any other fuel input) used during normal plant operations (as defined in section 3.03(2) of Notice 2007-52) for the Project will be [insert either: "bituminous coal"; "subbituminous coal"; or "lignite"];] and

3. On [insert date of acceptance letter issued under section 4.02(10) of Notice 2007-52], the IRS accepted Taxpayer's Application for § 48A Certification for the Project and allocated a qualifying advanced coal project credit under § 48A in the amount of \$[insert number] to the Project.

**NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:**

1. The total amount of the qualifying advanced coal project credit to be claimed for the Project under § 48A(a) must not exceed \$[insert the number in WHEREAS clause #3].

2. If Taxpayer fails to satisfy any of the certification requirements in § 48A(e)(2) within the time specified in § 48A(d)(2)(D) (2 years from [insert the date in WHEREAS clause #3]), or if the IRS does not issue a certification for the Project under Notice 2007-52, the qualifying advanced coal project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

3. If the Project is not placed in service by Taxpayer within 5 years of the date of issuance of the certification as determined under section 6.03 of Notice 2007-52, the qualifying advanced coal project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

4. If the plans for the Project change in any significant respect from the plans set forth in the application for DOE certification (as defined in section 4.01 of Notice 2007-52) and the Application for § 48A Certification (as defined in section 4.01 of Notice 2007-52) and, under section 7.03 of Notice 2007-52, the acceptance of Taxpayer's Application for § 48A Certification on [insert the date in WHEREAS clause #3] is void, the qualifying advanced coal project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

**[If the Project is not an integrated gasification combined cycle project, insert:**

5. If the Project fails to satisfy any of the requirements in § 48A(e)(1)(A), (C), (D), (E), and (F) for a qualifying advanced coal project or, during normal plant operations (as defined in section 3.03(2) of Notice 2007-52), fails to satisfy the requirement in § 48A(e)(1)(B) for a qualifying advanced coal project—

(1) at the time the Project is placed in service, the qualifying advanced coal project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited; and

(2) after the Project is placed in service (and after satisfying all such requirements at the time the Project is placed in service), the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.]

**[If the Project is an integrated gasification combined cycle project, insert:**

5. (1) If the Project fails to satisfy any of the requirements in § 48A(e)(1)(A), (C), (D), (E), and (F) for a qualifying advanced coal project or, during normal plant operations (as defined in section 3.03(2) of Notice 2007-52), fails to satisfy the requirement in § 48A(e)(1)(B) for a qualifying advanced coal project—

(a) at the time the Project is placed in service, the qualifying advanced coal project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited; and

(b) after the Project is placed in service (and after satisfying all such requirements at the time the Project is placed in service), the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

(2) If at any time more than 50 percent of the cumulative total fuel input (as defined in section 3.03(1) of Notice 2007-52 and including coal and any other fuel input) used during normal plant operations (as defined in section 3.03(2) of Notice 2007-52) is not [insert the primary feedstock in WHEREAS clause #2(5)], the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.]

6. Taxpayer will not claim the qualifying gasification project credit under § 48B for any qualified investment for which the qualifying advanced coal project credit is allowed under § 48A.

7. If Taxpayer elects to claim the qualifying advanced coal project credit on the qualified progress expenditures paid or incurred by Taxpayer during the taxable year(s) during which the Project is under construction and the Project ceases to be a qualifying advanced coal project (whether before, at the time, or after the Project is placed in service), rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply.

8. This agreement applies only to Taxpayer. Any successor in interest must execute a new closing agreement with the IRS. If the interest is acquired at or before the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, the qualifying advanced coal project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited. If the interest is acquired after the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

**THIS AGREEMENT IS FINAL AND CONCLUSIVE EXCEPT:**

1. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;

2. It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for § 7122) notwithstanding any law or rule of law; and

3. If it relates to a tax period ending after the date of this Closing Agreement, it is subject to any law enacted after such date, which applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this Closing Agreement.

**Taxpayer:** [insert name and identifying number]

**By:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
[insert name]

**Title:** [insert title]  
[insert taxpayer's name]

**Commissioner of Internal Revenue**

**By:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
[insert name]

**Title:** [insert title]

**I have examined the specific matters involved and recommend the acceptance of the proposed agreement.**

(Receiving Officer) \_\_\_\_\_

(Title) \_\_\_\_\_

Date Signed \_\_\_\_\_

**I have reviewed the specific matters involved and recommend the acceptance of the proposed agreement.**

(Reviewing Officer) \_\_\_\_\_

(Title) \_\_\_\_\_

Date Signed \_\_\_\_\_

## APPENDIX B

### APPLICATION FOR DOE CERTIFICATION

#### REQUEST FOR SUPPLEMENTAL APPLICATION INFORMATION FOR DOE

The Internal Revenue Service ("IRS") and the Department of Energy ("DOE") seek to certify applications that demonstrate a high likelihood of being successfully implemented by the applicants. To qualify, projects must be economically feasible and use the appropriate clean coal technology.

This request for submission of supplemental application information:

1. Describes the information to be provided by the applicant seeking a certification of feasibility, and
2. Lists the evaluation criteria and Program Policy Factors to be used by DOE in the evaluation of applications.

In conducting this evaluation, the DOE may utilize assistance and advice from qualified personnel from other Federal agencies and/or non-conflicted contractors. DOE will obtain assurances in advance from all evaluators that application information shall be kept confidential and used only for evaluation purposes. DOE reserves the right to request clarifications and/or supplemental information from some or all applicants through written submissions and/or oral presentations.

Notice is given that DOE may determine whether or not to provide a certification to the IRS at any time after the application has been received, without further exchanges or discussions. Therefore, all applicants are advised to submit their most complete and responsive application.

Applications will not be returned.

#### SUBMISSION INFORMATION FOR DOE CERTIFICATION APPLICATION

##### A. General

This request, together with the information in sections 5.02, 7.01, and 7.02 of Notice 2007-52 includes all the information needed to complete an application for DOE certification. All applications shall be prepared in accordance with this request in order to provide a standard basis for evaluation and to ensure that each application will be uniform as to format and sequence.

Each application should clearly demonstrate the applicant's capability, knowledge, and experience in regard to the requirements described herein.

Applicants should fully address the requirements of Notice 2007-52 and this request and **not** rely on the presumed background knowledge of reviewers. DOE may reject an application that does not follow the instructions regarding the organization and content of the application when the nature of the deviation and/or omission precludes meaningful review of the application.

### **B. Unnecessarily Elaborate Applications**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective application are not desired. Elaborate art work, graphics and pictures are neither required nor encouraged.

### **C. Application Submission for DOE Certification**

The application submission to DOE must include the information and documentation required by sections 5.02, 7.01, and 7.02 of Notice 2007-52.

An application to DOE will not be considered in the allocation round conducted in 2007-08 unless it is postmarked by October 31, 2007, and will not be considered in the allocation round conducted in 2008-09 unless it is postmarked by October 31, 2008. Two paper copies and one electronic version on a floppy disc or a CD of the Application must be submitted to:

Melissa Robe  
National Energy Technology Laboratory  
3610 Collins Ferry Road  
Morgantown, WV 26507

Note that under section 5.03(1) of Notice 2007-52, one paper copy and one electronic version must be sent to the IRS as part of the application for IRS certification. The application for IRS certification will not be considered in the allocation round conducted in 2007-08 unless it is submitted to the IRS by March 3, 2008, and will not be considered in the allocation round conducted in 2008-09 unless it is submitted to the IRS by March 2, 2009.

### **THE INFORMATION REQUIRED BY THIS REQUEST MUST BE SUBMITTED USING THE FORMAT AND THE HEADINGS OF THE "PROJECT INFORMATION MEMORANDUM" AS DESCRIBED BELOW.**

To aid in evaluation, applications shall be clearly and concisely written and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the applicant and the date.

The application, including the Project Information Memorandum, **MUST** be formatted in one of the following software applications:

Microsoft Word<sup>™</sup> 2002 or later edition  
Microsoft Excel<sup>™</sup> 2002 or later edition  
Adobe Acrobat<sup>™</sup> PDF 6.0 or later edition

Financial models should be submitted using the Excel<sup>™</sup> spreadsheet and must include calculation formulas and assumptions.

The applicant is responsible for the integrity and structure of the electronic files. The DOE will not be responsible for reformatting, restructuring or converting any files submitted under this announcement.

The Project Information Memorandum, *excluding Appendices*, shall not exceed seventy-five (75) pages. Pages in excess of the page limitation will not be considered for evaluation. All text shall be typed, single spaced, using 12 point font, 1 inch margins, and unreduced 8-1/2-inch by 11-inch pages. Illustrations and charts shall be legible with all text in legible font. Pages shall be sequentially numbered. Except as otherwise noted herein the page guidelines previously set forth constitute a limitation on the total amount of material that may be submitted for evaluation. No material may be incorporated in any application by reference as a means to circumvent the page limitation.

### **D. Form of Project Information Memorandum**

#### **PROJECT INFORMATION MEMORANDUM**

##### **I. SUMMARY AND INTRODUCTION**

- Description of the Project
- Financing and Ownership Structure
- Describe the main parties to the project, including background, ownership and related experience
- Current Project Status and Schedule to Beginning of Construction

## II. TECHNOLOGY AND TECHNICAL INFORMATION

Provide a description of the proposed technology, including sufficient supporting information (such as vendor guarantees, process flow diagrams, equipment descriptions, information on each major process unit and the total plant, compositions of major streams, and the technical plan for achieving the goals proposed for the project) as would be needed to allow DOE to confirm that the technical requirements of § 48A are met. Specifically the applicant should:

- Provide evidence sufficient to demonstrate that the proposed technology meets the definition of “Advanced Coal-Based Generation Technology,” either as integrated gasification combined cycle (IGCC) technology, or other advanced coal-based electric generation technology meeting the heat rate requirement of 8530 Btu/kWh. For advanced coal-based electric generation:
  - The applicant must provide evidence sufficient to justify the actual heat rate and heat rate corrected to conditions specified in § 48A(f)(2)
  - For projects including existing units, the applicant must provide evidence sufficient to justify that the proposed technology meets heat rate requirements specified in § 48A(f)(3)
- Provide evidence sufficient to justify that the proposed project is designed to meet the following performance requirements:
  - SO<sub>2</sub> (subbituminous coal is 80 percent or more of fuel input).....99 percent removal or emissions not more than 0.04 lbs/MMBTU
  - SO<sub>2</sub> (subbituminous coal is not more than 80 percent of fuel input).....99 percent removal
  - SO<sub>2</sub> (for all projects other than subbituminous coal projects).....99 percent removal
  - NO<sub>x</sub> emissions.....0.07 lbs / MMBTU
  - PM emissions.....0.015 lbs / MMBTU
  - Hg percent removal.....90 percent
- Provide evidence sufficient to demonstrate that the project meets the requirements for qualifying advanced coal projects as specified under § 48A(e)(1) including:
  - The project will power a new electric generation unit or retrofit/repower an existing electric generation unit. At least 50% of the useful output of the project is electrical power.
  - The fuel for the project is at least 75% coal (as defined in § 48A(c)(4) and section 3.01 of Notice 2007–52), on an energy input basis.
  - The project is located at one site and has a total nameplate electric power generating capacity (as defined in section 3.02 of Notice 2007–52) of at least 400 MW

## III. APPLICANT’S CAPABILITY TO ACCOMPLISH THE TECHNICAL OBJECTIVES

Provide a narrative supporting the Applicant’s capability to accomplish the technical objectives of the proposed project, including supporting documentation demonstrating that the applicant has assembled a team that is formally committed to participate in the proposed project.

- Provide information to support that the applicant has assembled a team with the skills and resources needed to implement the project as proposed. Provide signed agreements or letters from team members demonstrating that the proposed team members are fully committed to the project.
- Provide information, including examples of prior similar projects completed by applicant, EPC contractor, and suppliers of major subsystems or equipment, which support the capabilities of the applicant and its team members to design, construct, permit, and operate the facility. The applicant should demonstrate that the team members have a corporate history of successful completion of similar projects.
- Provide information to support that key personnel of the applicant and its team members have knowledge, experience, and adequate degree of involvement to successfully implement the project.
- Include the project status and relevant information from ongoing engineering activities. Also include in an appendix any engineering report or reports used by the applicant to develop the project and to estimate costs and operating performance. Include copies of any signed agreements to support project status claims regarding preliminary design studies, FEED, and EPC-type agreements.

## IV. PRIORITY FOR INTEGRATED GASIFICATION COMBINED CYCLE PROJECTS

For IGCC Projects, the applicant must submit information sufficient for categorization and prioritization of projects for certification, including:



- Identification of the primary feedstock (as defined in section 5.02(5) of Notice 2007–52), and all other feedstocks.
- If applicable, evidence demonstrating that the project will be capable of adding components that can capture, separate and permanently sequester greenhouse gases.
- A plan showing how project by-products will be marketed and utilized.
- Other benefits, if any.

#### V. SITE CONTROL AND OWNERSHIP

Provide evidence that demonstrates the overall feasibility of implementing the project at the proposed site.

- Provide evidence that the applicant owns or controls a site in the United States of sufficient size to allow the proposed project to be constructed and operated on a long-term basis. Documentation such as a deed demonstrating the applicant owns the project site, a signed option to purchase the site from the site owner, or a letter of intent by the site owner to sell the site to the applicant should be provided.
- Describe the current infrastructure at the site available to meet the needs of the project.
- Provide documentation supporting applicant’s conclusion that the proposed site can fully meet all environmental, coal supply, water supply, transmission interconnect, and public policy requirements. Such documentation may include signed agreements, letters of intent, or term sheets, such as coal supply, water supply, and product transportation, etc., and regulatory approvals supporting the key claims.
- Provide detailed plans, schedules and status updates, particularly, for sites with pre-existing conditions that could impact the proposed project. Pre-existing conditions may include, but are not limited to, sites with mandated environmental remediation efforts; brown-field sites that will require building demolition; or sites requiring substantial rerouting of existing roads, railroads, transmission lines or pipelines prior to the start of the project.
- Applicants must select one “proposed site.” However, projects with key physical or logistical elements that require close integration with another system for the project to succeed should provide information on all integrated systems regardless of where they are located. Example 1: a power plant designed to operate exclusively on coal from a to-be-opened mine should provide supporting documentation for the new mine. Example 2: an oxygen-blown IGCC plant planning to purchase oxygen from a third party who will construct a plant exclusively for this project should provide documentation for the oxygen supplier.

#### VI. UTILIZATION OF PROJECT OUTPUT

Provide evidence that demonstrates that a majority of the project output is reasonably expected to be acquired or utilized.

- Provide a projection of the anticipated costs of electricity and other marketable by-products produced by the plant.
- Provide documentation establishing that a majority of the output of the plant is reasonably expected to be acquired or utilized. Such documentation should be signed by authorizing officials of both the buyer and seller, and may include: Sales Agreements, Letters of Intent, Memoranda of Understanding, Option Agreements, and Power Purchase Agreements.
- Describe any energy sales arrangements that exist or that may be contemplated (*e.g.*, a Power Purchase Agreement or Energy Sales Agreement) and summarize their key terms and conditions.
- Include as an appendix any independent Energy Price Market Study that has been done in connection with this project, or if no independent market study has been completed, provide a copy of the applicant-prepared market study.
- Identify and describe any firm arrangements to sell non-power output, and provide any evidence of such arrangements. If the project produces a product in addition to power, include as an appendix any related market study of price and volume of sales expected for that product.

#### VII. PROJECT ECONOMICS

Describe the project economics and provide satisfactory evidence of economic feasibility as demonstrated through the financial forecast and the underlying project assumptions. The project economic and financial assumptions should be clearly stated and explained.

Show calculation of the amount of tax credit applied for based on allowable cost.

## VIII. PROJECT DEVELOPMENT AND FINANCIAL PLAN

Provide the total project budget and major plant costs (*e.g.*, development, operating, capital, construction, and financing costs). Provide the estimated annual budget for and source of project development costs from the time of the application until the beginning of construction, including legal, engineering, financial, environmental, overhead, and other development costs. Describe the overall approach to project development and financing sufficient to demonstrate project viability. Provide a complete explanation of the source and amount of project equity. Provide a complete explanation of the source and amount of project debt. Provide the audited financial statements for the most recently ended three fiscal years and quarterly interim financial statements for the current fiscal year for (a) the applicant, (b) for any of the project parties providing funding, and (c) for any third party funding source. If the applicant or another party does not have audited financial statements, the applicant or the party should provide equivalent financial statements prepared by the applicant or the party, in accordance with Generally Accepted Accounting Principles, and certified as to accuracy and completeness by the Chief Financial Officer of the party providing the statements.

For internally financed projects, provide evidence that the applicant has sufficient assets to fund the project with its own resources. Identify any internal approvals required to commit such assets. Include in an appendix copies of any board resolution or other approval authorizing the applicant to commit funds and proceed with the project.

For projects financed through debt instruments either unsecured or secured by assets other than the project, provide evidence that the applicant has sufficient creditworthiness to obtain such financing along with a discussion of the status of such instruments. Identify any internal approvals required to commit the applicant to pursue such financing. Include in an appendix copies of any board resolution or other approval authorizing the applicant to commit to such financing.

For projects financed through investor equity contributions, describe the source and status of each contribution. Discuss each investor's financial capability to meet its commitments. Include in an appendix, copies of any executed investment agreements.

If financing through a public offering or private placement of either debt or equity is planned for the project, provide the expected debt rating for the issue and an explanation of applicant's justification for the rating. Describe the status of any discussions with prospective investment bankers or other financial advisors.

Include as an appendix copies of any existing funding commitments or expressions of interest from funding sources for the project.

For projects employing non-recourse or limited recourse debt financing, provide a complete discussion of the approach to, and status of, such financing. In an appendix, provide an Excel based financial model of the project, with formulas, so that review of the model calculations and assumptions may be facilitated; provide *pro-forma* project financial, economic, capital cost, and operating assumptions, including detail of all project capital costs, development costs, interest during construction, transmission interconnection costs, other operating expenses, and all other costs and expenses.

## IX. PROJECT CONTRACT STRUCTURE

Describe the current status of each of the agreements set forth below. Include as an appendix copies of the contracts or summaries of the key provisions of each of the following agreements:

- Power Purchase Agreement (if not fully explained in Section IV).
- Coal Supply: describe the source and price of coal supply for the project. Include as an appendix any studies of coal supply price and amount that have been prepared. Include a summary of the coal supply contract and a signed copy of the contract.
- Coal Transportation: explain the arrangements for transporting coal, including costs.
- Operations & Maintenance Agreement: include a summary of the terms and conditions of the contract and a copy of the contract.
- Shareholders Agreement: summarize key terms and include the agreement as an appendix.
- Engineering, Procurement and Construction Agreement: describe the key terms of the existing or expected EPC contract arrangement, including firm price, liquidated damages, hold-backs, performance guarantees, etc.
- Water Supply Agreement: confirm the amount, source, and cost of water supply.
- Transmission Interconnection Agreement: explain the requirements to connect to the system and the current status of negotiations in this respect.

## X. PERMITS INCLUDING ENVIRONMENTAL AUTHORIZATIONS

- Provide a complete list of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction of the project.
- Explain what actions have been taken to date to satisfy the required authorizations and reviews, and the status of each.
- Provide a description of the applicant's plan to obtain and complete all necessary permits, and environmental authorizations and reviews.

## XI. STEAM TURBINE PURCHASE

- If applicant plans to purchase a steam turbine or turbines for the project, indicate the prospective vendors for the turbine and explain the current status of purchase negotiations, and provide a timeline for negotiation and purchase with expected purchase date.

## XII. PROJECT SCHEDULE

- Provide an overall project schedule which includes technical, business, financial, permitting and other factors to substantiate that the project will meet the 2 year project certification and 5 year placed-in-service requirement.
- The project schedule should be comprehensive and provide sufficient detail to demonstrate how applicant will meet the certification and placed-in-service requirements. The schedule should demonstrate that the applicant understands the required tasks, and has allowed realistic times for accomplishing the technical and financial tasks. The schedule should include the milestone accomplishments needed to obtain the financing for the project.
- Applicants should document their progress toward meeting the 2 year completion of permitting deadline. Existing permits and permit applications must be specific to the project proposed. If existing permits are not specific for the proposed coal-based project (*e.g.*, the permits are for oil-fired or natural gas-based units), specific plans, procedures and schedules for reapplying, modifying and/or renegotiating permits should be provided. Any local, state or federal permitting schedules which may impact the overall project schedule should be included.
- Applicant should document their progress toward obtaining engineering design information (FEED) to initiate permitting activities and to finalize the turbine generator purchase specification within the 2 year window. Most often, this requires final site, technology, process selection. Signed FEED and/or EPC-type agreements, if available, should be provided.

## APPENDICES

- Copy of internal or external engineering reports.
- Copy of site plan, together with evidence that applicant owns or controls a site. Examples of evidence would include a deed, or an executed contract to purchase or lease the site.
- Information supporting applicant's conclusion that the site is fully acceptable as the project site with respect to environment, coal supply, water supply, transmission interconnect, and public policy reasons.
- Power Purchase or Energy Sales Agreement.
- Energy Market Study.
- Market Study for non-power output.
- Financial Model of project.
- Financial statements for the applicant and other project funding sources for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.
- Expressions of interest or commitment letters from funding sources.
- For each project contract, if no contract currently exists, provide a summary of the expected terms and conditions.
- List of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction.

### E. Evaluation Criteria

Advanced coal projects: will be evaluated on whether they meet all the requirements of § 48A.

Technical: will be evaluated on whether the applicant has demonstrated the capability to accomplish the technical objectives.

Site: will be evaluated on the basis that the site requirement for ownership or control has been met, and that the site is suitable for the proposed project.

Economic: will be evaluated on whether the project has demonstrated economic feasibility, taking into consideration the submitted financial and project development and structural information and financial plan.

Schedule: will be evaluated on the applicant's ability to meet the 2 year project certification and the 5 year placed-in-service requirement.

### F. Program Policy Factors to be used by DOE in the evaluation of applications

Section 48A identifies minimum requirements for consideration for the qualifying advanced coal project credit, including the project's technical feasibility, cost, and applicant's ability. In the event that there are more qualified (certifiable) applications than there are available tax credits, the DOE will apply additional factors to rank eligible IGCC and non-IGCC projects based on their ability to advance coal technology beyond its current state.

If there are more certified applications than available credits for a pool described in section 4.02(2) of Notice 2007–52, DOE will rank the certified projects in descending order (that is, first, second, third, etc.), based on evaluation of the following Program Policy Factors. Factors 1, 2, and 3 are Primary Ranking Factors. A certified project that satisfies one of these factors will be ranked ahead of each project that satisfies only factors listed below that factor. Specifically, all certified projects satisfying Factor 1 will be selected before any project that does not satisfy Factor 1; all projects satisfying Factor 2 will be ranked ahead of any project that satisfies only Factor 3 and/or one or more Secondary Ranking Factors; and all projects satisfying Factor 3 will be ranked ahead of any project that does not satisfy any Primary Ranking Factors.

**Primary Ranking Factors:**

1. Capture and sequestration of 50 percent or more carbon dioxide emissions. Only projects capturing and sequestering 50 percent or more of the plant’s carbon dioxide emissions will satisfy this factor. Within this factor, higher rankings will be given to those projects capturing and sequestering higher percentages of plant carbon dioxide emissions.
2. Use of advanced technologies that optimize the plant for future carbon dioxide capture (for example, gasifier sizing and pressure, air separation unit sizing, and quench system) as well as systems that are designed to capture and sequester less than 50 percent of the carbon dioxide. Within this factor, higher rankings will be given to those projects capturing and sequestering higher percentages of plant carbon dioxide emissions and/or requiring less retrofitting to implement greater than 50 percent carbon capture and sequestration.
3. Location of the facility within 25 miles of potential carbon sequestration locations and carbon dioxide (CO<sub>2</sub>) pipelines or pipeline easements. Within this factor, higher rankings will be given to those projects with the facility located closer to potential carbon sequestration locations and carbon dioxide (CO<sub>2</sub>) pipelines or pipeline easements.

**Secondary Ranking Factors:**

- Location of the facility relative to potential carbon sequestration locations and carbon dioxide (CO<sub>2</sub>) pipelines or pipeline easements (for facilities not meeting Factor 3).
- Presentation of other environmental, economic, or performance benefits (including, in the case of an IGCC project, priority factors that are listed in section 5.02(10) of Notice 2007–52 and are not included in the Primary Ranking Factors).
- Higher plant efficiency.
- Geographic distribution of potential markets.
- The ratio of total nameplate generating capacity (as defined in section 3.02 of Notice 2007–52) to requested tax credit.
- Diversity of technology approaches and methods.

**G. Supplemental Technical and Financial Guidance for Section D “Project Information Memorandum”**

**Technology and Technical Information**

- It is important that the applicant select a specific gasification system for their project. Without that decision, it is difficult to provide the necessary specific design information needed for DOE to evaluate the project feasibility with respect to performance, emissions, outputs of major streams as well as capital and operating costs.
- The Applicant’s capability to meet the legislated heat rate and/or environmental targets should be supported with design information, and or vendor guarantees which are project, site and coal specific.

**Project Economics**

- Applicants should demonstrate the project’s economic feasibility and financial viability by providing a clear statement and explanation of the economic and financial assumptions made by the applicant, and a financial forecast for the project. The financial forecast should flow logically from the applicant’s assumptions and be consistent with them. Applicants should include assumptions regarding financial and economic issues that may not be included in the project costs but have a direct impact on the project. The examples given in the “Site Control and Ownership” section are relevant here and their impact on the project economics should be discussed here.

**Project Development and Financial Plan**

- The information provided by the applicant in this section should demonstrate that the applicant’s financial plan for developing the project is feasible and that the applicant will have access to necessary financing. The applicant should explain the source and timing for obtaining all financing, including the project development costs. It is important that the applicant explain and provide evidence that it has the capacity to fund the pre-construction project development costs, together with a budget for and description of those costs. Note that financial information is required for the applicant and for any other funding source.

**Project Contract Structure**

- This section requires that the applicant demonstrate an understanding of the commercial contracting process and show progress in establishing the framework of contracts and agreements that a project typically requires. Applicants should show that their intended contract structure is reasonable and that their assumptions relative to price, terms, and conditions are consistent with current market conditions. Evidence of final agreements, agreements in principle, or summaries of terms and conditions between the applicant and contract counterparties should be provided if available.

APPENDIX C

CONSENT TO PUBLIC DISCLOSURE  
OF CERTAIN QUALIFYING ADVANCED COAL PROJECT PROGRAM  
APPLICATION INFORMATION

In the event that the Application for § 48A Certification of [(Insert name of applicant-taxpayer here): \_\_\_\_\_] (the Applicant-Taxpayer) for an allocation of qualifying advanced coal project credits under section 48A of the Internal Revenue Code is approved, the undersigned authorized representative of the Applicant-Taxpayer hereby consents to the disclosure by the Internal Revenue Service through publication of a Notice in the Internal Revenue Bulletin or a press release of: (1) the name of the Applicant-Taxpayer; (2) if the Applicant-Taxpayer is a member of an affiliated group filing consolidated returns, the name of the common parent of the group; (3) the type and location of the project that is the subject of the Application for § 48A Certification; and (4) the amount of the allocation, if any, of qualifying advanced coal project credits for such project. The undersigned understands that this information might be published, broadcast, discussed, or otherwise disseminated in the public record.

This authorization shall become effective upon the execution thereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to disclose on behalf of the taxpayer named below.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Applicant-Taxpayer: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

Taxpayer’s Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Note: Treasury Regulations require that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.

\_\_\_\_\_

# Qualifying Gasification Project Program

## Notice 2007-53

### SECTION 1. PURPOSE

This notice updates the procedures for the allocation of credits under the qualifying gasification project program of § 48B of the Internal Revenue Code and defines certain terms for purposes of § 48B. The purpose of the qualifying gasification project program is to consider and award certifications for qualified investment eligible for credits under § 48B to qualifying gasification project sponsors. To further this purpose, the method of allocation is being modified for allocation rounds after 2006. Under the modified method of allocation, the U.S. Department of Energy (“DOE”) will rank a certified project relative to other certified projects and credits will be allocated to projects based on the DOE ranking. The modified allocation method will substantially favor projects that capture and sequester carbon dioxide emissions and will favor to a lesser extent projects optimized for future carbon dioxide capture.

### SECTION 2. BACKGROUND AND CHANGES

.01 Section 46 provides that the amount of the investment credit for any taxable year is the sum of the credits listed in § 46. That list includes the qualifying gasification project credit.

.02 The qualifying gasification project credit is provided under § 48B. Section 48B(a) provides that the qualifying gasification project credit for a taxable year is an amount equal to 20 percent of the qualified investment (as defined in § 48B(b)) for that taxable year in qualifying gasification projects.

.03 The term “qualifying gasification project” is defined in § 48B(c)(1) as meaning any project that (A) employs gasification technology, (B) will be carried out by an eligible entity (as defined in section 3.02 of this notice), and (C) includes a qualified investment of which an amount not to exceed \$650 million is certified under the qualifying gasification program as eligible for credit under § 48B. Pursuant to § 48B(c)(2), gasification technology is

any process that converts a solid or liquid product from coal (as defined in section 3.01 of this notice), petroleum residue (as defined in § 48B(c)(8)), biomass (as defined in § 48B(c)(4)), or other materials that are recovered for their energy or feedstock value into a synthesis gas composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

.04 The qualifying gasification project credit generally is allowed in the taxable year in which the eligible property (as defined in § 48B(c)(3)) is placed in service (as defined in section 3.05 of this notice) by the taxpayer. Further, the at-risk rules in § 49 and the recapture and other special rules in § 50 apply to the qualifying gasification project credit.

.05 Section 48B(d)(1) provides that the Secretary, in consultation with the Secretary of Energy, shall establish a qualifying gasification project program to consider and award certifications for qualified investment eligible for credits under § 48B to qualifying gasification project sponsors. The Treasury Department and the Internal Revenue Service established this program in Notice 2006-25, 2006-11 I.R.B. 609. Pursuant to § 48B(d)(2), certificates of eligibility may be issued under the program only during the 10-year period beginning on October 1, 2005.

.06 This notice modifies the qualifying gasification project program established in Notice 2006-25 in a number of respects. The significant changes made by this notice include the following:

(1) Large and Mid-Size Business Division (LMSB) of the Service will allocate the qualifying gasification project credits. The filing instructions in section 5.04 provide LMSB addresses to reflect this change.

(2) Section 3 defines certain terms for purposes of § 48B.

(3) The method of allocation is modified for allocation rounds after 2006. Under the modified method of allocation, the DOE will rank a certified project relative to other certified projects and credits will be allocated to projects based on the DOE ranking. The modified allocation method will substantially favor projects that capture and sequester carbon dioxide emissions and will favor to a lesser extent projects optimized for future carbon dioxide capture. Section 4.02(4) reflects this

change in the method by which credits under § 48B are allocated to projects.

(4) Section 4.02(8) provides that the period for submitting the application for § 48B certification (i) ends on March 3, 2008, for the 2007-08 allocation round and (ii) begins on March 4, 2008, and ends on March 2, 2009, for the 2008-09 allocation round. Changes also are made to the dates in sections 4.02(10) and (12) for accepting or rejecting a taxpayer’s application for § 48B certification and for executing closing agreements.

(5) Section 4.02(9) provides that the due date for the application for DOE certification is October 31, that DOE will rank certified projects, and that the due date for the DOE certification and ranking is March 1. Section 4.02(8) also clarifies that the DOE certification and ranking (for projects determined to be feasible) are provided to the Service.

(6) Section 4.02(12) provides that a successor in interest must execute a new closing agreement with the Service no later than the due date (including extensions) of the successor in interest’s Federal income tax return for the taxable year in which the transfer occurs.

(7) The information required to be included in the application for DOE certification is modified. Section 5.02 requires submission of additional information regarding the priority benefits of the project. Appendix B provides additional information regarding program policy factors. Applicants will no longer be required to submit independent financial reports.

(8) Section 5.03 requests that a taxpayer submit with the application for § 48B certification a declaration consenting to the disclosure by the Service of certain return information if the taxpayer is awarded an allocation of qualifying gasification project credits. The form of the declaration is set forth in Appendix C.

(9) Sections 5.03(1) and 5.04 require that a taxpayer submit one paper copy and one electronic version on a floppy disc or a CD of the application for § 48B certification (including the application for DOE certification).

(10) Section 6.02 provides more details on who may sign the penalties of perjury statement.

(11) Section 6.03 provides that the Service and the DOE must be informed if the plans for the project change in any signifi-

cant respect from the plans set forth in the applications for § 48B and DOE certification, and also provides the consequences of any significant change to the plans set forth in the applications.

(12) Section 6.06 provides that the DOE will offer debriefings to applicants that submitted an application for DOE certification.

(13) Section 9 provides guidance regarding Freedom of Information Act requests for records relating to the qualifying gasification project program.

### SECTION 3. DEFINITIONS

The following definitions apply for purposes of § 48B and this notice:

.01 *Coal.* Section 48B(c)(6) defines the term “coal” as meaning anthracite, bituminous coal, subbituminous coal, lignite, and peat. Coal includes waste coal (that is, usable material that is a byproduct of the previous processing of anthracite, bituminous coal, subbituminous coal, lignite, or peat). Examples of waste coal include fine coal of any of the listed ranks, coal of any of the listed ranks obtained from a refuse bank or slurry dam, anthracite culm, bituminous gob, and lignite waste.

.02 *Eligible entity.* Section 48B(c)(7) defines “eligible entity” as meaning any person whose application for certification is principally intended for use in a domestic project that employs domestic gasification applications related to chemicals, fertilizers, glass, steel, petroleum residues, forest products, and agriculture (including feedlots and dairy operations). For purposes of § 48B, a qualifying gasification project is carried out by an eligible entity if the project supplies more than 50 percent of the thermal output in British thermal unit (Btu) from the gasification process in the form of synthesis gas for direct use or subsequent chemical or physical conversion in an application related to one or more of the industries listed in § 48B(c)(7) or if more than 50 percent of the fuel input in Btu to the gasification process is supplied from one or more of the industries listed in § 48B(c)(7).

.03 *Total synthesis gas capacity.* The total synthesis gas capacity of a project is the total MMBtu per hour of the synthesis gas (higher heating value (HHV)) at the gasifier outlet of the project. The synthesis gas must be composed primarily of carbon

monoxide and hydrogen for direct use or subsequent chemical or physical conversion.

#### .04 *Fuel Input.*

(1) *In general.* The term “fuel input” means, with respect to any type of fuel, the amount of such fuel used during normal plant operations. The amounts of the fuel used are measured (i) in British thermal units (Btus) on an energy input basis and (ii) pursuant to applicable standards prescribed by the American Society for Testing and Materials (ASTM). For example, § 48B(d)(3)(D) provides that the fuels identified in § 48B(c)(2) will at all times cumulatively comprise at least 90 percent of the total fuels (fuels identified in § 48B(c)(2) and any other fuel input) required by the project. This requirement is satisfied if, after completion and during normal plant operations, the fuels identified in § 48B(c)(2) will cumulatively comprise at least 90 percent of the project’s total fuels measured in Btus on an energy input basis and pursuant to applicable ASTM standards.

(2) *Only normal plant operations taken into account.* Only fuel used during normal plant operations is taken into account for purposes of § 48B. Normal plant operations are operations other than during periods of initial plant certification, plant startup, plant shutdown, interconnected gasifier(s) shutdown for gasification system maintenance, or interruptions of the supply of fuels identified in § 48B(c)(2) to the project resulting from an event of force majeure (including an act of God, war, strike, or other similar event beyond the control of the taxpayer). For example, the fuel input during the initial plant certification may consist entirely of natural gas or other fuels not identified in § 48B(c)(2) because fuel used during initial plant certification is disregarded in determining whether the requirement of § 48B(d)(3)(D) to use 90 percent of the fuels identified in § 48B(c)(2) is satisfied.

.05 *Placed In Service.* For purposes of § 48B, property is placed in service in the taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function. See § 1.46–3(d)(1)(ii) of the Income Tax Regulations. Thus, a qualifying gasification project or eligible property (as defined in § 48B(c)(3)) that is a part of the project is placed in service in the taxable

year in which the project is placed in a condition or state of readiness and availability for producing synthesis gas from the feedstocks identified in § 48B(c)(2).

### SECTION 4. QUALIFYING GASIFICATION PROJECT PROGRAM

.01 *In General.* The Service will consider a project under the qualifying gasification project program only if the DOE provides a certification (“DOE certification”) and ranking (if any) for the project. Accordingly, for each qualifying gasification project, a taxpayer must submit: (1) an application for certification by the DOE (“application for DOE certification”), and (2) an application for certification under § 48B by the Service (“application for § 48B certification”). Both applications may be submitted only during the 3-year period beginning on February 21, 2006. Certifications will be issued and credits will be allocated to projects in annual allocation rounds. The initial allocation round was conducted in 2006. Additional allocation rounds will be conducted in 2007–08 and, if necessary, in 2008–09.

#### .02 *Program Specifications.*

(1) The Service determines the amount of the qualifying gasification project credits allocated to a qualifying gasification project at the time the Service accepts the application for § 48B certification for that project in accordance with section 4.02(9) of this notice. The qualified investment in the project will be certified as eligible for the credit to the extent such investment does not exceed the amount of the credit allocated to the project multiplied by five. See section 5 of this notice for the requirements applicable to the application for DOE certification and the application for § 48B certification.

(2) The certification for a project cannot apply to more than \$650 million of the qualified investment in the project. Thus, the maximum amount of qualifying gasification project credits that will be allocated to a project is \$130 million.

(3) Pursuant to § 48B(d)(1), the aggregate amount of credits allocated to all qualifying gasification projects may not exceed \$350 million. In the 2006 allocation round, \$349,663,000 of credits was allocated. Therefore, \$337,000 of credits is available for allocation in 2007–08.

(4) DOE will rank the certified projects in descending order (that is, first, second, third, etc.) and the \$337,000 available for allocation will be allocated as follows in the allocation round in 2007–08:

(a) If the requested allocation of credits for projects that DOE has certified does not exceed the amount available for allocation, each certified project will be allocated the full amount of credit requested.

(b) If the requested allocation of credits for projects that DOE has certified exceeds the amount available for allocation, the amount available for allocation will be allocated as follows:

(i) The project receiving the highest ranking (that is, first) will be allocated the full amount of credit requested (but not exceeding the amount available for allocation) before any credit is allocated to a lower-ranked project. The amount available for allocation is reduced by the amount of credit so allocated and only the remainder is available for allocation to a lower-ranked project.

(ii) Second and lower-ranked projects will be entitled to similar priority in the allocation of credits and allocations to such projects will similarly reduce the remainder of the amount available for allocation until the amount available for allocation is exhausted.

(5) If the amount available for allocation is not fully allocated in the 2007–08 allocation round, a similar allocation round will be conducted in 2008–09. Generally, the results of each year will be announced. See section 5.03(2) of this notice for further information about this announcement.

(6) If the same project would otherwise be allocated credits under both the qualifying gasification project program under this notice and the qualifying advanced coal project program under Notice 2007–52, 2007–26 I.R.B. 1456, the following rules apply:

(a) The qualifying gasification project credit may not be allocated to the project with respect to any qualified investment under § 48B for which a qualifying advanced coal project credit is allowed under § 48A; and

(b) The qualifying gasification project credit may be allocated to the project with respect to the qualified investment under § 48B for which a qualifying advanced coal project credit is not allowed under § 48A.

(7) For each allocation round, there will be an annual application period during which a taxpayer may file its application for § 48B certification. The Service will consider a project in an allocation round only if the application for § 48B certification for the project is submitted during the application period for that round and the DOE provides the DOE certification and the DOE ranking (if any) for the project before the end of that application period.

(8) For the allocation round conducted in 2007–08, the application period begins on October 3, 2006, and ends on March 3, 2008, and any completed application for § 48B certification received by the Service after October 2, 2006, and before March 4, 2008, will be deemed to be submitted by the taxpayer on March 3, 2008. For the allocation round to be conducted in 2008–09, the application period begins on March 4, 2008, and ends on March 2, 2009, and any completed application for § 48B certification received by the Service after March 3, 2008, and before March 3, 2009, will be deemed to be submitted by the taxpayer on March 2, 2009. For purposes of this notice, an application that is submitted by U.S. mail will be treated as received by the Service on the date of the postmark and an application submitted by a private delivery service will be treated as received by the Service on the date recorded or the date marked in accordance with § 7502(f)(2)(C).

(9) See section 5.02 of this notice and Appendix B to this notice for the information to be submitted to the DOE in an application for DOE certification. Appendix B to this notice also provides the instructions and address for filing the application for DOE certification. The DOE will determine the feasibility of the project and, if the project is determined to be feasible, will provide a DOE certification for the project to the Service. If the DOE certifies two or more projects, the DOE also will rank each of the projects it certifies (for example, first, second, third, etc.) relative to other certified projects. If an application for DOE certification is postmarked on or before October 31 of a calendar year, the DOE will determine the feasibility of the project and (for projects determined to be feasible) provide the DOE certification and the DOE ranking (if any) to the Service by March 1 of the year following that calendar year.

(10) By April 30 of the calendar year in which an application for § 48B certification is deemed to be submitted (as determined under section 4.02(8) of this notice), the Service will accept or reject the taxpayer's application for § 48B certification and will notify the taxpayer, by letter, of its decision.

(11) A taxpayer that receives an acceptance letter under section 4.02(10) of this notice has 7 years from the date of the acceptance letter to place the project in service and if the project is not placed in service by the end of that period then the acceptance letter is void.

(12) If the taxpayer's application for § 48B certification is accepted, the acceptance letter will state the amount of the credit allocated to the project and the amount of qualified investment that is certified as eligible for the credit. If a credit is allocated to a taxpayer's project, the taxpayer will be required to execute a closing agreement in the form set forth in Appendix A to this notice. By June 30 of the calendar year in which an application for § 48B certification is accepted, the taxpayer must execute and return the closing agreement to the Service at the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin. The Service will execute and return the closing agreement to the taxpayer by August 31 of such calendar year. The executed closing agreement applies only to the accepted taxpayer. Accordingly, any successor in interest must execute a new closing agreement with the Service no later than the due date (including extensions) of the successor in interest's Federal income tax return for the taxable year in which the transfer occurs. If the successor in interest does not execute a new closing agreement, the following rules apply:

(a) In the case of an interest acquired at or before the time the qualifying gasification project is placed in service, any credit allocated to the project will be fully forfeited (and rules similar to the recapture rules of § 50(a) apply with respect to qualified progress expenditures); and

(b) In the case of an interest acquired after the qualifying gasification project is placed in service, the project ceases to be investment credit property and the recapture rules of § 50(a) (and similar rules with



respect to qualified progress expenditures) apply.

## SECTION 5. APPLICATIONS FOR CERTIFICATIONS

.01 *In General.* An application for § 48B certification and a separate application for DOE certification must be submitted for each qualifying gasification project. If an application for DOE certification does not include all of the information required by section 5.02 of this notice and meet the requirements in sections 6.01 and 6.02 of this notice, the DOE may decline to accept the application. If an application for § 48B certification does not include all of the information listed in section 5.03 of this notice and meet the requirements in sections 6.01 and 6.02 of this notice, the application will not be accepted by the Service.

.02 *Information Required in the Application for DOE Certification.* An application for DOE certification must include all of the information requested in Appendix B to this notice and all of the following:

(1) The name, address, and taxpayer identification number of the taxpayer. If the taxpayer is a member of an affiliated group filing consolidated returns, also provide the name, address, and taxpayer identification number of the common parent of the group.

(2) The name and telephone number of a contact person.

(3) The name and address (or other unique identifying designation) of the qualifying gasification project.

(4) A statement specifying the projected placed-in-service date of the qualifying gasification project.

(5) The estimated total cost of the project and the estimated total qualified investment in the eligible property that will be part of the project.

(6) The amount of the qualifying gasification project credit requested for the project. The amount requested must not exceed \$130 million (the maximum amount permitted under § 48B(a) and (c)(1)(C)).

(7) If the taxpayer is or will be requesting an amount of the qualifying advanced coal project credit under § 48A for the same project, a statement specifying the amount of credit the taxpayer is or will be requesting under § 48A.

(8) The exact total synthesis gas capacity (as defined in section 3.03 of this notice) of the project.

(9) A statement specifying whether the project is entitled to priority for carbon capture capability (as defined in § 48B(c)(5)), for using renewable fuel, or for having project teams with experience that demonstrates successful and reliable operations of the gasification technology on the domestic fuels identified in § 48B(c)(2), and, if entitled to priority, a statement identifying which of these priorities apply to the project.

(10) Documentation or other evidence establishing that the taxpayer is financially viable without the receipt of additional federal funding associated with the qualifying gasification project.

.03 *Information To Be Included in the Application for § 48B Certification.*

(1) *Information required in the application for § 48B certification.* An application for § 48B certification must include all of the following:

(a) The name, address, and taxpayer identification number of the taxpayer. If the taxpayer is a member of an affiliated group filing consolidated returns, also provide the name, address, and taxpayer identification number of the common parent of the group.

(b) The name, telephone number, and fax number of a contact person. For such person, attach a properly executed power of attorney, preferably on Form 2848, *Power of Attorney and Declaration of Representative*.

(c) One paper copy and one electronic version on a floppy disc or a CD of the completed application for DOE certification submitted with respect to the project in accordance with section 5.02 of this notice.

(2) *Consent to disclosure of allocation.* In order to provide the public with information on how the qualifying gasification project credits authorized by Congress have been allocated and facilitate oversight of the qualifying gasification project program, the Service intends to publish the results of the allocation process. The Service expects that a list identifying the taxpayers and projects to which credits are allocated and specifying the amount of credit allocated to each would be of particular interest to the public. Pursuant to § 6103, consent is required in order to disclose any

return information with respect to taxpayers awarded an allocation. Therefore, the Service requests that each taxpayer submit with the application for § 48B certification a declaration, consenting to the disclosure by the Service of the following return information in the event a qualifying gasification project credit is allocated to the taxpayer's project: (a) the name of the taxpayer; (b) if the taxpayer is a member of an affiliated group filing consolidated returns, the name of the common parent of the group; (c) the type and location of the project to which the application relates; and (d) the amount of the qualifying gasification project credit allocated to the project. To provide a valid consent, the declaration must be in the form set forth in Appendix C. A taxpayer is not required to consent to disclosure of this information in order to receive an allocation of the qualifying gasification project credit, and neither the presence nor the absence of such a consent will be taken into account in the evaluation of a taxpayer's application. The Service will not publish any return information relating to a taxpayer if the taxpayer does not consent to disclosure of this information or does not receive an allocation of the qualifying gasification project credit.

.04 *Instructions and Address for Filing § 48B Application.* One paper copy and one electronic version on a floppy disc or a CD of the application for § 48B certification must be submitted. Applications for § 48B certification should be marked: SECTION 48B APPLICATION FOR CERTIFICATION. There is no user fee for these applications.

(1) Applications submitted by U.S. mail must be sent to:

Internal Revenue Service  
Industry Director, Natural Resources  
and Construction  
Attn: Executive Assistant  
1919 Smith Street  
Stop HOU 1000  
Houston, TX 77002

Applications submitted by a private delivery service must be sent to:

Internal Revenue Service  
Industry Director, Natural Resources  
and Construction  
Attn: Executive Assistant  
1919 Smith Street, Floor P2  
Stop HOU 1000  
Houston, TX 77002

(2) Applications may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. Central time to:

Internal Revenue Service  
Industry Director, Natural Resources  
and Construction  
Attn: Executive Assistant  
1919 Smith Street, Floor P2  
Stop HOU 1000  
Houston, TX 77002

## SECTION 6. OTHER REQUIREMENTS

.01 *Signature.* Each submission under section 5 of this notice must be signed and dated by the taxpayer. A stamped signature or faxed signature is not permitted.

.02 *Penalties of Perjury Statement.*

(1) Each submission under section 5 of this notice must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, all of the facts contained herein are true, correct, and complete."

(2) The declaration must be signed and dated by the taxpayer. The person signing for the taxpayer must have personal knowledge of the facts. Further, the declaration must be signed by an officer on behalf of a corporation, a general partner on behalf of a state-law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, and the proprietor in the case a sole proprietorship. If the taxpayer is a member of an affiliated group filing consolidated returns, the declaration also must be signed by a duly authorized officer of the common parent of the group. A stamped signature or faxed signature is not permitted.

.03 *Significant Change in Plans.* The Service and DOE must be informed if the plans for the project change in any significant respect from the plans set forth in the applications for § 48B and DOE certification. Any significant change to the plans

set forth in the applications will have the following effects:

(1) The Service will disregard any certification or ranking provided by DOE unless DOE is informed of the change before the date on which DOE provides the certification or ranking (that is, the Service will not consider the project unless DOE provides a new, timely certification and ranking (if any) on or after the date on which DOE is informed of the change); and

(2) Any acceptance provided by the Service and any allocation or certification based on that acceptance will be void unless the Service is informed of the change before the date on which the acceptance is provided under section 4.02(10) of this notice.

.04 *Effect of an Acceptance or Allocation.* An acceptance or allocation by the Service under this notice is not a determination that a project qualifies for the qualifying gasification project credit under § 48B. The Service may, upon examination (and after any appropriate consultation with DOE), determine that the project does not qualify for this credit.

.05 *No Right to a Conference or Appeal.* A taxpayer does not have a right to a conference relating to any matters under this notice. Further, a taxpayer does not have a right to appeal the decisions made under this notice (including the acceptance or rejection of the application for DOE or § 48B certification or the amount of credit allocated to the project) to an Associate Chief Counsel or any other official of the Service.

.06 *DOE Debriefings.* Although a taxpayer does not have a right to a conference relating to any matters under this notice, the DOE will offer debriefings to all applicants that submitted an application for DOE certification. This debriefing will be held by the DOE after the Service has accepted the applications for § 48B certification (as determined under section 4.02(10) of this notice). The sole purpose of the debriefing is to enable applicants to develop better proposals in future allocation rounds by providing DOE's review of the strengths and weaknesses of their application for DOE certification.

## SECTION 7. REVIEW AND REDISTRIBUTION

.01 *In General.* Section 48B(d)(1) provides for the review and redistribution of credits allocated under the qualifying gasification project program under rules similar to the rules of § 48A(d)(4).

.02 *Review and Redistribution of Credits.*

(1) *In general.* If, after the allocation round in 2008–09, the aggregate credit of \$350 million is not fully subscribed (that is, the aggregate credit is not fully allocated), an additional program for applications for certification to allocate the remaining credits will be conducted. Future guidance will prescribe the procedures applicable to applications for certification with respect to the remaining credits.

(2) *Reduction or forfeiture of allocated credits.* Under the closing agreement set forth in Appendix A to this notice, the qualifying gasification project credits allocated under section 4 of this notice will be reduced or forfeited in certain situations. A taxpayer must notify the Service of the amount of any reduction or forfeiture required under the closing agreement. This notification must be sent to the appropriate address listed in section 5.04 of this notice or listed in later guidance published in the Internal Revenue Bulletin.

The amount of any reduction or forfeiture of the allocated credits will be returned and included in the aggregate credit remaining to be allocated in the allocation round following the reduction or forfeiture. If the reduction or forfeiture occurs after the allocation round in 2008–09, future guidance will prescribe procedures applicable to applications for certification with respect to the returned credits.

## SECTION 8. QUALIFIED PROGRESS EXPENDITURES

.01 Section 48B(b)(3) provides that rules similar to the rules of § 46(c)(4) and (d) (as in effect on the day before the enactment of the Revenue Reconciliation Act of 1990) shall apply for purposes of § 48B. Former §§ 46(c)(4) and 46(d) provided the rules for claiming the investment credit on qualified progress expenditures (as defined in former § 46(d)(3)) made by a taxpayer during the taxable year for

the construction of progress expenditure property (as defined in former § 46(d)(2)).

.02 In the case of self-constructed property (as defined in former § 46(d)(5)(A)), former § 46(d)(3)(A) defined qualified progress expenditures to mean the amount that is properly chargeable (during the taxable year) to capital account with respect to that property. With respect to a qualifying gasification project that is self-constructed property, amounts paid or incurred are chargeable to capital account at the time and to the extent they are properly includible in computing basis under the taxpayer's method of accounting (for example, after applying the requirements of § 461, including the economic performance requirement of § 461(h)).

.03 To claim the qualifying gasification project credit on the qualified progress expenditures paid or incurred by a taxpayer during the taxable year for construction of a qualifying gasification project, the taxpayer must make an election under the rules set forth in § 1.46-5(o) of the Income Tax Regulations. The taxpayer may not make the qualified progress expenditures election for a qualifying gasification project until the taxpayer has received an acceptance letter for the project under section 4.02(10) of this notice.

.04 If a taxpayer makes the qualified progress expenditures election pursuant to section 8.03 of this notice, rules similar to the recapture rules in § 50(a)(2)(A)-(D) apply. In addition to the cessation events listed in § 50(a)(2)(A), examples of other events that will cause the project to cease being a qualifying gasification project are:

(1) Failure to place the project in service within 7 years from the date of the acceptance letter under section 4.02(10) of this notice; or

(2) A significant change to the plans for the project as set forth in the applications for § 48B and DOE certification and, under section 6.03 of this notice, the Service's acceptance of the project is void as a result of the change.

## SECTION 9. DISCLOSURE OF INFORMATION

.01 *In general.* Any information contained in the application for DOE certification or the application for § 48B certification is subject to § 6103 and to any other applicable exemption set forth in the Freedom of Information Act (the FOIA). Examples of FOIA exemptions include FOIA trade secrets and commercial or financial information exemption of 5 U.S.C. 552(b)(4) and the FOIA personal privacy exemption of 5 U.S.C. 552(b)(6).

.02 *FOIA requests.* Anyone interested in submitting a request for records under the FOIA with respect to the qualifying gasification project program under § 48B (including a request for records relating to the application for DOE certification) should direct a request that conforms to the Service's FOIA regulations, found at 26 C.F.R. § 601.702, to the following address:

IRS FOIA Request  
Baltimore Disclosure Office  
Room 940  
31 Hopkins Plaza  
Baltimore, MD 21201

## SECTION 10. EFFECT ON OTHER DOCUMENTS

Notice 2006-25 is clarified, modified, amplified, and superseded.

## SECTION 11. EFFECTIVE DATE

This notice is effective June 7, 2007.

## SECTION 12. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2002.

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 collections of information in this notice are in sections 4, 5, 6, 7, and Appendix B of this notice. This information is required to obtain an allocation of qualifying gasification project credits. This information will be used by the Service to verify that the taxpayer is eligible for the qualifying gasification project credits. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 1,700 hours.

The estimated annual burden per respondent varies from 50 to 125 hours, depending on individual circumstances, with an estimated average of 85 hours. The estimated number of respondents is 20.

The estimated annual frequency of responses is on occasion.

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

## SECTION 13. DRAFTING INFORMATION

The principal author of this notice is Ruba Nasrallah of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Jaime Park of the Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 622-3110 (not a toll-free call). For further information regarding the application for § 48B certification, contact Kimberly Edwards, Executive Assistant, Office of the Industry Director, Natural Resources and Construction, at (713) 209-3615 (not a toll-free number).

APPENDIX A  
CLOSING AGREEMENT

Under § 7121 of the Internal Revenue Code, [insert taxpayer's name, address, and identifying number] ("Taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

**WHEREAS:**

1. On or before March [insert date and year], Taxpayer submitted to the Internal Revenue Service ("IRS"), an application for certification under the qualifying gasification project program described in Notice 2007-53 ("Application for § 48B Certification");

2. Taxpayer's Application for § 48B Certification is for the qualifying gasification project (the "Project") described below—

(1) The Project will be located at [insert address or other identifying designation];

(2) The Project will have a total synthesis gas capacity (as defined in section 3.03 of Notice 2007-53) of at least [insert number] total MMBtu per hour of synthesis gas. The synthesis gas is composed primarily of carbon monoxide and hydrogen for direct use or subsequent chemical or physical conversion;

(3) The fuels identified in § 48B(c)(2) will at all times cumulatively comprise at least 90 percent of the total fuel input (as defined in section 3.04(1) of Notice 2007-53 and including fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for normal plant operations (as defined in section 3.04(2) of Notice 2007-53) for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity; and

3. On [insert date of acceptance letter issued under section 4.02(9) of Notice 2007-53], the IRS accepted Taxpayer's Application for § 48B Certification for the Project and allocated a qualifying gasification project credit under § 48B in the amount of \$[insert number] to the Project.

**NOW IT IS HEREBY DETERMINED AND AGREED FOR FEDERAL INCOME TAX PURPOSES THAT:**

1. The total amount of the qualifying gasification project credit to be claimed for the Project under § 48B(a) must not exceed \$[insert the number in WHEREAS clause #3].

2. If the Project is not placed in service by Taxpayer within 7 years of [insert the date in WHEREAS clause #3], the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

3. If the plans for the Project change in any significant respect from the plans set forth in the application for DOE certification (as defined in section 4.01 of Notice 2007-53) and the Application for § 48B Certification (as defined in section 4.01 of Notice 2007-53) and, under section 6.03 of Notice 2007-53, the acceptance of Taxpayer's Application for § 48B Certification on [insert the date in WHEREAS clause #3] is void, the qualifying advanced coal project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

4. (1) If the Project fails to use gasification technology as defined in § 48B(c)(2) or is not carried out by an eligible entity (as defined in section 3.02 of Notice 2007-53), the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited.

(2) If, at any time, the fuels identified in § 48B(c)(2) with respect to the gasification technology for the Project do not cumulatively comprise at least 90 percent of the total fuel input (as defined in section 3.04(1) of Notice 2007-53 and including fuels identified in § 48B(c)(2) and any other fuel input) required by the Project for normal plant operations (as defined in section 3.04(2) of Notice 2007-53) for the production of chemical feedstocks, liquid transportation fuels, or co-production of electricity, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

5. Taxpayer will not claim the qualifying advanced coal project credit under § 48A for any qualified investment for which the qualifying gasification project credit is allowed under § 48B.

6. If Taxpayer elects to claim the qualifying gasification project credit on the qualified progress expenditures paid or incurred by Taxpayer during the taxable year(s) during which the Project is under construction and if the Project ceases to be a qualifying gasification project (whether before, at the time, or after the Project is placed in service), rules similar to the recapture rules in § 50(a)(2)(A) through (D) apply.

7. This agreement applies only to Taxpayer. Any successor in interest must execute a new closing agreement with the IRS. If the interest is acquired at or before the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, the qualifying gasification project credit in the amount of \$[insert the number in WHEREAS clause #3] allocated to the Project is fully forfeited. If the interest is acquired after the time the Project is placed in service and the successor in interest fails to execute a new closing agreement, the Project ceases to be investment credit property and the recapture rules of § 50(a) apply.

**THIS AGREEMENT IS FINAL AND CONCLUSIVE EXCEPT:**

1. The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;
2. It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for § 7122) notwithstanding any law or rule of law; and
3. If it relates to a tax period ending after the date of this Closing Agreement, it is subject to any law enacted after such date, which applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this Closing Agreement.

**Taxpayer: [insert name and identifying number]**

**By:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
[insert name]

**Title:** [insert title]  
[insert taxpayer's name]

**Commissioner of Internal Revenue**

**By:** \_\_\_\_\_ **Date Signed:** \_\_\_\_\_  
[insert name]

**Title:** [insert title]

**I have examined the specific matters involved and recommend the acceptance of the proposed agreement.**

(Receiving Officer) \_\_\_\_\_

(Title) \_\_\_\_\_

Date Signed \_\_\_\_\_

**I have reviewed the specific matters involved and recommend the acceptance of the proposed agreement.**

(Reviewing Officer) \_\_\_\_\_

(Title) \_\_\_\_\_

Date Signed \_\_\_\_\_

APPENDIX B  
APPLICATION FOR DOE CERTIFICATION  
**REQUEST FOR SUPPLEMENTAL APPLICATION INFORMATION FOR DOE**

The Internal Revenue Service (“IRS”) and the Department of Energy (“DOE”) seek to certify applications that demonstrate a high likelihood of being successfully implemented by the applicants. To qualify, projects must be economically feasible and use the appropriate gasification technology.

This request for submission of supplemental application information:

1. Describes the information to be provided by the applicant seeking a certification of feasibility, and
2. Lists the evaluation criteria and Program Policy Factors to be used by DOE in the evaluation of applications.

In conducting this evaluation, the DOE may utilize assistance and advice from qualified personnel from other Federal agencies and/or non-conflicted contractors. DOE will obtain assurances in advance from all evaluators that application information shall be kept confidential and used only for evaluation purposes. DOE reserves the right to request clarifications and/or supplemental information from some or all applicants through written submissions and/or oral presentations.

Notice is given that DOE may determine whether or not to provide a certification to the IRS at any time after the application has been received, without further exchanges or discussions. Therefore, all applicants are advised to submit their most complete and responsive application.

Applications will not be returned.

**SUBMISSION INFORMATION FOR DOE CERTIFICATION APPLICATION**

**A. General**

This request, together with the information in sections 5.02, 6.01, and 6.02 of Notice 2007–53 includes all the information needed to complete an application for DOE certification. All applications shall be prepared in accordance with this request in order to provide a standard basis for evaluation and to ensure that each application will be uniform as to format and sequence.

Each application should clearly demonstrate the applicant’s capability, knowledge, and experience in regard to the requirements described herein.

Applicants should fully address the requirements of Notice 2007–53 and this request and **not** rely on the presumed background knowledge of reviewers. DOE may reject an application that does not follow the instructions regarding the organization and content of the application when the nature of the deviation and/or omission precludes meaningful review of the application.

**B. Unnecessarily Elaborate Applications**

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective application are not desired. Elaborate art work, graphics and pictures are neither required nor encouraged.

**C. Application Submission for DOE Certification**

The application submission to DOE must include the information and documentation required by sections 5.02, 6.01, and 6.02 of Notice 2007–53.

An application will not be considered in the allocation round conducted in 2007–08 unless it is postmarked by October 31, 2007, and will not be considered in the allocation round conducted in 2008–09 unless it is postmarked by October 31, 2008. Two paper copies and one electronic version on a floppy disc or a CD of the Application must be submitted to:

Melissa Robe  
National Energy Technology Laboratory  
3610 Collins Ferry Road  
Morgantown, WV 26507

Note that under section 5.03(1) of Notice 2007–53, one paper copy and one electronic version must be sent to the IRS as part of the application for IRS certification. The application for IRS certification will not be considered in the allocation round conducted in 2007–08 unless it is submitted to the IRS by March 3, 2008, and will not be considered in the allocation round conducted in 2008–09 unless it is submitted to the IRS by March 2, 2009.

**THE INFORMATION REQUIRED BY THIS REQUEST MUST BE SUBMITTED USING THE FORMAT AND THE HEADINGS OF THE PROJECT INFORMATION MEMORANDUM AS DESCRIBED BELOW.**

To aid in evaluation, applications shall be clearly and concisely written and logically assembled. All pages of each part shall be appropriately numbered and identified with the name of the applicant and the date.

The application, including the Project Information Memorandum, **MUST** be formatted in one of the following software applications:

Microsoft Word<sup>™</sup> 2002 or later edition  
Microsoft Excel<sup>™</sup> 2002 or later edition  
Adobe Acrobat<sup>™</sup> PDF 6.0 or later edition

Financial models should be submitted using the Excel<sup>™</sup> spreadsheet and must include calculation formulas and assumptions.

The applicant is responsible for the integrity and structure of the electronic files. The DOE will not be responsible for reformatting, restructuring or converting any files submitted under this announcement.

The Project Information Memorandum, *excluding Appendices*, shall not exceed seventy-five (75) pages. Pages in excess of the page limitation will not be considered for evaluation. All text shall be typed, single spaced, using 12 point font, 1 inch margins, and unreduced 8-1/2-inch by 11-inch pages. Illustrations and charts shall be legible with all text in legible font. Pages shall be sequentially numbered. Except as otherwise noted herein the page guidelines previously set forth constitute a limitation on the total amount of material that may be submitted for evaluation. No material may be incorporated in any application by reference as a means to circumvent the page limitation.

**D. Form of Project Information Memorandum**

**PROJECT INFORMATION MEMORANDUM**

**I. SUMMARY AND INTRODUCTION**

- Description of the Project
- Financing and Ownership Structure
- Describe the main parties to the project, including background, ownership and related experience
- Current Project Status and Schedule to Beginning of Construction

**II. TECHNOLOGY AND TECHNICAL INFORMATION**

Provide a description of the proposed technology, including sufficient supporting information (such as vendor guarantees, process flow diagrams, equipment descriptions, information on each major process unit and the total plant, compositions of major streams, and the technical plan for achieving the goals proposed for the project) as would be needed to allow DOE to confirm that the technical requirements of § 48B are met. Specifically, the applicant should:

- Provide evidence sufficient to demonstrate that the proposed technology will employ gasification technology as defined in § 48B(c)(2).
- Present information sufficient to justify the total amount of synthesis gas (as defined in § 48B(c)(2)) to be produced by the project (synthesis gas capacity). Provide the total MMBtu/hr of the syngas (HHV) at the gasifier outlet.
- Provide evidence sufficient to ensure that fuels defined in § 48B(c)(2) will comprise 90 percent of the total fuel input (fuels defined in § 48B(c)(2) and any other fuel input) for the project. Provide the total quantities of CO, H<sub>2</sub>, CH<sub>4</sub>, CO<sub>2</sub>, and water in the syngas.
- Identify the domestic industry for which the proposed project is intended to be used.
- Identify the specific products and quantities produced by the proposed project, providing sufficient evidence to support claims.
- Provide evidence that indicates, for projects using non renewable fuels, the gasification technology design reflects reasonable consideration for, and is capable of, accommodating equipment necessary to capture carbon dioxide for later use or sequestration. Include the project status and relevant information from ongoing engineering activities. Also include in an appendix any engineering report or reports used by the applicant to develop the project and to estimate costs and operating performance.

**III. APPLICANT'S CAPABILITY TO ACCOMPLISH THE TECHNICAL OBJECTIVES**

Provide a narrative supporting the applicant's capability to accomplish the technical objectives of the proposed project, including supporting documentation demonstrating that the applicant has assembled a team that is formally committed to participate in the proposed project.

- Provide information to support that the applicant has assembled a team with the skills and resources needed to implement the project as proposed. Provide signed agreements or letters from team members demonstrating that the proposed team members are fully committed to the project.
- Provide information, including examples of prior similar projects completed by applicant, EPC contractor, and suppliers of major subsystems or equipment, which support the capabilities of the applicant and its team members to design, construct, permit, and operate the facility. The applicant should demonstrate that the team members have a corporate history of successful completion of similar projects.
- Provide information to support that key personnel of the applicant and its team members have knowledge, experience, and adequate degree of involvement to successfully implement the project.
- Include the project status and relevant information from ongoing engineering activities. Also include in an appendix any engineering report or reports used by the applicant to develop the project and to estimate costs and operating performance. Included copies of any signed agreements to support project status claims regarding preliminary design studies, FEED, and EPC-type agreements.

#### IV. SITE CONTROL AND OWNERSHIP

- Provide evidence that the applicant owns or controls a site in the United States of sufficient size to allow the proposed project to be constructed and operated on a long-term basis. Documentation such as a deed demonstrating the applicant owns the project site, a signed option to purchase the site from the site owner, or a letter of intent by the site owner to sell the site to the applicant should be provided.
- Describe the current infrastructure at the site available to meet the needs of the project.
- Provide documentation supporting applicant's conclusion that the proposed site can fully meet all environmental, feedstock supply, water supply, transportation and public policy requirements. Such documentation may include signed agreements, letters of intent, or term sheets, such as coal supply, water supply, and product transportation, etc., and regulatory approvals supporting the key claims.
- Provide detailed plans, schedules and status updates, particularly, for sites with pre-existing conditions that could impact the proposed project. Pre-existing conditions may include, but are not limited to, sites with mandated environmental remediation efforts; brown-field sites that will require building demolition; or sites requiring substantial rerouting of existing roads, railroads, or pipelines prior to the start of the project.
- Applicants must select one "proposed site." However, projects with key physical or logistical elements that require close integration with another system for the project to succeed should provide information on all integrated systems regardless of where they are located. Example 1: a gasification plant designed to operate exclusively on coals from a to-be-opened mine should provide supporting documentation for the new mine. Example 2: an oxygen-blown gasification plant planning to purchase oxygen from a third party who will construct a plant exclusively for this project should provide documentation for the oxygen supplier.

#### V. UTILIZATION OF PROJECT OUTPUT

- Provide evidence that a market exists for the products of the proposed project as evidenced by contracts or written statements of intent from potential customers. Such documentation should be signed by authorizing officials by both the buyer and seller, and may include: Sales Agreements, Letters of Intent, Memoranda of Understanding, and Option Agreements.
- Describe any sales arrangements that exist or that may be contemplated and summaries of their key terms and conditions.
- Include as an appendix any independent Market Study that has been done in connection with this project, or if no independent market study has been completed, provide a copy of the applicant-prepared market study.

#### VI. PROJECT ECONOMICS

Describe the project economics and provide satisfactory evidence of economic feasibility as demonstrated through the financial forecast and the underlying project assumptions. The project economic and financial assumptions should be clearly stated and explained.

Discuss the market potential for the proposed technology beyond the project proposed by the applicant.

Show calculation for the amount of tax credit applied for based on allowable cost.



## VII. PROJECT DEVELOPMENT AND FINANCIAL PLAN

Provide the total project budget and major plant costs (*e.g.*, development, operating, capital, construction, and financing costs). Provide the estimated annual budget for and source of project development costs from the time of the application until the beginning of construction, including legal, engineering, financial, environmental, overhead, and other development costs. Describe the overall approach to project development and financing sufficient to demonstrate project viability. Provide a complete explanation of the source and amount of project equity. Provide a complete explanation of the source and amount of project debt. Provide the audited financial statements for the applicant for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year for (a) the applicant, (b) for any of the project parties providing funding, and (c) for any third party funding source. If the applicant or another party does not have audited financial statements, the applicant or the party should provide equivalent financial statements prepared by the applicant or the party, in accordance with Generally Accepted Accounting Principles, and certified as to accuracy and completeness by the Chief Financial Officer of the party providing the statements. Applicant should demonstrate that the award recipient is financially viable without the receipt of additional federal funding associated with the proposed project.

For internally financed projects, provide evidence that the applicant has sufficient assets to fund the project with its own resources. Identify any internal approvals required to commit such assets. Include in an appendix copies of any board resolution or other approval authorizing the applicant to commit funds and proceed with the project.

For projects financed through debt instruments either unsecured or secured by assets other than the project, provide evidence that the applicant has sufficient creditworthiness to obtain such financing along with a discussion of the status of such instruments. Identify any internal approvals required to commit the applicant to pursue such financing. Include in an appendix, copies of any board resolution or other approval authorizing the applicant to commit to such financing.

For projects financed through investor equity contributions, discuss the source and status of each contribution. Discuss each investor's financial capability to meet its commitments. Include in an appendix, copies of any executed investment agreements.

If financing through a public offering or private placement of either debt or equity is planned for the project, provide the expected debt rating for the issue and an explanation of applicant's justification for the rating. Describe the status of any discussions with prospective investment bankers or other financial advisors.

For projects employing nonrecourse debt financing, provide a complete discussion of the approach to, and status of, such financing. In an appendix, provide (1) an Excel based financial model of the project, with formulas, so that review of the model calculations and assumptions may be facilitated; provide *pro-forma* project financial, economic, capital cost, and operating assumptions, including detail of all project capital costs, development costs, interest during construction, other operating expenses, and all other costs and expenses.

## VIII. PROJECT CONTRACT STRUCTURE

Describe the current status of each of the agreements set forth below. Include as an appendix copies of the contracts or summaries of the key provisions of each of the following agreements:

- **Raw Material Input Supply:** describe the source and price of raw material inputs for the project. Include as an appendix any studies of price and amount of raw materials that have been prepared. Include a summary of any supply contracts and a signed copy of the contracts.
- **Transportation:** explain the arrangements for transporting project inputs and outputs, including costs.
- **Operations & Maintenance Agreement:** include a summary of the terms and conditions of the contract and a copy of the contract.
- **Shareholders Agreement:** summarize key terms and include the agreement as an appendix.
- **Engineering, Procurement and Construction Agreement:** describe the key terms of the existing or expected EPC contract arrangement, including firm price, liquidated damages, hold-backs, performance guarantees, etc.
- **Water Supply Agreement:** confirm the amount, source, and cost of water supply.

## IX. PERMITS INCLUDING ENVIRONMENTAL AUTHORIZATIONS

- Provide a complete list of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction of the project.
- Explain what actions have been taken to date to satisfy the required authorizations and reviews, and the status of each.
- Provide a description of the applicant's plan to obtain and complete all necessary permits, and environmental authorizations and reviews.
- Existing permits and permit applications must be specific to the project proposed. If existing permits are not specific for the proposed project (*i.e.*, permits for oil-fired or natural gas-based systems), specific plans, procedures and schedules for reapplying, modifying and/or renegotiating permits should be provided.

## X. PROJECT SCHEDULE

- Provide an overall project schedule which includes technical, business, financial, permitting and other factors to substantiate that the project will meet the 7 year requirement for placing the plant in service.
- The project schedule should be comprehensive and provide sufficient detail to demonstrate how applicant will meet the placed-in-service requirement. The schedule should demonstrate that the applicant understands the required tasks, and has allowed realistic times for accomplishing the technical and financial tasks. The schedule should include the milestone accomplishments needed to obtain the financing for the project.

## APPENDICES

- Copy of internal or external engineering reports.
- Copy of site plan, together with evidence that applicant owns or controls a site. Examples of evidence would include a deed, or an executed contract to purchase or lease the site.
- Information supporting applicant's conclusion that the site is fully acceptable as the project site with respect to environment, raw material supply, water supply, and public policy reasons.
- Project Market Study.
- Financial Model of project.
- Financial statements for the applicant and other project funding sources for the most recently ended three fiscal years, and the unaudited quarterly interim financial statements for the current fiscal year.
- Expressions of interest or commitment letters from funding sources.
- For each project contract, if no contract currently exists, provide a summary of the expected terms and conditions.
- List of all federal, state, and local permits, including environmental authorizations or reviews, necessary to commence construction.
- Copies of any contract or written statements from customers of intent to purchase project products.

### E. Evaluation Criteria:

Industrial Gasification Projects: will be evaluated on whether they meet all the requirements of § 48B.

Technical: will be evaluated on whether the applicant has demonstrated the capability to accomplish the technical objectives.

Site: will be evaluated on the basis that the site requirement for ownership or control has been met, and that the site is suitable for the proposed project.

Economic: will be evaluated on whether the project has demonstrated economic feasibility, taking into consideration the submitted financial and project development and structural information and financial plan.

Schedule: will be evaluated on the applicant's ability to meet the 7 year placed-in-service requirement.

### F. Program Policy Factors to be used by DOE in the evaluation of applications

Section 48B identifies minimum requirements for consideration for the qualifying gasification project credit, including the project's technical feasibility, cost, and applicant's ability. In the event that there are more qualified (certifiable) applications than there are available tax credits, the DOE will apply additional factors to rank eligible projects based on their ability to advance the deployment of industrial gasification technology beyond its current state.

If there are two or more certified applications than available credits, DOE will rank the certified projects in descending order (that is, first, second, third, etc.), based on evaluation of the following Program Policy Factors. Factors 1, 2, and 3 are Primary Ranking Factors. A certified project that satisfies one of these factors will be ranked ahead of each project that satisfies only factors listed below that factor. Specifically, all certified projects satisfying Factor 1 will be selected before any project that does not satisfy Factor 1; all projects satisfying Factor 2 will be ranked ahead of any project that satisfies only Factor 3 and/or one or more Secondary Ranking Factors; and all projects satisfying Factor 3 will be ranked ahead of any project that does not satisfy any Primary Ranking Factors.

Primary Ranking Factors:

1. Capture and sequestration of 50 percent or more of carbon dioxide emissions. Only projects capturing and sequestering 50 percent or more of the plant's carbon dioxide emissions will satisfy this factor. Within this factor, higher rankings will be given to those projects capturing and sequestering higher percentages of plant carbon dioxide emissions.

2. Use of advanced technologies that optimize the plant for future carbon dioxide capture (for example, gasifier sizing and pressure, air separation unit sizing, and quench system) as well as systems that are designed to capture and sequester less than 50 percent of the carbon dioxide. Within this factor, higher rankings will be given to those projects capturing and sequestering higher percentages of plant carbon dioxide emissions and/or requiring less retrofitting to implement greater than 50 percent carbon capture and sequestration.

3. Location of the facility within 25 miles of potential carbon sequestration locations and carbon dioxide (CO<sub>2</sub>) pipelines or pipeline easements. Within this factor, higher rankings will be given to those projects with the facility located closer to potential carbon sequestration locations and carbon dioxide (CO<sub>2</sub>) pipelines or pipeline easements.

#### Secondary Ranking Factors:

- Location of the facility relative to potential carbon sequestration locations and carbon dioxide (CO<sub>2</sub>) pipelines or pipeline easements (for facilities not meeting Factor 3).
- Presentation of other environmental, economic, or performance benefits (including priority factors that are listed in section 5.02(9) of Notice 2007–53 and are not included in the Primary Ranking Factors).
- Higher plant efficiency.
- Geographic distribution of potential markets.
- The ratio of total synthesis gas capacity (as defined in section 3.03 of Notice 2007–53) to requested tax credit.
- Diversity of technology approaches and methods.

### **G. Supplemental Technical and Financial Guidance for Section D “Project Information Memorandum”**

#### **Technology and Technical Information**

- It is important that the applicant select a specific gasification system for their project. Without that decision, it is difficult to provide the necessary specific design information needed for DOE to evaluate the project feasibility with respect to performance, emissions, outputs of major streams as well as capital and operating costs.

#### **Project Economics**

- Applicants should demonstrate the project’s economic feasibility and financial viability by providing a clear statement and explanation of the economic and financial assumptions made by the applicant, and a financial forecast for the project. The financial forecast should flow logically from the applicant’s assumptions and be consistent with them. Applicants should include assumptions regarding financial and economic issues that may not be included in the project costs but have a direct impact on the project. The examples given in the “Site Control and Ownership” section are relevant here and their impact on the project economics should be discussed here.

#### **Project Development and Financial Plan**

- The information provided by the applicant in this section should demonstrate that the applicant’s financial plan for developing the project is feasible and that the applicant will have access to necessary financing. The applicant should explain the source and timing for obtaining all financing, including the project development costs. It is important that the applicant explain and provide evidence that it has the capacity to fund the pre-construction project development costs, together with a budget for and description of those costs. Note that financial information is required for the applicant and for any other funding source.

#### **Project Contract Structure**

- This section requires that the applicant demonstrate an understanding of the commercial contracting process and show progress in establishing the framework of contracts and agreements that a project typically requires. Applicants should show that their intended contract structure is reasonable and that their assumptions relative to price, terms, and conditions are consistent with current market conditions. Evidence of final agreements, agreements in principle, or summaries of terms and conditions between the applicant and contract counterparties should be provided, if available.

APPENDIX C  
 CONSENT TO PUBLIC DISCLOSURE  
 OF CERTAIN QUALIFYING GASIFICATION PROJECT PROGRAM  
 APPLICATION INFORMATION

In the event that the Application for § 48B Certification of [(Insert name of applicant-taxpayer here): \_\_\_\_\_] (the Applicant-Taxpayer) for an allocation of qualifying gasification project credits under section 48B of the Internal Revenue Code is approved, the undersigned authorized representative of the Applicant-Taxpayer hereby consents to the disclosure by the Internal Revenue Service through publication of a Notice in the Internal Revenue Bulletin or a press release of: (1) the name of the Applicant-Taxpayer; (2) if the Applicant-Taxpayer is a member of an affiliated group filing consolidated returns, the name of the common parent of the group; (3) the type and location of the project that is the subject of the Application for § 48B Certification; and (4) the amount of the allocation, if any, of qualifying gasification project credits for such project. The undersigned understands that this information might be published, broadcast, discussed, or otherwise disseminated in the public record.

This authorization shall become effective upon the execution thereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to disclose on behalf of the taxpayer named below.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Name of Applicant-Taxpayer: \_\_\_\_\_

Taxpayer Identification Number: \_\_\_\_\_

Taxpayer's Address:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Note: Treasury Regulations require that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.

\_\_\_\_\_

*26 CFR 601.602: Tax forms and instructions.  
 (Also: Part 1, 6011, 6012, 6033, 6037, 6061, 1.6011-1(a), 1.6012-5, 301.6061-1(b).)*

**Rev. Proc. 2007-40**

**TABLE OF CONTENTS**

**SECTION 1. PURPOSE** ..... 1489

**SECTION 2. BACKGROUND AND CHANGES** ..... 1489

**SECTION 3. DEFINITIONS.** ..... 1490

**SECTION 4. ACCEPTANCE TO PARTICIPATE IN THE IRS e-file PROGRAM** ..... 1490

**SECTION 5. RESPONSIBILITIES OF AN AUTHORIZED IRS e-file PROVIDER.** ..... 1490

**SECTION 6. PENALTIES.** ..... 1491

**SECTION 7. MONITORING AND SANCTIONING AN AUTHORIZED IRS e-file PROVIDER** ..... 1492

<b>SECTION 8. ADMINISTRATIVE REVIEW PROCESS</b> .....	1492
<b>SECTION 9. DENIAL OF APPLICATION OR REVOCATION OF AN AUTHORIZED IRS <i>e-file</i> PROVIDER'S PARTICIPATION DUE TO COURT INJUNCTION OR OTHER LEGAL ACTION</b> .....	1492
<b>SECTION 10. PILOT PROGRAMS</b> .....	1492
<b>SECTION 11. EFFECT ON OTHER DOCUMENTS</b> .....	1492
<b>SECTION 12. EFFECTIVE DATE</b> .....	1492
<b>SECTION 13. INTERNAL REVENUE SERVICE OFFICE CONTACT</b> .....	1492
<b>SECTION 14. DRAFTING INFORMATION</b> .....	1492

**SECTION 1. PURPOSE**

This revenue procedure informs Authorized IRS *e-file* Providers of their obligations to the Internal Revenue Service (the Service), taxpayers, and other participants in the IRS *e-file* Program, and combines the rules governing IRS *e-file*.

**SECTION 2. BACKGROUND AND CHANGES**

.01 Section 1.6011-1(a) of the Income Tax Regulations provides that every person subject to income tax must make a return or statement as required by the regulations. The return or statement must include the information required by the applicable regulations or forms.

.02 Section 301.6061-1(b) of the Regulations on Procedure and Administration authorizes the Secretary to prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

.03 Section 1.6012-5 of the Income Tax Regulations provide that the Commissioner may authorize the use, at the option of a person required to make a return, of a composite return in lieu of any form specified in 26 CFR Part 1 (Income Tax), subject to such conditions, limitations, and special rules governing the preparation, execution, filing, and correction thereof as the Commissioner may deem appropriate.

.04 Section 6011(e)(1) of the Internal Revenue Code (the Code) gives specific authority for the Service and the Treasury Department to “prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form.” On January 12, 2005, the Service and the

Treasury Department published in the Federal Register (T.D. 9175, 2005-1 C.B. 665 [70 FR 2012-01]) temporary regulations mandating the electronic filing of certain Forms 1120, 1120S, 990 and 990-PF under sections 301.6011-5T, 301.6037-2T, and 301.6033-4T. On November 12, 1999, the Service and the Treasury Department also published in the Federal Register (T.D. 8843, 1999-2 C.B. 590 [64 FR 61502]) final regulations mandating the electronic filing of certain Forms 1065 under section 301.6011-3.

.05 This revenue procedure combines the rules governing IRS *e-file* including the rules governing electronic filing of:

- (1) Form 56, *Notice Concerning Fiduciary Relationship*;
- (2) Form 720, *Quarterly Federal Excise Tax Return*;
- (3) Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*;
- (4) Form 941, *Employer's QUARTERLY Federal Tax Return*;
- (5) Form 944, *Employer's ANNUAL Federal Tax Return*;
- (6) Form 990, *Return of Organization Exempt From Income Tax*;
- (7) Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*;
- (8) Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*;
- (9) Form 1040 and 1040A, *U.S. Individual Income Tax Return*, and Form 1040EZ, *Income Tax Return for Single and Joint Filers With No Dependents*;
- (10) Form 1041, *U.S. Income Tax Return for Estates and Trusts*;
- (11) Form 1065, *U.S. Return of Partnership Income*;
- (12) Form 1120, *U.S. Corporation Income Tax Return*;

(13) Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*; and

(14) Form 1120S, *U.S. Income Tax Return for an S Corporation*;

(15) Form 2290, *Heavy Highway Vehicle Use Tax Return*;

(16) Form 2350, *Application for Extension of Time To File U.S. Income Tax Return*;

(17) Form 2688, *Application for Additional Extension of Time To File U.S. Individual Income Tax Return*;

(18) Form 4868, *Application for Automatic Extension of Time To File U.S. Individual Income Tax Return*;

(19) Form 7004, *Application for Automatic 6-Month Extension of Time To File Certain Business Income Tax, Information, and Other Returns*;

(20) Form 8849, *Claim for Refund of Excise Taxes*;

(21) Form 8868, *Application for Extension of Time To File an Exempt Organization Return*;

(22) Form 9465, *Installment Agreement Request*; and

(23) Any successor forms to the forms listed above, and any future forms or returns that may be filed by Authorized IRS *e-file* Providers.

.06 This revenue procedure does not cover procedures governing electronic filing of Form 1040NR, *U.S. Nonresident Alien Income Tax Return*. For procedures governing the electronic filing of Form 1040NR, see Rev. Proc. 2000-24, 2000-1 C.B. 1133.

.07 This revenue procedure also does not cover providers of information returns that are filed under the FIRE (Filing Information Returns Electronically) Program. See Publication 1220, *Specifications for Filing Forms 1098, 1099, 5498 and W2-G Electronically or Magnetically*. The infor-

mation returns not covered by this revenue procedure include:

(1) Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*;

(2) Form 1098 series;

(3) Form 1099 series;

(4) Form 5498, *IRA Contribution Information*;

(5) Form 8027, *Employer's Annual Information Return of Tip Income and Allocated Tips*; and

(6) Form W-2G, *Certain Gambling Winnings*.

.08 Many of the rules governing participation in IRS *e-file* are now set forth in IRS Publications. See section 5.01 of this revenue procedure.

.09 Rev. Proc. 2005-60, 2005-2 C.B. 449, is revised by adding a new section 9 that provides that the IRS may deny an application to participate in IRS *e-file* or revoke an Authorized IRS *e-file* Provider's participation in IRS *e-file* if the firm, a Principal, or Responsible Official has been enjoined from filing returns because of a Federal or State court order or injunction or other legal action that would prevent participation in the program. In such cases the denied applicant or *e-file* provider will not be entitled to seek administrative review of the denial under the procedures set out in this revenue procedure.

### SECTION 3. DEFINITIONS

.01 Authorized IRS *e-file* Provider. A participant in IRS *e-file* is referred to as an "Authorized IRS *e-file* Provider." The five categories of Authorized IRS *e-file* Providers are:

(1) Electronic Return Originator. An Electronic Return Originator (ERO) originates the electronic submission of returns.

(2) Intermediate Service Provider. An Intermediate Service Provider receives tax return information from an ERO (or from a taxpayer or tax-exempt organization that files electronically using a personal computer, modem or the Internet, and commercial tax preparation software), processes the return information, and either forwards the information to a Transmitter, or sends the information back to the ERO (or taxpayer or tax-exempt organization).

(3) Software Developer. A Software Developer develops software for the purposes of (a) formatting electronic return

information according to publications issued by the Service that set forth electronic return file specifications and record layouts for tax returns; and/or (b) transmitting electronic tax return information directly to the Service.

(4) Transmitter. A Transmitter transmits electronic return information directly to the Service.

(5) Reporting Agent. A Reporting Agent is an accounting service, franchiser, bank, service bureau, or other entity that complies with Rev. Proc. 2007-38, 2007-25 I.R.B. 1442, and is authorized to perform one or more of the acts listed in Rev. Proc. 2007-38 on behalf of a taxpayer.

The five categories of Authorized IRS *e-file* Providers are not mutually exclusive. For example, an ERO can, at the same time, be a Transmitter, Software Developer, or Intermediate Service Provider depending on the function(s) performed.

.02 Responsible Official. A Responsible Official is an individual with authority over the IRS *e-file* operation of the office(s) of the Authorized IRS *e-file* Provider, is the first point of contact with the Service, and has authority to sign revised IRS *e-file* applications. A Responsible Official is responsible for ensuring that the Authorized IRS *e-file* Provider adheres to the provisions of this revenue procedure and the publications and notices governing the IRS *e-file* Program.

.03 Principal. The Principal for a business or organization includes the following:

(1) Sole Proprietorship. The sole proprietor is the Principal for a sole proprietorship.

(2) Partnership. Each partner who has a 5 percent or more interest in a partnership is a Principal. If no partner has at least a 5 percent or more interest in the partnership, the Principal is an individual authorized to act for the partnership in legal and/or tax matters.

(3) Corporation. The President, Vice-President, Secretary, and Treasurer are each a Principal of the corporation.

(4) Other. The Principal for an entity that is not a sole proprietorship, partnership, or corporation is an individual authorized to act for the entity in legal and/or tax matters.

### SECTION 4. ACCEPTANCE TO PARTICIPATE IN THE IRS *e-file* PROGRAM

.01 Sole proprietors, businesses, and organizations that wish to become an Authorized IRS *e-file* Provider must apply for participation and must be accepted by the Service.

.02 The procedures governing application to the IRS *e-file* Program are included in Publication 3112, *IRS e-file Application and Participation*.

.03 The circumstances under which the Service may deny participation in the IRS *e-file* Program are also included in Publication 3112. An applicant who is denied participation may seek administrative review of the denial except as provided for in section 8 of this revenue procedure.

.04 To continue participation in the IRS *e-file* Program, an Authorized IRS *e-file* Provider must adhere to all requirements of this revenue procedure and the publications and notices governing IRS *e-file*.

### SECTION 5. RESPONSIBILITIES OF AN AUTHORIZED IRS *e-file* PROVIDER

.01 To ensure that returns are accurately and efficiently filed, an Authorized IRS *e-file* Provider must comply with the provisions of this revenue procedure and all publications and notices governing IRS *e-file*. The Service will from time to time update such publications and notices to reflect changes to the program. It is the responsibility of the Authorized IRS *e-file* Provider to ensure that it complies with the latest version of all publications and notices. The publications and notices governing the IRS *e-file* Program include:

(1) Publication 1345, *Handbook for Authorized IRS e-file Providers of Individual Income Tax Returns*;

(2) Publication 1345A, *Filing Season Supplement for Authorized IRS e-file Providers of Individual Income Tax Returns*;

(3) Publication 1346, *Electronic Return File Specifications and Record Layouts for Individual Income Tax Returns*;

(4) Publication 1436, *Test Package for Electronic Filers of Individual Income Tax Returns*;

(5) Publication 1437, *Procedures for the 1041 e-file Program, U.S. Income Tax Return for Estates and Trusts*;

(6) Publication 1438, *File Specifications, Validation Criteria and Record Layouts for the Form 1041 e-file Program, U.S. Income Tax Return for Estates and Trusts*;

(7) Publication 1438–A, (*Supplement for the 1041 e-file Program, U.S. Income Tax Return for Estates and Trusts*);

(8) Publication 1474, *Technical Specifications Guide For Reporting Agent Authorization and Federal Tax Depositors*;

(9) Publication 1524, *Procedures for 1065 e-file Program, U.S. Return of Partnership Income*;

(10) Publication 1525, *File Specifications, Validation Criteria and Record Layouts for the 1065 e-file Program, U.S. Return of Partnership Income*;

(11) Publication 1855, *Technical Specifications Guide for the Electronic Filing of Form 941, Employer's Quarterly Federal Tax Return*;

(12) Publication 3112, *IRS e-file Application and Participation*;

(13) Publication 3416, *1065 e-file Program, U.S. Return of Partnership Income (Publication 1525 Supplement)*;

(14) Publication 3715, *Technical Specifications Guide for the Electronic Filing of Form 940, Employer's Federal Unemployment (FUTA) Tax Return*;

(15) Publication 3823, *Employment Tax e-file System Implementation and User Guide*;

(16) Publication 4162, *Modernized e-file Test Package for Forms 1120/1120S*;

(17) Publication 4163, *Modernized e-file (MeF) Information for Authorized IRS e-file Providers of Forms 1120/1120S*;

(18) Publication 4164, *Modernized e-file (MeF) Guide for Software Developers and Transmitters*;

(19) Publication 4206, *Information for Authorized IRS e-file Providers of Exempt Organization Filings*; and

(20) Postings to the IRS web site at: <http://www.irs.gov> on the Internet, and published and future guidance in the Internal Revenue Bulletin and the Federal Register.

.02 The publications and notices listed in section 5.01 supplement this revenue procedure. A violation of any provision of these publications and notices is considered a violation of this revenue procedure

and may subject an Authorized IRS *e-file* Provider to the sanctions provided in section 7 of this revenue procedure.

.03 The security of taxpayer accounts and personal information is a top priority for the Service. It is the responsibility of each Authorized IRS *e-file* Provider to have security systems in place to prevent unauthorized access to taxpayer accounts and personal information by third parties. The Gramm-Leach-Bliley Act, codified at 15 U.S.C. §§ 6801–6827, includes rules applicable to Authorized IRS *e-file* Providers that are designed to ensure the security and privacy of taxpayer information. Violation of the provisions of the Gramm-Leach-Bliley Act and the implementing rules and regulations promulgated by the Federal Trade Commission, or violations of the non-disclosure rules contained in sections 6713 or 7216 or the regulations promulgated thereunder, are considered violations of this revenue procedure and may subject an Authorized IRS *e-file* Provider to penalties as set forth in section 6 of this revenue procedure or sanctions provided in section 7 of this revenue procedure.

.04 In addition to the responsibilities defined in 5.01, 5.02, and 5.03 above, additional Authorized IRS *e-file* Providers responsibilities may be defined in statutes and regulations, revenue procedures, publications, postings to the IRS web site at: <http://www.irs.gov> on the Internet, and published and future guidance in the Internal Revenue Bulletin and the Federal Register.

## SECTION 6. PENALTIES

.01 Penalties for Disclosure or Use of Information.

(1) An Authorized IRS *e-file* Provider is a tax return preparer under the definition of section 7216(a) of the Code. Tax return preparers are subject to criminal penalties for unauthorized disclosure or use of tax return information. See section 7216 (a). In addition, section 6713 establishes civil penalties for unauthorized disclosure or use of income tax return information by tax return preparers.

(2) In certain situations, under section 7216(b)(2), disclosure of tax return information among Authorized IRS *e-file* Providers for the purpose of electronically filing a return is permissible. For example,

an ERO may pass on tax return information to an Intermediate Service Provider and/or a Transmitter for the purpose of having an electronic return formatted and transmitted to the Service.

.02 Other Preparer Penalties.

(1) Preparer penalties may be imposed against an individual or firm meeting the definition of a tax return preparer under section 7701(a)(36) and section 301.7701–15. Preparer penalties that may be imposed under appropriate circumstances include, but are not limited to, those set forth in sections 6694, 6695, and 6713. **Caution: The regulations cited in this section 6.02 do not reflect amendments to the definition of tax return preparer made by the Small Business and Work Opportunity Act of 2007.**

(2) Under section 301.7701–15(d)(1), Authorized IRS *e-file* Providers are not tax return preparers for the purpose of assessing most preparer penalties as long as their services are limited to “typing, reproduction, or other mechanical assistance in the preparation of a return or claim for refund.”

(3) If an ERO, Intermediate Service Provider, Transmitter, or the product of a Software Developer alters the tax return information in a nonsubstantive way, this alteration will be considered to come under the “mechanical assistance” exception described in section 301.7701–15(d)(1), and will not cause an Authorized IRS *e-file* Provider to become a tax return preparer. A nonsubstantive change is a correction or change limited to a transposition error, misplaced entry, spelling error, or arithmetic correction.

(4) If an ERO, Intermediate Service Provider, Transmitter, or the product of a Software Developer alters tax return information in a way that does not come under the “mechanical assistance” exception, such Authorized IRS *e-file* Provider may be held liable for tax return preparer penalties.

.03 Other Penalties. In addition to the above specified provisions, the Service may impose all appropriate preparer, non-preparer, and disclosure penalties against an Authorized IRS *e-file* Provider as warranted under the circumstances.

## SECTION 7. MONITORING AND SANCTIONING AN AUTHORIZED IRS *e-file* PROVIDER

.01 The Service will monitor Authorized IRS *e-file* Providers for compliance with the rules governing IRS *e-file*. The Service may sanction an Authorized IRS *e-file* Provider for violating any provision of this revenue procedure or the publications and notices governing IRS *e-file*.

.02 Sanctions that the Service may impose upon an Authorized IRS *e-file* Provider for violations described in section 7.01 of this revenue procedure include a written reprimand, suspension or expulsion from the program, and other sanctions, depending on the severity of the infraction. Publication 3112 describes the infraction categories and the rules governing the imposition of sanctions.

## SECTION 8. ADMINISTRATIVE REVIEW PROCESS

.01 An applicant that has been denied participation in IRS *e-file* (see section 4.03 of this revenue procedure) has the right to an administrative review (except as provided in Section 9, below). During the administrative review process, the denial of participation remains in effect.

.02 An Authorized IRS *e-file* Provider may seek administrative review for any sanction the Service may impose under section 7 of this revenue procedure.

.03 Publication 3112 describes the procedures regarding administrative review of a denial of participation in IRS *e-file* and any sanction imposed by the Service.

## SECTION 9. DENIAL OF APPLICATION OR REVOCATION OF AN AUTHORIZED IRS *e-file* PROVIDER'S PARTICIPATION IN IRS *e-file* DUE TO COURT INJUNCTION OR OTHER LEGAL ACTION

.01 The Service may deny an Application to participate in IRS *e-file* or revoke an Authorized IRS *e-file* Provider's participation in IRS *e-file* if the Provider, a Principal, or Responsible Official is enjoined from filing returns because of a Federal or State court injunction.

.02 The Service may deny an application or revoke an Authorized IRS *e-file* Provider's participation in IRS *e-file* if the Provider, Principal, or Responsible Official is prohibited from filing returns by any Federal or State legal action that would prohibit them from participation. A type of such legal action would be a Federal Executive Order such as Executive Order 13224 (September 23, 2001), which involves prohibitions directed at terrorist individuals or organizations. An organization described in this Executive Order would not be given IRS *e-file* privileges.

.03 If an Authorized IRS *e-file* Provider's participation in IRS *e-file* is revoked under this section, the Authorized IRS *e-file* Provider is not entitled to the Administrative Review Process set forth in Section 8 and cannot administratively appeal a revocation of its participation in IRS *e-file*. Nor can an applicant appeal its denial to participate in the program. If, however, the injunction or other legal action expires or a reviewing court reverses it, the enjoined Authorized IRS *e-file* Provider or denied applicant may reapply to participate in IRS *e-file* after the injunction or other legal action expires or the appellate decision reversing the injunction becomes final.

## SECTION 10. PILOT PROGRAMS

.01 The Service regularly conducts pilot programs to introduce new technology into the IRS *e-file* Program. These pilot programs are usually conducted within a limited geographic area or within a limited taxpayer or practitioner community. The Service establishes rules for participating in these pilot programs and embodies these rules in an implementing document typically referred to as a "Memorandum of Understanding" or "Memorandum of Agreement." Pilot participants must agree to the provisions of the implementing document in order to participate in the pilot program.

.02 An implementing document supplements this revenue procedure, but does not supersede it.

.03 A violation of a provision of an implementing document is considered a violation of this revenue procedure and may subject the participant to sanctions (see section 7 of this revenue procedure).

## SECTION 11. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2005-60, 2005-2 C.B. 449, is superseded.

## SECTION 12. EFFECTIVE DATE

This revenue procedure is effective June 25, 2007.

## SECTION 13. INTERNAL REVENUE SERVICE OFFICE CONTACT

All questions regarding this revenue procedure should be directed to the Service. The telephone number for this purpose is (202) 283-0261 (not a toll-free number).

## SECTION 14. DRAFTING INFORMATION

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

---

26 CFR 1.601.204: Changes in accounting periods and in methods of accounting.  
(Also Part 1: §§ 446, 475; 1.475(a)-4.)

## Rev. Proc. 2007-41

### SECTION 1. PURPOSE

Section 1.475(a)-4 of the Income Tax Regulations (the safe harbor valuation regulations) permits dealers in securities and dealers in commodities to elect to use the values of eligible positions reported on certain financial statements as the fair market values of those positions for purposes of section 475 of the Internal Revenue Code (Code). This revenue procedure designates the securities and commodities that are eligible positions for purposes of the safe harbor valuation regulations. This revenue procedure also illustrates the application of the safe harbor to taxpayers who are both dealers and traders.



## SECTION 2. BACKGROUND

.01 Section 475(a) of the Internal Revenue Code requires dealers in securities to value their securities at fair market value as of the last business day of the year. Section 475(e) allows dealers in commodities to elect this same mark-to-market treatment for their commodities. Section 475(f) allows traders in securities (and traders in commodities) to elect mark-to-market treatment for positions held in connection with the taxpayer's securities trading business (or commodities trading business, as the case may be).

.02 Section 475(c)(2) defines security as any—

- (A) share of stock in a corporation;
- (B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;
- (C) note, bond, debenture, or other evidence of indebtedness;
- (D) interest rate, currency, or equity notional principal contract;
- (E) evidence of interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D) [of section 475(c)(2)], or any currency, including any option, forward contract, short position, and any similar financial instrument in such a security or currency; and

(F) position which —

(i) is not a security described in subparagraph (A), (B), (C), (D), or (E) [of section 475(c)(2)];

(ii) is a hedge with respect to such a security, and;

(iii) is clearly identified in the dealer's records as being described in [subparagraph (F) of section 475(c)(2)] before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

Subparagraph (E) [of section 475(c)(2)] shall not include any contract to which section 1256(a) applies.

.03 Section 475(e)(2) defines commodity as:

(A) any commodity which is actively traded (within the meaning of section 1092(d)(1));

(B) any notional principal contract with respect to any commodity described in subparagraph (A) [of section 475(e)(2)];

(C) any evidence of an interest in, or a derivative instrument in, any commodity described in subparagraph (A) or (B) [of section 475(e)(2)], including any option, forward contract, futures contract, short position, and any similar instrument in such a commodity; and

(D) any position which —

(i) is not a commodity described in subparagraph (A), (B), or (C) [of section 475(e)(2)],

(ii) is a hedge with respect to such a commodity, and

(iii) is clearly identified in the taxpayer's records as being described in [subparagraph (D) of section 475(2)(2)] before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

.04 Section 475(g) provides that the Secretary shall prescribe regulations as may be necessary or appropriate to carry out the purposes of § 475. The legislative history of § 475 indicates that, under this regulatory authority, the Secretary may issue regulations to permit the use of valuation methodologies that reduce the administrative burden of compliance on taxpayers but that nevertheless clearly reflect income for federal income tax purposes. H.R. Rep. No. 213, 103d Cong., 1<sup>st</sup> Sess. 616 (1993), 1993-3 C.B. 494.

.05 On June 12, 2007, the Internal Revenue Service and the Treasury Department published the safe harbor valuation regulations in the **Federal Register** (T.D. 9328). These regulations provide an elective safe harbor method for valuation under § 475 for dealers in securities and dealers in commodities. Under the safe harbor in § 1.475(a)-4, an eligible taxpayer (as defined in § 1.475(a)-4) may elect that, if certain conditions and limitations are met, the values reported for certain eligible positions for financial reporting purposes are treated as those positions' fair market values for purposes of § 475.

.06 Section 1.475(a)-4(c) defines an eligible taxpayer as “(1) a dealer in securities, as defined in section 475(c)(1) and the regulations thereunder; or (2) a dealer in commodities, as defined in section 475(e) and any regulations thereunder, that is subject to an election under section 475(e).”

.07 Section 1.475(a)-4(g) states, “For any taxpayer, an eligible position is any security or commodity that the Commis-

sioner in a revenue procedure or other published guidance designates with respect to that taxpayer as an eligible position for purposes of this safe harbor.”

## SECTION 3. SCOPE

This revenue procedure designates eligible positions under § 1.475(a)-4(g) for electing eligible taxpayers under § 1.475(a)-4(c).

## SECTION 4. ELIGIBLE POSITIONS FOR SAFE HARBOR

Pursuant to § 1.475(a)-4(g), the following are designated as eligible positions for purposes of the safe harbor valuation regulations:

.01 With respect to an eligible taxpayer described in § 1.475(a)-4(c)(1), any security within the meaning of § 475(c)(2) and the regulations thereunder.

.02 With respect to an eligible taxpayer described in § 1.475(a)-4(c)(2), any commodity within the meaning of § 475(e)(2) and any regulations thereunder.

## SECTION 5. EXAMPLES

The following examples illustrate the application of this revenue procedure:

### .01 Example 1.

*X* is both a dealer in securities and a dealer in physical commodities. In a business unrelated to its commodities dealing business, *X* is a trader in commodity derivatives. With respect to the commodity trading business, *X* has made a mark-to-market election under § 475(f)(2) but has not made the commodity dealer election under § 475(e). *X* makes the valuation safe harbor election under § 1.475(a)-4.

Because *X* is a dealer in securities, *X* is an eligible taxpayer within the meaning of § 1.475(a)-4(c)(1). Accordingly, *X*'s securities are eligible positions with respect to *X*, and, if all other requirements are met, may be covered by the valuation safe harbor. Because *X* has not made the election under § 475(e), however, *X* is not described in § 1.475(a)-4(c)(2). For that reason, *X*'s commodity positions are not eligible positions with respect to *X*, and the positions in the commodity trading business (which are marked to market pursuant to § 475(f)) are not covered by the valuation safe harbor.

### .02 Example 2.

*Y* is a dealer in commodities and is a trader in securities but is not a dealer in securities. *Y* makes the elections under § 475(e) (the commodity dealer election), under § 475(f) (the election to apply § 475 to its securities trading business), and under § 1.475(a)-4 (the valuation safe harbor election).

Because *Y* is an eligible taxpayer described in § 1.475(a)-4(c)(2), *Y*'s commodity positions are eligible positions with respect to *Y*. Although *Y* also marks to market the securities held in connection

with *Y*'s securities trading business, those securities are not eligible positions with respect to *Y* because *Y* is not an eligible taxpayer described in § 1.475(a)–4(c)(1).

#### SECTION 6. EFFECTIVE DATES

This revenue procedure is effective on June 12, 2007.

#### SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Marsha Ann Sabin or John W. Rogers III of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information re-

garding this revenue procedure, contact Marsha Ann Sabin or John W. Rogers III at (202) 622–3950 (not a toll-free call).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking and Notice of Public Hearing

### Employer Comparable Contributions to Health Savings Accounts Under Section 4980G

#### REG-143797-06

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G in instances where an employee has not established an HSA by December 31<sup>st</sup> and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses. In general, these proposed regulations affect employers that contribute to employees' HSAs. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by August 29, 2007. Outlines of topics to be discussed at the public hearing scheduled for September 27, 2007, at 10:00 am, must be received by August 28, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-143797-06), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered to CC:PA:LPD:PR (REG-143797-06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS - REG-143797-06). The public hearing will be held in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mireille Khoury at (202) 622-6080; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, **Office of Information and Regulatory Affairs**, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 31, 2007.

Comments are specifically requested concerning:

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

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

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

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

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

The collection of information in these proposed regulations is in Q & A-14. This

information is needed for purposes of making HSA contributions to employees who establish an HSA after the end of the calendar year but before the last day of February. The likely respondents are employers that contribute to employees' HSAs.

Estimated total annual reporting burden: 1,250,000 hours.

The estimated annual burden per respondent is .25 hour.

Estimated number of respondents: 5,000,000.

The estimated annual frequency of responses: 1.

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

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

##### Background

This document contains proposed Pension Excise Tax Regulations (26 CFR part 54) under section 4980G of the Internal Revenue Code (Code). Under section 4980G, an excise tax is imposed on an employer that fails to make comparable contributions to the HSAs of its employees.

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Act), Public Law 108-173, (117 Stat. 2066, 2003) added section 223 to the Code to permit eligible individuals to establish HSAs for taxable years beginning after December 31, 2003. Section 4980G was also added to the Code by the Act. Section 4980G(a) imposes an excise tax on the failure of an employer to make comparable contributions to the HSAs of its employees for a calendar year. Section 4980G(b) provides that rules and requirements similar to section 4980E (the comparability rules for Archer Medical Savings Accounts (Archer MSAs)) apply for purposes of section 4980G. Section 4980E(b) imposes an excise tax equal to 35% of the aggregate amount contributed

by the employer to the Archer MSAs of employees during the calendar year if an employer fails to make comparable contributions to the Archer MSAs of its employees in a calendar year. Accordingly, if an employer fails to make comparable contributions to the HSAs of its employees during a calendar year, an excise tax equal to 35% of the aggregate amount contributed by the employer to the HSAs of its employees during that calendar year is imposed on the employer. See sections 4980G(a) and (b) and 4980E(b). See also Notice 2004-2, 2004-1 C.B. 269, Q & A-32.

On August 26, 2005, proposed regulations (REG-138647-04, 2005-2 C.B. 697) on the comparability rules of section 4980G were published in the **Federal Register** (70 FR 50233). On July 31, 2006, final regulations (REG-138647-04, 2006-3 I.R.B. 328) on the comparability rules were published in the **Federal Register** (71 FR 43056). The final regulations clarified and expanded upon the guidance regarding the comparability rules published in Notice 2004-2 and in Notice 2004-50, 2004-2 C.B. 196, Q & A-46 through Q & A-54. See §601.601(d)(2) of this chapter. Q & A-6(b) of the final regulations reserved the issue dealing with an employee who has not established an HSA by the end of the calendar year. These proposed regulations address that reserved issue and one additional issue concerning the acceleration of employer contributions.

Section 4980G was amended by section 306 of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2922), effective for taxable years beginning after December 31, 2006. Treasury and IRS expect to publish guidance on the amendment to section 4980G.

### Explanation of Provisions

#### *Employee Has Not Established HSA by December 31*

The proposed regulations provide a means for employers to comply with the comparability requirements with respect to employees who have not established an HSA by December 31, as well as with respect to employees who may have established an HSA but not notified the employer of that fact. The proposed reg-

ulations provide that, in order to comply with the comparability rules for a calendar year with respect to such employees, the employer must comply with a notice requirement and a contribution requirement. In order to comply with the notice requirement, the employer must provide all such employees, by January 15 of the following calendar year, written notice that each eligible employee who, by the last day of February, both establishes an HSA and notifies the employer that he or she has established the HSA will receive a comparable contribution to the HSA. For each such eligible employee who establishes an HSA and so notifies the employer by the end of February, the employer must contribute to the HSA by April 15 comparable amounts (taking into account each month that the employee was a comparable participating employee) plus reasonable interest. The notice may be delivered electronically. The proposed regulations provide sample language that employers may use as a basis in preparing their own notices.

#### *Acceleration of Employer Contributions*

The proposed regulations also address a second issue relating to acceleration of contributions. They provide that, for any calendar year, an employer may accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred during the calendar year qualified medical expenses exceeding the employer's cumulative HSA contributions at that time. If an employer accelerates contributions for this reason, these contributions must be available on an equal and uniform basis to all eligible employees throughout the calendar year and employers must establish reasonable uniform methods and requirements for acceleration of contributions and the determination of medical expenses. An employer is not required to contribute reasonable interest on either accelerated or non-accelerated HSA contributions. But see Q & A-6 and Q & A-12 in §54.4980G-4 for when reasonable interest must be paid.

#### *Other issues*

These proposed regulations concern only section 4980G. Other statutes may impose additional requirements (for ex-

ample, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (sections 9801-9803)).

### Proposed Effective Date

It is proposed that these regulations apply to employer contributions made on or after the date the final regulations are published in the **Federal Register**. However, taxpayers may rely on these regulations for guidance pending the issuance of final regulations. Alternatively, until the publication of final regulations, an employer may continue to rely on the last sentence of Q & A-6(a) of section 54.4980G-4 of the proposed regulations published in the **Federal Register** on August 26, 2005, which provides that, an employer is not required to make comparable contributions for a calendar year to an employee's HSA if the employee has not established an HSA by December 31<sup>st</sup> of the calendar year.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact the estimated burden associated with the information collection averages 15 minutes per respondent. Moreover, a model notice has been provided for employers who are subject to this collection of information and any burden imposed on employees due to the collection of information in these regulations will be outweighed by the benefit of receiving HSA contributions. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Comments and Public Hearing

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

A public hearing has been scheduled for September 27, 2007, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by August 30, 2007, and an outline of the topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) August 28, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

## Drafting Information

The principal author of these proposed regulations is Mireille Khoury, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

\* \* \* \* \*

## Proposed Amendment to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

### PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 continues to read in part as follows:

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

Par. 2. Section 54.4980G-0 is amended by adding entries for Q & A-14, Q & A-15 and Q & A-16 to read as follows:

#### *§54.4980G-0 Table of contents.*

\* \* \* \* \*

#### *§54.4980G-4 Calculating comparable contributions.*

\* \* \* \* \*

Q-14: How does an employer comply with the comparability rules if an employee has not established an HSA by December 31st?

Q-15: For any calendar year, may an employer accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses (as defined in section 223(d)(2)) exceeding the employer's cumulative HSA contributions at that time?

Q-16: What is the effective date for the rules in Q & A-14 and 15 of this section?

Par. 3. Section 54.4980G-4 is amended by:

1. Removing paragraph (b) and redesignating paragraph (c) as paragraph (b) in Q & A-6.

2. Adding Q & A-14, Q & A-15 and Q & A-16.

The additions read as follows:

#### *§54.4980G-4 Calculating comparable contributions.*

\* \* \* \* \*

Q-14: Does an employer fail to satisfy the comparability rules for a calendar year if the employer fails to make contributions with respect to eligible employees because the employee has not established an HSA or because the employer does not know that the employee has established an HSA?

A-14: (a) *In general.* An employer will not fail to satisfy the comparability rules

for a calendar year merely because the employer fails to make contributions with respect to an eligible employee because the employee has not established an HSA or because the employer does not know that the employee has established an HSA, if—

(1) The employer provides timely written notice to all such eligible employees that it will make comparable contributions for eligible employees who, by the last day of February of the following calendar year, both establish an HSA and notify the employer (in accordance with a procedure specified in the notice) that they have established an HSA; and

(2) For each such eligible employee who establishes an HSA and so notifies the employer on or before the last day of February of such following calendar year, the employer contributes to the HSA comparable amounts (taking into account each month that the employee was a comparable participating employee) plus reasonable interest by April 15<sup>th</sup> of such following calendar year.

(b) *Notice.* The notice described in paragraph (a) of this Q & A-14 must be provided to each eligible employee who has not established an HSA by December 31 or if the employer does not know if the employee established an HSA. The employer may provide the notice to other employees as well. However, if the employee has earlier notified the employer that he or she has established an HSA, or if the employer has previously made contributions to that employee's HSA, the employer may not condition making comparable contributions on receipt of any additional notice from that employee. For each calendar year, a notice is deemed to be timely if the employer provides the notice no earlier than 90 days before the first HSA employer contribution for that calendar year and no later than January 15 of the following calendar year.

(c) *Model notice.* Employers may use the following sample language as a basis in preparing their own notices.

### **Notice to Employees Regarding Employer Contributions to HSAs:**

This notice explains how you may be eligible to receive contributions from [employer] if you are covered by a High Deductible Health Plan (HDHP). [Employer] provides contributions to the

Health Savings Account (HSA) of each employee who is [insert employer's eligibility requirements for HSA contributions] ("eligible employee"). If you are an eligible employee, you must do the following in order to receive an employer contribution:

(1) establish an HSA on or before the last day in February of [insert year after the year for which the contribution is being made] and;

(2) notify [insert name and contact information for appropriate person to be contacted] of your HSA account information on or before the last day in February of [insert year after year for which the contribution is being made]. [Specify the HSA account information that the employee must provide (e.g., account number, name and address of trustee or custodian, etc.) and the method by which the employee must provide this account information (e.g., in writing, on a certain form, etc.)].

If you establish your HSA on or before the last day of February in [insert year after year for which the contribution is being made] and notify [employer] of your HSA account information, you will receive your HSA contributions, plus reasonable interest, for [insert year for which contribution is being made] by April 15 of [insert year after year for which contribution is being made]. If, however, you do not establish your HSA or you do not notify us of your HSA account information by the deadline, then we are not required to make any contributions to your HSA for [insert applicable year]. You may notify us that you have established an HSA by sending an [e-mail or] a written notice to [insert name, title and, if applicable, e-mail address]. If you have any questions about this notice, you can contact [insert name and title] at [insert telephone number or other contact information].

(e) *Electronic delivery.* An employer may furnish the notice required under this section electronically. See §1.401(a)-21 of this chapter.

(f) *Examples.* The following examples illustrate the rules in this Q & A-14:

*Example 1.* In a calendar year, Employer Q contributes to the HSAs of current employees who are eligible individuals covered under any HDHP. For the 2009 calendar year, Employer Q contributes \$50 per month on the first day of each month, beginning January 1<sup>st</sup>, to the HSA of each employee who is an el-

igible employee on that date. For the 2009 calendar year, Employer Q provides written notice satisfying the content requirements on October 16, 2008 to all employees regarding the availability of HSA contributions for eligible employees. For eligible employees who are hired after October 16, 2008, Employer Q provides such a notice no later than January 15, 2010. Employer Q's notice satisfies the notice requirements in paragraph (a)(1) of this Q & A-14.

*Example 2.* Employer R's written cafeteria plan permits employees to elect to make pre-tax salary reduction contributions to their HSAs. Employees making this election have the right to receive cash or other taxable benefits in lieu of their HSA pre-tax contribution. Employer R automatically contributes a non-elective matching contribution to the HSA of each employee who makes a pre-tax HSA contribution. Because Employer R's HSA contributions are made through the cafeteria plan, the comparability requirements do not apply to the HSA contributions made by Employer R. Consequently, Employer R is not required to provide written notice to its employees regarding the availability of this matching HSA contribution. See Q & A-1 in §54.4980G-5 for treatment of HSA contributions made through a cafeteria plan.

*Example 3.* In a calendar year, Employer S maintains an HDHP and only contributes to the HSAs of eligible employees who elect coverage under its HDHP. For the 2009 calendar year, Employer S employs ten eligible employees. For the 2009 calendar year, all ten employees have elected coverage under Employer S's HDHP and have established HSAs. For the 2009 calendar year, Employer S makes comparable contributions to the HSAs of all ten employees. Employer S satisfies the comparability rules. Thus, Employer S is not required to provide written notice to its employees regarding the availability of HSA contributions for eligible employees.

*Example 4.* In a calendar year, Employer T contributes to the HSAs of current full-time employees with family coverage under any HDHP. For the 2009 calendar year, Employer T provides timely written notice satisfying the content requirements to all employees regardless of HDHP coverage. Employer T makes identical monthly contributions to all eligible employees (meaning full time employees with family HDHP coverage) that establish HSAs. Employer T contributes comparable amounts (taking into account each month that the employee was a comparable participating employee) plus reasonable interest to the HSAs of the eligible employees that establish HSAs and provide the necessary information after the end of the year but on or before the last day of February, 2010. Employer T makes no contribution to the HSAs of employees that do not establish an HSA and provide the necessary information on or before the last day of February, 2010. Employer T satisfies the comparability requirements.

*Example 5.* For 2007, Employer V contributes to the HSAs of current full time employees with family coverage under any HDHP. Employer V has 500 current full time employees. As of the date for Employer V's first HSA contribution for the 2007 calendar year, 450 employees have established HSAs. Employer V provides timely written notice satisfying the content requirements only to those 50 current full time employees who have not established HSAs. Employer V makes identical quarterly contributions to the 450

employees who established HSAs. Employer V contributes comparable amounts to the eligible employees who establish HSAs and provide the necessary information after the end of the year but on or before the last day of February, 2008. Employer V makes no contribution to the HSAs of employees that do not establish an HSA and provide the necessary information on or before the last day of February, 2008. Employer V satisfies the comparability rules.

Q-15: For any calendar year, may an employer accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses (as defined in section 223(d)(2)) exceeding the employer's cumulative HSA contributions at that time?

A-15: (a) *In general.* Yes. For any calendar year, an employer may accelerate part or all of its contributions for the entire year to the HSAs of employees who have incurred, during the calendar year, qualified medical expenses exceeding the employer's cumulative HSA contributions at that time. If an employer accelerates contributions to employees' HSAs, all accelerated contributions must be available throughout the calendar year on an equal and uniform basis to all eligible employees. Employers must establish reasonable uniform methods and requirements for accelerated contributions and the determination of medical expenses.

(b) *Satisfying comparability.* An employer that accelerates contributions to the HSAs of its employees will not fail to satisfy the comparability rules because employees who incur qualifying medical expenses exceeding the employer's cumulative HSA contributions at that time have received more contributions in a given period than comparable employees who do not incur such expenses, provided that all comparable employees receive the same amount or the same percentage for the calendar year. Also, an employer that accelerates contributions to the HSAs of its employees will not fail to satisfy the comparability rules because an employee who terminates employment prior to the end of the calendar year has received more contributions on a monthly basis than employees who work the entire calendar year. An employer is not required to contribute reasonable interest on either accelerated or non-accelerated HSA contributions. But see Q & A-6 and Q & A-12 of this section for when reasonable interest must be paid.

Q-16: What is the effective date for the rules in Q & A-14 and 15 of this section?

A-16: It is proposed that these regulations apply to employer contributions made on or after the date the final regulations are published in the **Federal Register**. However, taxpayers may rely on these regulations for guidance pending the issuance of final regulations. Alternatively, until the publication of final regulations, an employer may continue to rely on the last sentence of Q & A-6(a) of section 54.4980G-4 of the proposed regulations published in the **Federal Register** on August 26, 2005, which provides that, an employer is not required to make comparable contributions for a calendar year to an employee's HSA if the employee has not established an HSA by December 31<sup>st</sup> of the calendar year.

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

(Filed by the Office of the Federal Register on May 31, 2007, 8:45 a.m., and published in the issue of the Federal Register for June 1, 2007, 72 F.R. 30501)

## Foundations Status of Certain Organizations

### Announcement 2007-60

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

A Reel Chance, Clayton, NJ  
About Planning Parties, Inc.,  
Loganville, GA

Abundant Grace Gospel Ministry, Inc.,  
Webster, NY  
Acacia Charities, Inc., Glens Falls, NY  
African American Women Against Aids,  
Dallas, TX  
Agape Diversified Care-Givers,  
Incorporated, Detroit, MI  
A. J. Hoffman Foundation, Inc.,  
Florham Park, NJ  
Al Sami Charity Foundation,  
Dove Canyon, CA  
American Home Dream Foundation,  
Arlington, TX  
Appeal of the Nobel Peace Laureates  
Foundation, Inc., Washington, DC  
Asian Transplantation Awareness in  
Southern California, Orange, CA  
A.S.S.K., Honolulu, HI  
Baby Sudz, Inc., Houston, TX  
Benefits USA Foundation, Columbia, SC  
Bluecollar.org, Mobile, AL  
Bronzeville Community Development  
Association, Chicago, IL  
Burnham Educational Center, Seattle, WA  
Carlas Lil Angels Learning Center,  
Cedar Hill, TX  
Carol Morgan School Foundation, Inc.,  
Miami, FL  
Center for International Relations Corp.,  
Arlington, VA  
Central Florida Cancer Institute  
Foundation, Davenport, FL  
Chee Murray Charitable Foundation,  
Sugar Land, TX  
Childrens Bridge, Inc., Wayne, NJ  
Christian Transdenominational  
Spiritual Group & Enlightenment,  
Tallahassee, FL  
Christian W. Konstanzer Fund of the  
Kiwans Club of Mt. Clemens, Inc.,  
Mt. Clemens, MI  
Citadel of Hope Community Development  
Corp., Hillside, NJ  
Color Country Chapter of Candlelighters  
Childhood Cancer, St. George, UT  
Community Health Resource, Inc.,  
Hogansville, GA  
Computer Literate Learning Center, Inc.,  
Clarkston, GA  
Computer Repair & Networking  
Organization, New York, NY  
Crane Area Schools Education  
Foundation, Inc., Crane, OR  
Curtis L. Backmon Sr. Foundation,  
Baltimore, MD  
Daomi Foundation, Phoenixville, PA  
Don Seibel Memorial Scholarship  
Foundation, Finksburg, MD

Educating Little People, York, PA  
Edwards Foundation, Beaverton, OR  
Enrique E. Pina Sr. Ministry,  
Millington, TN  
Enterprise Unlimited, Los Angeles, CA  
Ethiopian Humanitarian Foundation,  
San Diego, CA  
FAC Services, Inc., East Point, GA  
Fathersday DC, Inc., St. Petersburg, FL  
First Creative Research Consultants, Inc.,  
Beaumont, TX  
FMC Foundation, Inc., New York, NY  
Focused Kids, Inc., Memphis, TN  
Foreign Trade Institute, Denver, CO  
Forensic Institute of Auto Theft Analysis,  
Big Bend, WI  
Fresh Anointing Deliverance Center, Inc.,  
Boston, GA  
Fulton County Child Abuse Prevention  
Council, Rochester, IN  
Global Health Vision A NJ Nonprofit  
Corporation, Plainfield, NJ  
Good Samaritan Development  
Corporation, Wilson, NC  
Heartbridge, Inc., Kailua Kona, HI  
Heartland Womens Foundation, Inc.,  
Tribune, KS  
Heavenly Cradle Day Care Center,  
St. Louis, MO  
Helen Residence, Inc., Roselle, NJ  
Help for Children of America, Inc.,  
Hartsdale, NY  
Help Mom Work at Home Christian Child  
Care Guild, Seattle, WA  
Her Place, Inc., Baltimore, MD  
Hope Housing Redevelopment  
Corporation, San Antonio, TX  
Humanitarian Action Network for  
Democratization and Security,  
Galveston, TX  
Hunting Park Development, Inc.,  
Philadelphia, PA  
Impowerment Group, Providence, RI  
Innecourt Ministries, Inc., Hinesville, GA  
International Diversity Education Center,  
Ridgewood, NJ  
International Institute of Success  
Dynamics, Boston, MA  
International Midwives Exchange, Inc.,  
High Falls, NY  
Italian American Cultural Arts Corp.,  
Yonkers, NY  
J & J Youth Home & Health Care  
Services, Inc., Carson, CA  
J Live N Me Workplace Ministries,  
Incorporated, Temple, TX  
Jawad Omair Yasin Foundation,  
Oklahoma City, OK

John Lee Comer Center, Montgomery, AL  
 Julius Deloatche Basketball Camp,  
 Peoria, IL  
 Kansas Dental Association Relief Fund,  
 Incorporated, Topeka, KS  
 Kidney Research Fund USA,  
 Bryn Mawr, PA  
 Kids RULE, Inc., Boca Raton, FL  
 Lab Consulting, Inc., Tulsa, OK  
 Lambert Friends Ministries, Inc.,  
 Portland, OR  
 Life Trades Center, Verona, WI  
 Lineam, Inc., Norco, LA  
 Loganworks, Port Angeles, WA  
 Love Arms for Boys, Inc., El Cerrito, CA  
 Maui Jazz Project, Inc., Kahului, HI  
 McTaggart Court 2, Inc., Akron, OH  
 Mission Now, Inc., St. Louis, MO  
 My Sisters & Me Ministries, Inc., Gary, IN  
 National Educational Diversity  
 Students of America Organization,  
 Van Buren, ME  
 New Lifestyle Living, Inc., Linden, NJ  
 Northeast Conservatory of Music,  
 Delmar, NY  
 Oaktree Assisted Living, Inc., Yardley, PA  
 Oasis Veritas, St. Louis Park, MN  
 On Common Ground, Quincy, CA  
 PACES – Performing Arts and Cultural  
 Exchange Studios, Kealahou, HI  
 Palee Walton Ministries, Inc.,  
 Oakland, CA  
 Parkford Apartments Tenants Association,  
 Library, PA  
 Pasco Community Development  
 Foundation, Inc., Brooklyn, MD  
 Peanut Butter Project, Alameda, CA  
 Phase I & Phase II Sober Living,  
 Bakersfield, CA  
 Phoenix Outreach Community  
 Development Corporation, Houston, TX  
 Pillar Family Foundation in Memory  
 of Raizy Rivky and Eli Pillar,  
 Brooklyn, NY  
 Place of Grace Ministries, Carlisle, PA  
 Project USA Corp., Cranston, RI  
 Pucho, Inc., Buffalo, NY  
 Pueri Sancti Spiriti, Albuquerque, NM  
 Rainbow Ministry, Everett, MA  
 Raptor Rehabilitation Project, Inc.,  
 Catalina, AZ  
 Ritu Sinha Charitable Foundation,  
 Staten Island, NY  
 Roc-Link, Inc., Irvine, CA  
 Rolando McClain Crisis Center, Inc.,  
 Isola, MS  
 Saint George Foundation for Social  
 Sciences, Houston, TX  
 San Francisco Revival Ministry,  
 San Leandro, CA  
 Save Our Sons, Inc., Atlanta, GA  
 Seva Fund Foundation, Inc.,  
 Morro Bay, CA  
 Shelbina Community Advancement  
 Corporation, Shelbina, MO  
 So Be It Entertainment, Harrisburg, PA  
 Sons of Abraham, Philadelphia, PA  
 Southeastern Bat Diversity Network,  
 Muncie, IN  
 Southern Foundation for the Advancement  
 of Arts and Education, Cumming, GA  
 Spinnaker Cove Nature Preserve  
 and Conservation Area, Inc.,  
 Indianapolis, IN  
 Squeaky Wheel Foundation, Surrey, ME  
 STI Empowerment Fund, Inc.,  
 Hempstead, NY  
 Switchback Association, Renton, WA  
 T L Foundation, Chicago, IL  
 Take Time Out, Inc., Farmington Hills, MI  
 Taxpayer Assistance Center, Inc.,  
 Philadelphia, PA  
 Tierra Institute International,  
 Huntington Beach, CA  
 Tom Weyers Memorial Scholarship Trust,  
 Appleton, WI  
 True Love Ministries, Lancaster, CA  
 Unaffiliated Baptist Churches of America,  
 Sioux Falls, SD  
 United Missios Christian Awareness  
 Ministry, Marietta, GA  
 United States Airpower Museum,  
 Fresno, CA  
 Unity of the Faith Ministries, Inc.,  
 Mt. Vernon, NY  
 Up the Unity, Inc., Washington, DC  
 Upromise Education Foundation,  
 Needham, MA  
 Waterfront Housing GP Corp.,  
 Pittsburgh, PA  
 West Los Angeles Christian Outreach,  
 Inc., Los Angeles, CA  
 Young Aesthetics Society, Hodgdon, ME  
 Youth Excelling Socially, Inc.,  
 Little Rock, AR

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.



# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

## Abbreviations

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

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

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

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

## Numerical Finding List<sup>1</sup>

Bulletins 2007–1 through 2007–26

### Announcements:

2007-1, 2007-1 I.R.B. 243  
2007-2, 2007-2 I.R.B. 263  
2007-3, 2007-4 I.R.B. 376  
2007-4, 2007-7 I.R.B. 518  
2007-5, 2007-4 I.R.B. 376  
2007-6, 2007-4 I.R.B. 376  
2007-7, 2007-4 I.R.B. 377  
2007-8, 2007-5 I.R.B. 416  
2007-9, 2007-5 I.R.B. 417  
2007-10, 2007-6 I.R.B. 464  
2007-11, 2007-6 I.R.B. 464  
2007-12, 2007-6 I.R.B. 465  
2007-13, 2007-7 I.R.B. 519  
2007-14, 2007-7 I.R.B. 519  
2007-15, 2007-8 I.R.B. 596  
2007-16, 2007-8 I.R.B. 597  
2007-17, 2007-8 I.R.B. 597  
2007-18, 2007-9 I.R.B. 625  
2007-19, 2007-7 I.R.B. 521  
2007-20, 2007-8 I.R.B. 599  
2007-21, 2007-9 I.R.B. 630  
2007-22, 2007-9 I.R.B. 631  
2007-23, 2007-10 I.R.B. 665  
2007-24, 2007-10 I.R.B. 681  
2007-25, 2007-10 I.R.B. 682  
2007-26, 2007-10 I.R.B. 682  
2007-27, 2007-11 I.R.B. 733  
2007-28, 2007-10 I.R.B. 683  
2007-29, 2007-11 I.R.B. 733  
2007-30, 2007-11 I.R.B. 734  
2007-31, 2007-12 I.R.B. 769  
2007-32, 2007-11 I.R.B. 734  
2007-33, 2007-13 I.R.B. 841  
2007-34, 2007-13 I.R.B. 842  
2007-35, 2007-15 I.R.B. 949  
2007-36, 2007-15 I.R.B. 953  
2007-37, 2007-15 I.R.B. 954  
2007-38, 2007-15 I.R.B. 954  
2007-39, 2007-15 I.R.B. 954  
2007-40, 2007-16 I.R.B. 978  
2007-41, 2007-16 I.R.B. 978  
2007-42, 2007-17 I.R.B. 1037  
2007-43, 2007-17 I.R.B. 1038  
2007-44, 2007-19 I.R.B. 1238  
2007-45, 2007-18 I.R.B. 1122  
2007-46, 2007-19 I.R.B. 1239  
2007-47, 2007-20 I.R.B. 1260  
2007-48, 2007-20 I.R.B. 1274  
2007-49, 2007-21 I.R.B. 1300  
2007-50, 2007-22 I.R.B. 1337  
2007-51, 2007-22 I.R.B. 1337  
2007-52, 2007-22 I.R.B. 1337

### Announcements— Continued:

2007-53, 2007-23 I.R.B. 1383  
2007-54, 2007-23 I.R.B. 1383  
2007-55, 2007-23 I.R.B. 1384  
2007-56, 2007-23 I.R.B. 1384  
2007-57, 2007-24 I.R.B. 1418  
2007-58, 2007-25 I.R.B. 1448  
2007-59, 2007-25 I.R.B. 1448  
2007-60, 2007-26 I.R.B. 1499

### Notices:

2007-1, 2007-2 I.R.B. 254  
2007-2, 2007-2 I.R.B. 254  
2007-3, 2007-2 I.R.B. 255  
2007-4, 2007-2 I.R.B. 260  
2007-5, 2007-3 I.R.B. 269  
2007-6, 2007-3 I.R.B. 272  
2007-7, 2007-5 I.R.B. 395  
2007-8, 2007-3 I.R.B. 276  
2007-9, 2007-5 I.R.B. 401  
2007-10, 2007-4 I.R.B. 354  
2007-11, 2007-5 I.R.B. 405  
2007-12, 2007-5 I.R.B. 409  
2007-13, 2007-5 I.R.B. 410  
2007-14, 2007-7 I.R.B. 501  
2007-15, 2007-7 I.R.B. 503  
2007-16, 2007-8 I.R.B. 536  
2007-17, 2007-12 I.R.B. 748  
2007-18, 2007-9 I.R.B. 608  
2007-19, 2007-11 I.R.B. 689  
2007-20, 2007-9 I.R.B. 610  
2007-21, 2007-9 I.R.B. 611  
2007-22, 2007-10 I.R.B. 670  
2007-23, 2007-11 I.R.B. 690  
2007-24, 2007-12 I.R.B. 750  
2007-25, 2007-12 I.R.B. 760  
2007-26, 2007-14 I.R.B. 870  
2007-27, 2007-13 I.R.B. 814  
2007-28, 2007-14 I.R.B. 880  
2007-29, 2007-14 I.R.B. 881  
2007-30, 2007-14 I.R.B. 883  
2007-31, 2007-16 I.R.B. 971  
2007-32, 2007-17 I.R.B. 996  
2007-33, 2007-21 I.R.B. 1284  
2007-34, 2007-17 I.R.B. 996  
2007-35, 2007-15 I.R.B. 940  
2007-36, 2007-17 I.R.B. 1000  
2007-37, 2007-17 I.R.B. 1002  
2007-38, 2007-18 I.R.B. 1103  
2007-39, 2007-20 I.R.B. 1243  
2007-40, 2007-21 I.R.B. 1284  
2007-41, 2007-21 I.R.B. 1287  
2007-42, 2007-21 I.R.B. 1288  
2007-43, 2007-22 I.R.B. 1318  
2007-44, 2007-22 I.R.B. 1320  
2007-45, 2007-22 I.R.B. 1320

### Notices— Continued:

2007-46, 2007-23 I.R.B. 1342  
2007-47, 2007-24 I.R.B. 1393  
2007-48, 2007-25 I.R.B. 1428  
2007-49, 2007-25 I.R.B. 1429  
2007-50, 2007-25 I.R.B. 1430  
2007-51, 2007-26 I.R.B. 1456  
2007-52, 2007-26 I.R.B. 1456  
2007-53, 2007-26 I.R.B. 1474

### Proposed Regulations:

REG-100841-97, 2007-12 I.R.B. 763  
REG-153037-01, 2007-15 I.R.B. 942  
REG-157711-02, 2007-8 I.R.B. 537  
REG-123365-03, 2007-23 I.R.B. 1357  
REG-143316-03, 2007-21 I.R.B. 1292  
REG-149856-03, 2007-24 I.R.B. 1394  
REG-144859-04, 2007-20 I.R.B. 1245  
REG-159444-04, 2007-9 I.R.B. 618  
REG-115403-05, 2007-12 I.R.B. 767  
REG-152043-05, 2007-2 I.R.B. 263  
REG-158677-05, 2007-16 I.R.B. 975  
REG-161919-05, 2007-6 I.R.B. 463  
REG-125632-06, 2007-5 I.R.B. 415  
REG-143601-06, 2007-24 I.R.B. 1398  
REG-143797-06, 2007-26 I.R.B. 1495  
REG-146247-06, 2007-16 I.R.B. 977  
REG-147144-06, 2007-10 I.R.B. 680  
REG-156420-06, 2007-18 I.R.B. 1110  
REG-156779-06, 2007-17 I.R.B. 1015  
REG-157834-06, 2007-13 I.R.B. 840

### Revenue Procedures:

2007-1, 2007-1 I.R.B. 1  
2007-2, 2007-1 I.R.B. 88  
2007-3, 2007-1 I.R.B. 108  
2007-4, 2007-1 I.R.B. 118  
2007-5, 2007-1 I.R.B. 161  
2007-6, 2007-1 I.R.B. 189  
2007-7, 2007-1 I.R.B. 227  
2007-8, 2007-1 I.R.B. 230  
2007-9, 2007-3 I.R.B. 278  
2007-10, 2007-3 I.R.B. 289  
2007-11, 2007-2 I.R.B. 261  
2007-12, 2007-4 I.R.B. 354  
2007-13, 2007-3 I.R.B. 295  
2007-14, 2007-4 I.R.B. 357  
2007-15, 2007-3 I.R.B. 300  
2007-16, 2007-4 I.R.B. 358  
2007-17, 2007-4 I.R.B. 368  
2007-18, 2007-5 I.R.B. 413  
2007-19, 2007-7 I.R.B. 515  
2007-20, 2007-7 I.R.B. 517  
2007-21, 2007-9 I.R.B. 613  
2007-22, 2007-10 I.R.B. 675  
2007-23, 2007-10 I.R.B. 675

<sup>1</sup> 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.

**Revenue Procedures— Continued:**

2007-24, 2007-11 I.R.B. 692  
2007-25, 2007-12 I.R.B. 761  
2007-26, 2007-13 I.R.B. 814  
2007-27, 2007-14 I.R.B. 887  
2007-28, 2007-16 I.R.B. 974  
2007-29, 2007-17 I.R.B. 1004  
2007-30, 2007-18 I.R.B. 1104  
2007-31, 2007-19 I.R.B. 1225  
2007-32, 2007-22 I.R.B. 1322  
2007-33, 2007-21 I.R.B. 1289  
2007-34, 2007-23 I.R.B. 1345  
2007-35, 2007-23 I.R.B. 1349  
2007-36, 2007-22 I.R.B. 1335  
2007-37, 2007-25 I.R.B. 1433  
2007-38, 2007-25 I.R.B. 1442  
2007-39, 2007-25 I.R.B. 1446  
2007-40, 2007-26 I.R.B. 1488  
2007-41, 2007-26 I.R.B. 1492

**Revenue Rulings:**

2007-1, 2007-3 I.R.B. 265  
2007-2, 2007-3 I.R.B. 266  
2007-3, 2007-4 I.R.B. 350  
2007-4, 2007-4 I.R.B. 351  
2007-5, 2007-5 I.R.B. 378  
2007-6, 2007-5 I.R.B. 393  
2007-7, 2007-7 I.R.B. 468  
2007-8, 2007-7 I.R.B. 469  
2007-9, 2007-6 I.R.B. 422  
2007-10, 2007-10 I.R.B. 660  
2007-11, 2007-9 I.R.B. 606  
2007-12, 2007-11 I.R.B. 685  
2007-13, 2007-11 I.R.B. 684  
2007-14, 2007-12 I.R.B. 747  
2007-15, 2007-11 I.R.B. 687  
2007-16, 2007-13 I.R.B. 807  
2007-17, 2007-13 I.R.B. 805  
2007-18, 2007-13 I.R.B. 806  
2007-19, 2007-14 I.R.B. 843  
2007-20, 2007-14 I.R.B. 863  
2007-21, 2007-14 I.R.B. 865  
2007-22, 2007-14 I.R.B. 866  
2007-23, 2007-15 I.R.B. 889  
2007-24, 2007-21 I.R.B. 1282  
2007-25, 2007-16 I.R.B. 956  
2007-26, 2007-16 I.R.B. 970  
2007-27, 2007-18 I.R.B. 1099  
2007-28, 2007-18 I.R.B. 1039  
2007-29, 2007-19 I.R.B. 1223  
2007-30, 2007-21 I.R.B. 1277  
2007-31, 2007-21 I.R.B. 1275  
2007-32, 2007-21 I.R.B. 1278  
2007-33, 2007-21 I.R.B. 1281  
2007-34, 2007-22 I.R.B. 1316  
2007-35, 2007-22 I.R.B. 1317  
2007-36, 2007-23 I.R.B. 1339  
2007-37, 2007-24 I.R.B. 1390

**Revenue Rulings— Continued:**

2007-38, 2007-25 I.R.B. 1420  
2007-39, 2007-26 I.R.B. 1449  
2007-40, 2007-25 I.R.B. 1426  
2007-41, 2007-25 I.R.B. 1421

**Tax Conventions:**

2007-23, 2007-10 I.R.B. 665

**Treasury Decisions:**

9298, 2007-6 I.R.B. 434  
9299, 2007-6 I.R.B. 460  
9300, 2007-2 I.R.B. 246  
9301, 2007-2 I.R.B. 244  
9302, 2007-5 I.R.B. 382  
9303, 2007-5 I.R.B. 379  
9304, 2007-6 I.R.B. 423  
9305, 2007-7 I.R.B. 479  
9306, 2007-6 I.R.B. 420  
9307, 2007-7 I.R.B. 470  
9308, 2007-8 I.R.B. 523  
9309, 2007-7 I.R.B. 497  
9310, 2007-9 I.R.B. 601  
9311, 2007-10 I.R.B. 635  
9312, 2007-12 I.R.B. 736  
9313, 2007-13 I.R.B. 805  
9314, 2007-14 I.R.B. 845  
9315, 2007-15 I.R.B. 891  
9316, 2007-16 I.R.B. 962  
9317, 2007-16 I.R.B. 957  
9318, 2007-17 I.R.B. 990  
9319, 2007-18 I.R.B. 1041  
9320, 2007-17 I.R.B. 994  
9321, 2007-19 I.R.B. 1123  
9322, 2007-18 I.R.B. 1100  
9323, 2007-20 I.R.B. 1240  
9324, 2007-22 I.R.B. 1302  
9325, 2007-24 I.R.B. 1386

## Finding List of Current Actions on Previously Published Items<sup>1</sup>

Bulletins 2007–1 through 2007–26

### Announcements:

#### 2006-45

Updated and superseded by  
Ann. 2007-47, 2007-20 I.R.B. 1260

### Notices:

#### 2002-45

Modified by  
Notice 2007-22, 2007-10 I.R.B. 670

#### 2005-1

Obsoleted in part by  
T.D. 9321, 2007-19 I.R.B. 1123

#### 2005-29

Modified and superseded by  
Notice 2007-4, 2007-2 I.R.B. 260

#### 2005-86

Modified by  
Notice 2007-22, 2007-10 I.R.B. 670

#### 2005-98

Modified and superseded by  
Notice 2007-26, 2007-14 I.R.B. 870

#### 2006-2

Modified and superseded by  
Notice 2007-4, 2007-2 I.R.B. 260

#### 2006-4

Superseded in part by  
T.D. 9321, 2007-19 I.R.B. 1123

#### 2006-13

Obsoleted by  
T.D. 9315, 2007-15 I.R.B. 891

#### 2006-24

Clarified, modified, amplified, and superseded by  
Notice 2007-52, 2007-26 I.R.B. 1456

#### 2006-25

Clarified, modified, amplified, and superseded by  
Notice 2007-53, 2007-26 I.R.B. 1474

#### 2006-50

Amplified, clarified, and modified by  
Notice 2007-11, 2007-5 I.R.B. 405

#### 2006-64

Superseded for taxable years on or after  
January 1, 2008 by  
T.D. 9321, 2007-19 I.R.B. 1123

#### 2006-77

Clarified, modified, and amplified by  
Notice 2007-36, 2007-17 I.R.B. 1000

### Notices— Continued:

#### 2006-85

Amplified by  
Notice 2007-48, 2007-25 I.R.B. 1428

#### 2006-87

Modified and supplemented by  
Notice 2007-25, 2007-12 I.R.B. 760

#### 2007-19

Amended and supplemented by  
Notice 2007-31, 2007-16 I.R.B. 971

### Proposed Regulations:

#### REG-208270-86

Corrected by  
Ann. 2007-4, 2007-7 I.R.B. 518

#### REG-121509-00

Corrected by  
Ann. 2007-17, 2007-8 I.R.B. 597

#### REG-139059-02

Corrected by  
Ann. 2007-36, 2007-15 I.R.B. 953  
Ann. 2007-37, 2007-15 I.R.B. 954

#### REG-144859-04

Corrected by  
Ann. 2007-54, 2007-23 I.R.B. 1383

#### REG-141901-05

Corrected by  
Ann. 2007-7, 2007-4 I.R.B. 377

#### REG-142270-05

Corrected by  
Ann. 2007-2, 2007-2 I.R.B. 263

#### REG-125632-06

Corrected by  
Ann. 2007-26, 2007-10 I.R.B. 682

#### REG-127819-06

Corrected by  
Ann. 2007-5, 2007-4 I.R.B. 376

#### REG-136806-06

Corrected by  
Ann. 2007-6, 2007-4 I.R.B. 376  
Hearing cancelled by  
Ann. 2007-19, 2007-7 I.R.B. 521

#### REG-156779-06

Corrected by  
Ann. 2007-53, 2007-23 I.R.B. 1383

### Revenue Procedures:

#### 86-46

Modified by  
Notice 2007-44, 2007-22 I.R.B. 1320

### Revenue Procedures— Continued:

#### 98-20

Superseded by  
Rev. Proc. 2007-12, 2007-4 I.R.B. 354

#### 2000-38

Modified by  
Rev. Proc. 2007-16, 2007-4 I.R.B. 358

#### 2000-42

Obsoleted in part by  
T.D. 9315, 2007-15 I.R.B. 891

#### 2000-50

Modified by  
Rev. Proc. 2007-16, 2007-4 I.R.B. 358

#### 2001-31

Superseded by  
Rev. Proc. 2007-29, 2007-17 I.R.B. 1004

#### 2001-42

Modified and amplified by  
Rev. Proc. 2007-19, 2007-7 I.R.B. 515

#### 2002-9

Modified and amplified by  
Rev. Proc. 2007-14, 2007-4 I.R.B. 357  
Rev. Proc. 2007-33, 2007-21 I.R.B. 1289  
Modified by  
Rev. Proc. 2007-16, 2007-4 I.R.B. 358

#### 2003-35

Superseded by  
Rev. Proc. 2007-32, 2007-22 I.R.B. 1322

#### 2003-69

Modified and superseded by  
Rev. Proc. 2007-38, 2007-25 I.R.B. 1442

#### 2004-11

Superseded by  
Rev. Proc. 2007-16, 2007-4 I.R.B. 358

#### 2004-65

Modified and superseded by  
Rev. Proc. 2007-20, 2007-7 I.R.B. 517

#### 2005-12

Superseded by  
Rev. Proc. 2007-17, 2007-4 I.R.B. 368

#### 2005-51

Amplified by  
Rev. Proc. 2007-25, 2007-12 I.R.B. 761

#### 2005-60

Superseded by  
Rev. Proc. 2007-40, 2007-26 I.R.B. 1488

#### 2005-69

Superseded by  
Rev. Proc. 2007-15, 2007-3 I.R.B. 300

<sup>1</sup> 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.

**Revenue Procedures— Continued:****2005-74**

Superseded by  
Rev. Proc. 2007-24, 2007-11 I.R.B. 692

**2006-1**

Superseded by  
Rev. Proc. 2007-1, 2007-1 I.R.B. 1

**2006-2**

Superseded by  
Rev. Proc. 2007-2, 2007-1 I.R.B. 88

**2006-3**

Superseded by  
Rev. Proc. 2007-3, 2007-1 I.R.B. 108

**2006-4**

Superseded by  
Rev. Proc. 2007-4, 2007-1 I.R.B. 118

**2006-5**

Superseded by  
Rev. Proc. 2007-5, 2007-1 I.R.B. 161

**2006-6**

Superseded by  
Rev. Proc. 2007-6, 2007-1 I.R.B. 189

**2006-7**

Superseded by  
Rev. Proc. 2007-7, 2007-1 I.R.B. 227

**2006-8**

Superseded by  
Rev. Proc. 2007-8, 2007-1 I.R.B. 230

**2006-17**

Obsoleted in part by  
Rev. Proc. 2007-26, 2007-13 I.R.B. 814

**2006-20**

Obsoleted in part by  
Rev. Proc. 2007-31, 2007-19 I.R.B. 1225

**2006-35**

Modified by  
Rev. Proc. 2007-22, 2007-10 I.R.B. 675

**2006-53**

Section 3.24(1) modified and superseded by  
Rev. Proc. 2007-36, 2007-22 I.R.B. 1335

**2007-3**

Amplified by  
Rev. Proc. 2007-39, 2007-25 I.R.B. 1446

**Revenue Rulings:****54-19**

Obsoleted in part by  
Rev. Rul. 2007-14, 2007-12 I.R.B. 747

**55-132**

Obsoleted by  
Rev. Rul. 2007-14, 2007-12 I.R.B. 747

**Revenue Rulings— Continued:****56-462**

Obsoleted by  
Rev. Rul. 2007-14, 2007-12 I.R.B. 747

**56-518**

Obsoleted by  
Rev. Rul. 2007-14, 2007-12 I.R.B. 747

**57-505**

Obsoleted by  
Rev. Rul. 2007-14, 2007-12 I.R.B. 747

**58-370**

Obsoleted by  
Rev. Rul. 2007-14, 2007-12 I.R.B. 747

**58-500**

Obsoleted by  
Rev. Rul. 2007-14, 2007-12 I.R.B. 747

**69-141**

Modified by  
Notice 2007-22, 2007-10 I.R.B. 670

**69-212**

Obsoleted by  
Rev. Rul. 2007-14, 2007-12 I.R.B. 747

**69-587**

Revoked by  
Rev. Rul. 2007-12, 2007-11 I.R.B. 685

**71-477**

Obsoleted by  
Rev. Rul. 2007-14, 2007-12 I.R.B. 747

**74-245**

Obsoleted by  
Rev. Rul. 2007-35, 2007-22 I.R.B. 1317

**75-161**

Obsoleted by  
Rev. Rul. 2007-8, 2007-7 I.R.B. 469

**76-188**

Obsoleted by  
Rev. Rul. 2007-8, 2007-7 I.R.B. 469

**78-330**

Modified by  
Rev. Rul. 2007-8, 2007-7 I.R.B. 469

**81-18**

Distinguished by  
Rev. Rul. 2007-32, 2007-21 I.R.B. 1278

**81-225**

Clarified and amplified by  
Rev. Rul. 2007-7, 2007-7 I.R.B. 468

**82-45**

Obsoleted by  
Rev. Rul. 2007-35, 2007-22 I.R.B. 1317

**92-19**

Supplemented in part by  
Rev. Rul. 2007-10, 2007-10 I.R.B. 660

**Revenue Rulings— Continued:****96-51**

Amplified by  
Rev. Rul. 2007-12, 2007-11 I.R.B. 685

**2002-41**

Modified by  
Notice 2007-22, 2007-10 I.R.B. 670

**2003-43**

Modified by  
Notice 2007-2, 2007-2 I.R.B. 254

**2003-92**

Clarified and amplified by  
Rev. Rul. 2007-7, 2007-7 I.R.B. 468

**2003-102**

Modified by  
Notice 2007-22, 2007-10 I.R.B. 670

**2003-109**

Superseded by  
Rev. Rul. 2007-28, 2007-18 I.R.B. 1039

**2005-24**

Modified by  
Notice 2007-22, 2007-10 I.R.B. 670

**2005-76**

Supplemented and superseded by  
Rev. Rul. 2007-4, 2007-4 I.R.B. 351

**2006-36**

Modified by  
Notice 2007-22, 2007-10 I.R.B. 670

**Treasury Decisions:****9263**

Corrected by  
Ann. 2007-22, 2007-9 I.R.B. 631

**9276**

Corrected by  
Ann. 2007-20, 2007-8 I.R.B. 599  
Ann. 2007-21, 2007-9 I.R.B. 630

**9278**

Corrected by  
Ann. 2007-9, 2007-5 I.R.B. 417  
Ann. 2007-10, 2007-6 I.R.B. 464

**9286**

Corrected by  
Ann. 2007-8, 2007-5 I.R.B. 416

**9298**

Corrected by  
Ann. 2007-32, 2007-11 I.R.B. 734

**9303**

Corrected by  
Ann. 2007-25, 2007-10 I.R.B. 682

**9313**

Corrected by  
Ann. 2007-48, 2007-20 I.R.B. 1274

**Treasury Decisions— Continued:**

**9315**

Corrected by

Ann. 2007-49, 2007-21 I.R.B. 1300

**9319**

Corrected by

Ann. 2007-57, 2007-24 I.R.B. 1418

Ann. 2007-58, 2007-25 I.R.B. 1448

**9322**

Corrected by

Ann. 2007-50, 2007-22 I.R.B. 1337

# INDEX

## Internal Revenue Bulletins 2007–1 through 2007–26

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parenthesis refers to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

### Key to Abbreviations:

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

## EMPLOYEE PLANS

Contributions, deductibility, Pension Protection Act of 2006 (Notice 28) 14, 880

Corporations, prohibited allocations of securities in an S corporation (TD 9302) 5, 382

Definition of party and allocation of net income or proceeds for purposes of section 4965 (Notice 18) 9, 608

Determination letters, issuing procedures (RP 6) 1, 189

Full funding limitations, weighted average interest rate for:

- January 2007 (Notice 12) 5, 409
- February 2007 (Notice 20) 9, 610
- March 2007 (Notice 27) 13, 814
- April 2007 (Notice 32) 17, 996
- May 2007 (Notice 33) 21, 1284
- June 2007 (Notice 51) 26, 1456

Guidance Priority List, recommendations for 2007–2008 (Notice 41) 21, 1287

Health Insurance Portability and Accountability Act of 1996 (HIPAA):

- Health plan nondiscrimination requirements:
  - For certain grandfathered church plans (TD 9299) 6, 460
  - For group health plans (TD 9298) 6, 434; correction (Ann 32) 11, 734

Insurance arrangements, application of section 409A to split-dollar life insurance arrangements (Notice 34) 17, 996

Letter rulings:

- And determination letters, areas which will not be issued from:
  - Associates Chief Counsel and Division Counsel (TE/GE) (RP 3) 1, 108
  - Associate Chief Counsel (International) (RP 7) 1, 227
- And general information letters, procedures (RP 4) 1, 118
- User fees, request for letter rulings (RP 8) 1, 230

## EMPLOYEE PLANS—Cont.

Mortality tables for:

- Determining current liability, updated (TD 9310) 9, 601
- Determining present value (REG–143601–06) 24, 1398
- Plan-specific substitute mortality tables (RP 37) 25, 1433

Nonbank trustees and nonbank custodians, approval list (Ann 47) 20, 1260

Nonqualified deferred compensation plans, application of section 409A (TD 9321) 19, 1123

Proposed Regulations:

- 26 CFR 1.430(h)(3)–1, –2, added; 1.431(c)(6)–1, added; mortality tables for determining present value (REG–143601–06) 24, 1398

Qualified retirement plans:

Defined benefit pension plans:

- Cash balance and other hybrid plans (Notice 6) 3, 272
- Permitted benefits (Notice 14) 7, 501

Designated Roth accounts under section 402A (TD 9324) 22, 1302

Distribution issues, multiple issues (Notice 7) 5, 395

Limitations on benefits and contributions under qualified plans (TD 9319) 18, 1041; correction (Ann 57) 24, 1418; additional correction (Ann 58) 25, 1448

Normal retirement age (TD 9325) 24, 1386

Pension plans, in-service distributions (Notice 8) 3, 276

Remedial amendment period (Notice 3) 2, 255

Section 401(k), safe harbor plan, Roth contribution (Ann 59) 25, 1448

Regulations:

26 CFR 1.401(a)–1, amended; 1.411(d)–4, amended; distributions from a pension plan upon attainment of normal retirement age (TD 9325) 24, 1386

26 CFR 1.401(a)–2(b), revised; 1.401(a)(9)–5, revised; 1.401(k)–1, amended; 1.402(c)–2, revised; 1.415–1 thru –10, removed; 1.415(a)–1, added; 1.415(b)–1, –2, added; 1.415(c)–1, –2, added; 1.415(d)–1, added; 1.415(f)–1, added; 1.415(g)–1, added; 1.415(j)–1, added; 1.416–1, amended; 1.457–4, –5, –6, –10, amended; 1.415(c)(4)–1, removed; limitations on benefits and contributions under qualified plans (TD 9319) 18, 1041; correction (Ann 57) 24, 1418; additional correction (Ann 58) 25, 1448

26 CFR 1.401(k)–0, –1(f), amended; 1.402(g)–1, amended; 1.402A–1, –2, added; 1.408A–10, added; 602.101, amended; designated Roth accounts under section 402A (TD 9324) 22, 1302

26 CFR 1.402(c)–2, revised; 1.409(p)–1, added; prohibited allocations of securities in an S corporation (TD 9302) 5, 382

26 CFR 1.409A–0 thru –6, added; application of section 409A to nonqualified deferred compensation plans (TD 9321) 19, 1123

26 CFR 1.412(l)(7)–1, added; updated mortality tables for determining current liability (TD 9310) 9, 601

26 CFR 54.9801–1, –2, amended; 54.9802–2, added; 54.9831–1, amended; exception to the HIPAA nondiscrimination requirements for certain grandfathered church plans (TD 9299) 6, 460

## EMPLOYEE PLANS—Cont.

26 CFR 54.9802–1, revised; 54.9802–1T, removed; nondiscrimination and wellness programs in health coverage in the group market (TD 9298) 6, 434; correction (Ann 32) 11, 734

Roth IRAs, rollovers, designated Roth accounts (Ann 55) 23, 1384

Technical advice to IRS employees (RP 5) 1, 161

## EMPLOYMENT TAX

Electronic filing, Authorized IRS e-file Provider, requirements for participation (RP 40) 26, 1488

Form 8655, Reporting Agent Authorization, requirements for completing (RP 38) 25, 1442

Frivolous tax return positions:

Arguments and schemes (Notice 30) 14, 883

That a taxpayer is not a citizen or is not a person as defined by the Code (RR 22) 14, 866

That filing tax returns and paying federal tax are voluntary (RR 20) 14, 863

That wages are not income (RR 19) 14, 843

Guidance Priority List, recommendations for 2007–2008 (Notice 41) 21, 1287

Installment agreements, payment of tax liabilities (REG–100841–97) 12, 763

Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1

Penalties, disclosure on reports filed with Securities and Exchange Commission (SEC) (RP 25) 12, 761

Proposed Regulations:

26 CFR 301.6159–0, added; 301.6159–1, revised; 301.6331–4, revised; agreements for payment of tax liabilities in installments (REG–100841–97) 12, 763

Regulations:

26 CFR 31.3402(g)–1(a)(8), revised; flat rate supplemental wage withholding, correction to TD 9276 (Ann 20) 8, 599; additional correction (Ann 21) 9, 630

Supplemental wages, withholding, correction to TD 9276 (Ann 20) 8, 599; additional correction (Ann 21) 9, 630

Technical Advice Memoranda (TAMs) (RP 2) 1, 88

## ESTATE TAX

Frivolous tax return positions:

Arguments and schemes (Notice 30) 14, 883

That filing tax returns and paying federal tax are voluntary (RR 20) 14, 863

Guidance Priority List, recommendations for 2007–2008 (Notice 41) 21, 1287

Installment agreements, payment of tax liabilities (REG–100841–97) 12, 763

Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1

## ESTATE TAX—Cont.

Post-death events, guidance under section 2053 (REG–143316–03) 21, 1292

Proposed Regulations:

26 CFR 20.2051–1, amended; 20.2053–1, –3, –6, –9, –10, amended; 20.2053–4, revised; guidance under section 2053 regarding post-death events (REG–143316–03) 21, 1292

26 CFR 301.6159–0, added; 301.6159–1, revised; 301.6331–4, revised; agreements for payment of tax liabilities in installments (REG–100841–97) 12, 763

Technical Advice Memoranda (TAMs) (RP 2) 1, 88

## EXCISE TAX

Communications excise tax (Notice 11) 5, 405

Credits and payments, renewable diesel and diesel mixtures (Notice 37) 17, 1002

Electronic filing, Authorized IRS e-file Provider, requirements for participation (RP 40) 26, 1488

Frivolous tax return positions:

Arguments and schemes (Notice 30) 14, 883

That filing tax returns and paying federal tax are voluntary (RR 20) 14, 863

Guidance Priority List, recommendations for 2007–2008 (Notice 41) 21, 1287

Health Insurance Portability and Accountability Act of 1996 (HIPAA):

Health plan nondiscrimination requirements:

For certain grandfathered church plans (TD 9299) 6, 460

For group health plans (TD 9298) 6, 434; correction (Ann 32) 11, 734

Installment agreements, payment of tax liabilities (REG–100841–97) 12, 763

Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1

Penalties, disclosure on reports filed with Securities and Exchange Commission (SEC) (RP 25) 12, 761

Proposed Regulations:

26 CFR 301.6159–0, added; 301.6159–1, revised; 301.6331–4, revised; agreements for payment of tax liabilities in installments (REG–100841–97) 12, 763

Regulations:

26 CFR 54.9801–1, –2, amended; 54.9802–2, added; 54.9831–1, amended; exception to the HIPAA nondiscrimination requirements for certain grandfathered church plans (TD 9299) 6, 460

26 CFR 54.9802–1, revised; 54.9802–1T, removed; nondiscrimination and wellness programs in health coverage in the group market (TD 9298) 6, 434; correction (Ann 32) 11, 734

Technical Advice Memoranda (TAMs) (RP 2) 1, 88



## EXEMPT ORGANIZATIONS

Annual notice to donors regarding pending and settled declaratory judgment suits (Ann 1) 1, 243  
Declaratory judgment suits (Ann 45) 18, 1122  
Definition of party and allocation of net income or proceeds for purposes of section 4965 (Notice 18) 9, 608  
Electronic filing, Authorized IRS e-file Provider, requirements for participation (RP 40) 26, 1488  
Frivolous tax return positions, arguments and schemes (Notice 30) 14, 883  
Guidance Priority List, recommendations for 2007–2008 (Notice 41) 21, 1287  
Letter rulings:  
    And determination letters, areas which will not be issued from Associates Chief Counsel and Division Counsel (TE/GE) (RP 3) 1, 108  
    And general information letters, procedures (RP 4) 1, 118  
    User fees, request for letter rulings (RP 8) 1, 230  
List of organizations classified as private foundations (Ann 14) 7, 519; (Ann 33) 13, 841; (Ann 42) 17, 1037; (Ann 52) 22, 1337; (Ann 60) 26, 1499  
New public inspection requirement of annual return filed under section 6011 relating to tax imposed under section 511, Form 990-T (Notice 45) 22, 1320  
Political campaign activities of section 501(c)(3) organizations (RR 41) 25, 1421  
Revocations (Ann 3) 4, 376; (Ann 13) 7, 519; (Ann 34) 13, 842; (Ann 38) 15, 954; (Ann 43) 17, 1038; (Ann 46) 19, 1239; (Ann 51) 22, 1337; (Ann 56) 23, 1384  
Safe harbor under section 527(l) (RP 27) 14, 887  
Technical advice to IRS employees (RP 5) 1, 161

## GIFT TAX

Frivolous tax return positions:  
    Arguments and schemes (Notice 30) 14, 883  
    That filing tax returns and paying federal tax are voluntary (RR 20) 14, 863  
Guidance Priority List, recommendations for 2007–2008 (Notice 41) 21, 1287  
Installment agreements, payment of tax liabilities (REG-100841-97) 12, 763  
Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1  
Proposed Regulations:  
    26 CFR 301.6159-0, added; 301.6159-1, revised; 301.6331-4, revised; agreements for payment of tax liabilities in installments (REG-100841-97) 12, 763  
Technical Advice Memoranda (TAMs) (RP 2) 1, 88

## INCOME TAX

Accounting methods:  
    Accrual of interest on nonperforming loans (RR 32) 21, 1278  
    Automatic consent to change accounting method for executory contract liabilities (RP 14) 4, 357  
    Changes in accounting methods (RP 16) 4, 358  
    Changes in computing depreciation (TD 9307) 7, 470  
    Executory contract liabilities (RR 3) 4, 350  
    Payroll taxes on deferred compensation (RR 12) 11, 685  
    Procedures to change method for uncollected interest to safe harbor method (RP 33) 21, 1289  
Uniform capitalization:  
    Of costs (Notice 29) 14, 881  
    Simplified methods, assets produced on a routine and repetitive basis (TD 9318) 17, 990  
Active trade or business requirement under section 355(b), guidance (REG-123365-03) 23, 1357  
Advance Pricing Agreement (APA) Program, annual report to the public, 2006 (Ann 31) 12, 769  
Annual notice to donors regarding pending and settled declaratory judgment suits (Ann 1) 1, 243  
Annuities, exchanges of property for an annuity contract, change in hearing location for REG-141901-05 (Ann 7) 4, 377  
Archer Medical Savings Accounts (Archer MSAs):  
    2005 and 2006 not cut-off years (Ann 44) 19, 1238  
    Reporting obligation for accounts established between January 1, 2005, and June 30, 2005, and January 1, 2006, and June 30, 2006 (Ann 24) 10, 681  
Automobile owners and lessees, inflation adjustments for 2007 (RP 30) 18, 1104  
Bonds, clean renewable energy bonds (Notice 26) 14, 870  
Capital assets (RR 37) 24, 1390  
Charitable contributions:  
    Qualified conservation contributions (Notice 50) 25, 1430  
    Study on donor advised funds and supporting organizations (Notice 21) 9, 611  
Common mistakes on tax returns (Notice 35) 15, 940  
Communications excise tax (Notice 11) 5, 405  
Compliance resolution program for employees other than corporate insiders for additional 2006 taxes arising under section 409A due to exercise of stock rights (Ann 18) 9, 625  
Computer software under section 199(c)(5)(B) (TD 9317) 16, 957  
Consumer Price Index (CPI) adjustments, certain loans under section 1274A for 2007 (RR 4) 4, 351  
Contractual protection filter under regulations section 1.6011-4, exceptions (RP 20) 7, 517  
Controlled services transactions under section 482, treatment, allocation of income and deductions from intangibles, and stewardship expense, correction to TD 9278 (Ann 9) 5, 417; additional corrections (Ann 10) 6, 464; correction to REG-146893-02 (Ann 11) 6, 464

## INCOME TAX—Cont.

### Corporations:

Banks, status as S corporation under section 1361(a)(1) (REG-158677-05) 16, 975

Bulgarian per se entity (Notice 10) 4, 354

### Consolidated returns:

Anti-avoidance and anti-loss reimportation rules following a loss on disposition of stock of consolidated subsidiaries (TD 9322) 18, 1100; correction (Ann 50) 22, 1337; (REG-156420-06) 18, 1110

Unified rule for loss on subsidiary stock (REG-157711-02) 8, 537

Contributions to the capital of a corporation, nonshareholder contributions, exclusions from gross income (RR 31) 21, 1275

### Controlled foreign corporation (CFC):

Subpart F income (Notice 9) 5, 401

Substantial assistance, shipping income (Notice 13) 5, 410

### Corporate reorganizations:

Additional guidance on distributions under sections 368(a)(1)(D) and 354(b)(1)(B) (TD 9313) 13, 805; correction (Ann 40) 16, 978; additional correction (Ann 48) 20, 1274; (REG-157834-06) 13, 840

Distributions under sections 368(a)(1)(D) and 354(b)(1)(B) (TD 9303) 5, 379; correction (Ann 25) 10, 682; (REG-125632-06) 5, 415; correction (Ann 26) 10, 682

Guidance on measurement of continuity of interest (TD 9316) 16, 962; (REG-146247-06) 16, 977

Liabilities in excess of basis, transfers to controlled corporations (RR 8) 7, 469

Covered employees under section 162(m)(3) (Notice 49) 25, 1429

Dual consolidated losses (TD 9315) 15, 891; correction (Ann 49) 21, 1300

Exclusion from gross income of previously taxed earnings and profits and related basis adjustments, correction to REG-121509-00 (Ann 17) 8, 597

Foreign corporation interest expense allocations, branch profits tax, election for liability reduction (Notice 1) 2, 254

Look-through treatment of dividends from noncontrolled section 902 corporation, correction to TD 9260 (Ann 12) 6, 465

Open account debt, section 1367 (REG-144859-04) 20, 1245; correction (Ann 54) 23, 1383

Property used to purchase parent stock in certain triangular reorganizations involving foreign corporations (Notice 48) 25, 1428

Transfers by U.S. persons of stock or securities to foreign corporations (TD 9311) 10, 635; (REG-147144-06) 10, 680

### Credits:

Alternative fuel vehicle refueling property (Notice 43) 22, 1318

Alternative motor vehicle credit, heavy-duty hybrid (Notice 46) 23, 1342

Child and dependent care credit, expenses, correction to REG-139059-02 (Ann 36) 15, 953; additional correction (Ann 37) 15, 954

## INCOME TAX—Cont.

Foreign tax credits, direct and indirect (REG-156779-06) 17, 1015; correction (Ann 53) 23, 1383

### Low-income housing credit:

2007 population figures used for calculation (Notice 23) 11, 690

Satisfactory bond, "bond factor" amounts for the period:

January through March 2007 (RR 5) 5, 378

January through June 2007 (RR 25) 16, 956

Nonconventional source fuel credit, inflation adjustment factor and phase-out amount for CY 2006 (Notice 38) 18, 1103

Qualifying advanced coal project credit (Notice 52) 26, 1456

Qualifying gasification project credit (Notice 53) 26, 1474

Railroad track maintenance credit, hearing cancellation for REG-142270-05 (Ann 2) 2, 263; correction to TD 9286 (Ann 8) 5, 416

Renewable electricity, refined coal, and Indian coal production credit, 2007 inflation adjustment (Notice 40) 21, 1284

Cross licensing arrangements, guidance on tax treatment (RP 23) 10, 675

Declaratory judgment suits (Ann 45) 18, 1122

Deductions, income attributable to domestic production activities, statistical sampling (RP 35) 23, 1349

### Depreciation:

2007 limitations on depreciation deductions for passenger automobiles (RP 30) 18, 1104

MACRS property acquired in a like-kind exchange or an involuntary conversion (TD 9314) 14, 845

Disallowance of convention expenses, North American geographical area (RR 28) 18, 1039

### Disaster relief:

Depreciation, Gulf Opportunity (GO) Zone additional first year depreciation deduction (Notice 36) 17, 1000

Reduction in taxable income for housing Hurricane Katrina displaced individuals (TD 9301) 2, 244; (REG-152043-05) 2, 263

Disciplinary actions involving attorneys, certified public accountants, enrolled agents, and enrolled actuaries (Ann 41) 16, 978

### Disclosure of reportable transactions by:

List maintenance rules under section 6112 for material advisors, hearing scheduled for REG-103043-05 (Ann 27) 11, 733

Material advisors under section 6111, hearing scheduled for REG-103039-05 (Ann 30) 11, 734

Taxpayers under section 6011, hearing scheduled for REG-103038-05 (Ann 29) 11, 733

Domestic production activities, income attributable, correction to TD 9263 (Ann 22) 9, 631

## INCOME TAX—Cont.

Electronic filing:  
Authorized IRS e-file Provider, requirements for participation (RP 40) 26, 1488  
Electronic payment option for user fee charges for Form 8802 (RP 22) 10, 675  
Elimination of regulatory impediments to filing certain business income tax returns and other forms (TD 9300) 2, 246  
Guidance necessary to facilitate business electronic filing under section 1561 (TD 9304) 6, 423; (REG-161919-05) 6, 463  
Specifications for Form 8851, Summary of Archer MSAs (RP 29) 17, 1004  
Employer-provided vehicles, cents-per-mile valuation rule, maximum vehicle values (RP 11) 2, 261  
Estimated tax penalty, waiver for citizens or residents of the U.S. living abroad (Notice 16) 8, 536  
Exemptions, dependent (REG-149856-03) 24, 1394  
Extensions:  
Extension of deadline for settlement offered to certain foreign embassy staff (Ann 28) 10, 683  
Extension of time taxpayers have until April 17, 2007, to file 2006 returns and pay any taxes due, Emancipation Day Holiday in the District of Columbia (Ann 16) 8, 597  
Federal tax lien, procedures for obtaining release or discharge (REG-159444-04) 9, 618  
Film and television production, deduction for qualified costs (TD 9312) 12, 736; (REG-115403-05) 12, 767  
Foreign earned income exclusion (RP 28) 16, 974  
Forms:  
1096, 1098, 1099, 5498, W-2G, and 1042-S, substitute form specifications (RP 15) 3, 300  
8802, electronic payment option for user fee charges (RP 22) 10, 675  
8851, Summary of Archer MSAs, specifications for filing electronically (Ann 15) 8, 596; (RP 29) 17, 1004  
8921, Transactions Involving a Pool of Applicable Insurance Contracts, comments requested on draft form (Notice 24) 12, 750  
8922, Applicable Insurance Contract Information Return (For Tax-Exempt Organizations and Government Entities under Section 6050V), comments requested on draft form (Notice 24) 12, 750  
Frivolous tax return positions:  
Arguments and schemes (Notice 30) 14, 883  
That a Form 23C must be provided as a record of assessment (RR 21) 14, 865  
That a taxpayer is not a citizen or is not a person as defined by the Code (RR 22) 14, 866  
That filing tax returns and paying federal tax are voluntary (RR 20) 14, 863  
That wages are not income (RR 19) 14, 843  
Gaming Industry Tip Compliance Agreement (GITCA) Program, update (RP 32) 22, 1322  
Guidance Priority List, recommendations for 2007-2008 (Notice 41) 21, 1287

## INCOME TAX—Cont.

Health Reimbursement Arrangements (HRAs), debit cards (Notice 2) 2, 254  
Health Savings Accounts (HSAs):  
Cost-of-living adjustments for inflation for 2008 (RP 36) 22, 1335  
Employer comparable contributions to HSAs under section 4980G (REG-143797-06) 26, 1495  
Rollovers to (Notice 22) 10, 670  
Housing cost amount eligible for exclusion or deduction, revised (Notice 25) 12, 760  
Income and currency gain or loss with respect to a section 987 qualified business unit (QBU), correction to REG-208270-86 (Ann 4) 7, 518  
Information reporting:  
Requirements, exclusion of the sale or exchange of a principle residence (RP 12) 4, 354  
Under section 6050V, comments requested on draft Forms 8921, Transactions Involving a Pool of Applicable Insurance Contracts, and Form 8922, Applicable Insurance Contract Information Return (For Tax-Exempt Organizations and Government Entities under Section 6050V) (Notice 24) 12, 750  
Installment agreements:  
Payment of tax liabilities (REG-100841-97) 12, 763  
User fees (TD 9306) 6, 420  
Insurance companies:  
Aggregation of modified endowment contracts (MECs) under section 72(e)(12) (RR 38) 25, 1420  
Comments requested on closing agreements for life insurance and annuity contracts (Notice 15) 7, 503  
Indices and electronic submission of information, Rev. Proc. 2001-42 updated (RP 19) 7, 515  
Investor control and general public (RR 7) 7, 468  
Loss payment patterns and discount factors for the 2006 accident year (RP 9) 3, 278  
Prevailing state assumed interest rate tables, 2007 (RR 10) 10, 660  
Salvage discount factors for the 2006 accident year (RP 10) 3, 289  
Tax-free exchange, endorsement of check to second company for a second annuity contract (RR 24) 21, 1282  
Interest:  
Exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation (TD 9323) 20, 1240  
Investment:  
Federal short-term, mid-term, and long-term rates for:  
January 2007 (RR 2) 3, 266  
February 2007 (RR 9) 6, 422  
March 2007 (RR 15) 11, 687  
April 2007 (RR 23) 15, 889  
May 2007 (RR 29) 19, 1223  
June 2007 (RR 36) 23, 1339

## INCOME TAX—Cont.

- Rates:  
Underpayments and overpayments, quarter beginning:  
April 1, 2007 (RR 16) 13, 807  
July 1, 2007 (RR 39) 26, 1449
- Inventory:  
IRS discontinues publication, but continues acceptance, of BLS Department Store Inventory Price Indexes (Notice 44) 22, 1320  
LIFO, price indexes used by department stores for:  
November 2006 (RR 6) 5, 393  
December 2006 (RR 11) 9, 606  
January 2007 (RR 18) 13, 806  
February 2007 (RR 27) 18, 1099  
March 2007 (RR 34) 22, 1316
- Leases, tax-exempt use property (Notice 4) 2, 260
- Letter rulings:  
And determination letters, areas which will not be issued from:  
Associates Chief Counsel and Division Counsel (TE/GE) (RP 3) 1, 108  
Section 102(a) (RP 39) 25, 1446  
Associate Chief Counsel (International) (RP 7) 1, 227  
And information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
- Life insurance, transfer of value and grantor trusts (RR 13) 11, 684
- Like-kind exchanges, qualified settlement funds and certain other escrow accounts, trusts, and funds, taxation and reporting of earned income, revision of REG-113365-04 (Ann 35) 15, 949
- Monetary penalties under Circular 230 (Notice 39) 20, 1243
- National and area median gross income figures, guidance for 2007 (RP 31) 19, 1225
- Nonsufficient funds (NSF) fees, accounting for credit card NSF fees that are not interest (RR 1) 3, 265
- Partnerships:  
Guaranteed payments to partners (RR 40) 25, 1426  
Income attributable to domestic production activities, qualifying in-kind partnerships, deductions (RR 30) 21, 1277
- Penalties:  
Disclosure on reports filed with Securities and Exchange Commission (SEC) (RP 25) 12, 761  
Under sections 6707 or 6707A, rescission (RP 21) 9, 613
- Pre-Filing Agreement (PFA) program, continued (RP 17) 4, 368
- Private foundations, organizations now classified as (Ann 14) 7, 519; (Ann 33) 13, 841; (Ann 42) 17, 1037; (Ann 52) 22, 1337; (Ann 60) 26, 1499
- Proposed Regulations:  
26 CFR 1.21-1, corrected; expenses for household and dependent care services necessary for gainful employment, correction to REG-139059-02 (Ann 36) 15, 953; additional correction (Ann 37) 15, 954  
26 CFR 1.45G-0, -1, added; railroad track maintenance credit, hearing cancellation for REG-142270-05 (Ann 2) 2, 263

## INCOME TAX—Cont.

- 26 CFR 1.152-4, revised; dependent child of divorced or separated parents or parents who live apart (REG-149856-03) 24, 1394
- 26 CFR 1.181-0 thru -6, added; deduction for qualified film and television production costs (REG-115403-05) 12, 767
- 26 CFR 1.337(d)-1, -2, removed; 1.358-6, amended; 1.1502-13, -19, -21, -30 thru -33, -35, -80, -91, amended; 1.1502-20, -35T, removed; 1.1502-36, added; unified rule for loss on subsidiary stock (REG-157711-02) 8, 537
- 26 CFR 1.355-0, -1, amended; 1.355-3, revised; guidance regarding the active trade or business requirement under section 355(b) (REG-123365-03) 23, 1357
- 26 CFR 1.367(a)-3, amended; 1.367(a)-8, revised; certain transfers of stock or securities by U.S. persons to foreign corporations (REG-147144-06) 10, 680
- 26 CFR 1.368-1, amended; corporate reorganizations, guidance on the measurement of continuity of interest (REG-146247-06) 16, 977
- 26 CFR 1.368-2, amended; corporate reorganizations, distributions under sections 368(a)(1)(D) and 354(b)(1)(B) (REG-125632-06) 5, 415; correction (Ann 26) 10, 682; additional guidance (REG-157834-06) 13, 840
- 26 CFR 1.468B-6, amended; escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property, revision of REG-113365-04 (Ann 35) 15, 949
- 26 CFR 1.482-1, -8, -9, amended; 1.861-8, amended; allocation of income and deductions from intangibles, stewardship expense, correction to REG-146893-02 (Ann 11) 6, 464
- 26 CFR 1.901-2, amended; determining the amount of taxes paid for purposes of section 901 (REG-156779-06) 17, 1015; correction (Ann 53) 23, 1383
- 26 CFR 1.959-1, -2, -3, revised; 1.961-2, -3, revised; exclusion from gross income of previously taxed earnings and profits and adjustments to basis of stock in controlled foreign corporations and of other property, correction to REG-121509-00 (Ann 17) 8, 597
- 26 CFR 1.987-1 thru -3, -6, amended; income and currency gain or loss with respect to a section 987 QBU, correction to REG-208270-86 (Ann 4) 7, 518
- 26 CFR 1.1363-1, amended; effect of election on corporation (REG-158677-05) 16, 975
- 26 CFR 1.1367-2, -3, amended; open account debt (REG-144859-04) 20, 1245; correction (Ann 54) 23, 1383
- 26 CFR 1.1502-32, -35, amended, anti-avoidance and anti-loss reimportation rules applicable following a loss on disposition of stock of consolidated subsidiaries (REG-156420-06) 18, 1110
- 26 CFR 1.1502-43, -47, amended; 1.1561-1, -3, added; 1.1561-2, amended; 1.1563-1, added; guidance necessary to facilitate business electronic filing under section 1561 (REG-161919-05) 6, 463

## INCOME TAX—Cont.

- 26 CFR 1.9300-1, added; reduction in taxable income for housing Hurricane Katrina displaced individuals (REG-152043-05) 2, 263
- 26 CFR 54.4980G-0, -4, amended; employer comparable contributions to Health Savings Accounts under section 4980G (REG-143797-06) 26, 1495
- 26 CFR 301.6159-0, added; 301.6159-1, revised; 301.6331-4, revised; agreements for payment of tax liabilities in installments (REG-100841-97) 12, 763
- 26 CFR 301.6325-1, amended; 301.6503(f)-1, revised; 301.7426-1, revised; release of lien or discharge of property (REG-159444-04) 9, 618
- 26 CFR 301.7603-1, revised; 301.7603-2, added; 301.7609-1 thru -5, revised; suspension of statutes of limitations in third-party and John Doe summons disputes and expansion of taxpayers' rights to receive notice and seek judicial review of third-party summonses (REG-153037-01) 15, 942
- Publications:
- 1167, General Rules and Specifications for Substitute Forms and Schedules (RP 24) 11, 692
- 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, W-2G, and 1042-S (RP 15) 3, 300
- Qualified amended returns (TD 9309) 7, 497
- Qualified board or exchange, section 1256(g)(7)(C), United Kingdom ICE Futures (RR 26) 16, 970
- Qualified mortgage bonds (QMBs) and mortgage credit certificates (MCCs), average area housing purchase prices for 2007 (RP 26) 13, 814
- Qualified production activities income and W-2 wages (RP 34) 23, 1345
- Qualified Zone Academy Bonds, allocations for years 2006 and 2007 (RP 18) 5, 413
- Real estate investment trust (REIT):
- Treatment of gain under section 987 for REIT qualification purposes (Notice 42) 21, 1288
- Treatment of section 988 gain for REIT income test purposes (RR 33) 21, 1281
- Real estate mortgage investment conduit (REMIC), modifications of commercial loans held by a REMIC (Notice 17) 12, 748
- Regulations:
- 26 CFR 1.45G-0T, -1T, added; railroad track maintenance credit; correction to TD 9286 (Ann 8) 5, 416
- 26 CFR 1.108-1, removed and reserved; 1.342-1, removed; 1.371-1, -2, removed; 1.372-1, removed; 1.374-1 thru -4, removed; 1.924(a)-1T, amended; 1.1018-1, removed; 1.1502-43, -47, -47T, -90, amended; 1.1502-43T, added; 1.1561-0, -1, -3, removed; 1.1561-1T, -2T, -3T, added; 1.1561-2, amended; 1.1562-0 thru -7, removed; 1.1563-1, removed; 1.1563-1T, -3, amended; 1.1564-1, removed; 5.1561-1, removed; guidance necessary to facilitate business electronic filing under section 1561 (TD 9304) 6, 423

## INCOME TAX—Cont.

- 26 CFR 1.167(e)-1, amended; 1.167(e)-1T, removed; 1.168(i)-4, -6T, amended; 1.446-1, amended; 1.446-1T, removed; 1.1016-3, amended; 1.1016-3T, removed; changes in computing depreciation (TD 9307) 7, 470
- 26 CFR 1.168(a)-1, (b)-1, (i)-5, (i)-6, added; 1.168(a)-1T, (b)-1T, (d)-1T, (i)-0T, (i)-1T, (i)-5T, (i)-6T, removed; 1.168(d)-1, (i)-0, (i)-1, (k)-1, amended; depreciation of MACRS property that is acquired in a like-kind exchange or as a result of an involuntary conversion (TD 9314) 14, 845
- 26 CFR 1.170A-11, amended; 1.170A-11T, removed; 1.556-2, amended; 1.556-2T, removed; 1.565-1, amended; 1.565-1T, removed; 1.936-7, amended; 1.936-7T, removed; 1.1017-1, amended; 1.1017-1T, removed; 1.1368-1, amended; 1.1368-1T, removed; 1.1377-1, amended; 1.1377-1T, removed; 1.1502-21, amended; 1.1502-21T, amended; 1.1502-75, amended; 1.1502-75T, removed; 1.1503-2, amended; 1.1503-2T, removed; 1.6038B-1, amended; 1.6038B-1T, amended; 301.7701-3, amended; 301.7701-3T, removed; 602.101, amended; guidance necessary to facilitate business electronic filing (TD 9300) 2, 246
- 26 CFR 1.181-0T thru -6T, added; 602.101, amended; deduction for qualified film and television production costs (TD 9312) 12, 736
- 26 CFR 1.199-0, -3, -3T, -6, -8, -8T, amended; computer software under section 199(c)(5)(B) (TD 9317) 16, 957
- 26 CFR 1.199-1 thru -4, -6 thru -9, amended; income attributable to domestic production activities, correction to TD 9263 (Ann 22) 9, 631
- 26 CFR 1.263A-1, -2, amended; 1.263A-1T, -2T, removed; guidance regarding the simplified service cost method and the simplified production method (TD 9318) 17, 990
- 26 CFR 1.367(a)-3, -8, amended; 1.367(a)-3T, -8T, added; 602.101, amended; certain transfers of stock or securities by U.S. persons to foreign corporations (TD 9311) 10, 635
- 26 CFR 1.368-1, amended; 1.368-1T, added; corporate reorganizations, guidance on the measurement of continuity of interest (TD 9316) 16, 962
- 26 CFR 1.368-2, amended; 1.368-2T, added; corporate reorganizations, distributions under sections 368(a)(1)(D) and 354(b)(1)(B) (TD 9303) 5, 379; correction (Ann 25) 10, 682
- 26 CFR 1.368-2T, amended; corporate reorganizations, additional guidance on distributions under sections 368(a)(1)(D) and 354(b)(1)(B) (TD 9313) 13, 805; correction (Ann 40) 16, 978; additional correction (Ann 48) 20, 1274
- 26 CFR 1.482; 1.861; 1.6038; 1.6038A; 1.6662; treatment of services under section 482, allocation of income and deductions from intangibles, stewardship expense, correction to TD 9278 (Ann 9) 5, 417; additional corrections (Ann 10) 6, 464

## INCOME TAX—Cont.

- 26 CFR 1.671–5, amended; 1.671–5T, removed; reporting rules for widely held fixed investment trusts (TD 9308) 8, 523
- 26 CFR 1.863–3, amended; 1.863–8, –9, added; 602.101, amended; source of income from certain space and ocean activities, source of communications income (TD 9305) 7, 479
- 26 CFR 1.871–14, amended; 1.881–2(a)(6), added; 1.1441–1(b)(7), amended; revisions to regulations relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments (TD 9323) 20, 1240
- 26 CFR 1.902–1, –1T, –2, amended; 1.904–0, –4, –5, amended; 1.904(f)–12T, amended; 1.964–1, –1T, amended; application of separate limitations to dividends from non-controlled section 902 corporations, correction to TD 9260 (Ann 12) 6, 465
- 26 CFR 1.985–3, amended; United States dollar approximate separate transactions method (DASTM) (TD 9320) 17, 994
- 26 CFR 1.1502–21, amended; 1.1503(d)–0 thru –8, added; 1.1503–2A, removed; 602.101, amended; dual consolidated losses (TD 9315) 15, 891; correction (Ann 49) 21, 1300
- 26 CFR 1.1502–32, –32T, –35, –35T, amended, anti-avoidance and anti-loss reimportation rules applicable following a loss on disposition of stock of consolidated subsidiaries (TD 9322) 18, 1100; correction (Ann 50) 22, 1337
- 26 CFR 1.6664–0, –1, amended; 1.6664–1T, –2T, removed; 1.6664–2(c), revised; qualified amended returns (TD 9309) 7, 497
- 26 CFR 1.9300–1T, added; reduction in taxable income for housing Hurricane Katrina displaced individuals (TD 9301) 2, 244
- 26 CFR 300.0, amended; 300.1, amended; 300.2, amended; user fees for processing installment agreements (TD 9306) 6, 420
- Reporting rules for widely held fixed investment trusts (WHFITs) (TD 9308) 8, 523
- Revenue rulings:
- Obsolete (RR 14) 12, 747
  - Withdrawal of obsolete guidance on blocked income (RR 35) 22, 1317
- Revocations, exempt organizations (Ann 3) 4, 376; (Ann 13) 7, 519; (Ann 34) 13, 842; (Ann 38) 15, 954; (Ann 43) 17, 1038; (Ann 46) 19, 1239; (Ann 51) 22, 1337; (Ann 56) 23, 1384
- Safe harbor valuation, designation of eligible positions for section 475 (RP 41) 26, 1492
- Services cost method:
- And other issues under section 482 temporary regulations, partial modification of effective date and clarification (Notice 5) 3, 269
  - Under section 482 regulations, specified covered services eligible (RP 13) 3, 295
- Settlement initiative, further extension of deadline for settlement offered to certain foreign embassy staff (Ann 39) 15, 954

## INCOME TAX—Cont.

- Space and ocean activities, source of income, source of communications income (TD 9305) 7, 479
- Standard Industry Fare Level (SIFL) formula (RR 17) 13, 805
- Statute of limitations:
- On assessment for bona fide residents of the U.S. Virgin Islands (Notice 19) 11, 689; and exchange of information (Notice 31) 16, 971
  - Suspension in third-party and John Doe summons disputes (REG–153037–01) 15, 942
- Substitute forms:
- 1096, 1098, 1099, 5498, W-2G, and 1042-S, rules and specifications (RP 15) 3, 300
  - And schedules, general rules and specifications (RP 24) 11, 692
- Tax conventions:
- Disallowance of convention expenses, North American geographical area (RR 28) 18, 1039
  - Reciprocal exemption agreement, Bailiwick of Jersey (Ann 23) 10, 665
- Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) amendments to section 199, change in hearing location for REG–127819–06 (Ann 5) 4, 376
- Technical Advice Memoranda (TAMs) (RP 2) 1, 88
- Travel expenses not away from home, deductibility of lodging expenses (Notice 47) 24, 1393
- Treatment of payments in lieu of taxes under section 141, change in hearing location for REG–136806–06 (Ann 6) 4, 376; cancellation of hearing on REG–136806–06 (Ann 19) 7, 521
- United States dollar approximate separate transactions method (DASTM), qualified business unit (QBU) (TD 9320) 17, 994
- User fees:
- Electronic payment option for user fee charges for Form 8802 (RP 22) 10, 675
  - Installment agreements (TD 9306) 6, 420
- Waiver of estimated tax penalty for citizens or residents of the U.S. living abroad (Notice 16) 8, 536

## SELF-EMPLOYMENT TAX

- Frivolous tax return positions:
- Arguments and schemes (Notice 30) 14, 883
  - That filing tax returns and paying federal tax are voluntary (RR 20) 14, 863
- Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
- Technical Advice Memoranda (TAMs) (RP 2) 1, 88



**U.S. GOVERNMENT  
PRINTING OFFICE**  
KEEPING AMERICA INFORMED

Order Processing Code:  
3465

Easy Secure Internet:  
bookstore.gpo.gov

**Internal Revenue Cumulative Bulletins  
Publications and Subscription Order Form**

Toll Free: 866 512-1800  
DC Area: 202 512-2800  
Fax: 202 512-2250

Mail: Superintendent of Documents  
P.O. Box 371954  
Pittsburgh, PA 15250-7954

**Publications**

Qty.	Stock Number	Title	Price Each	Total Price
	048-004-02467-5	Cum. Bulletin 1999-3	20.40	
	048-004-02462-4	Cum. Bulletin 2001-2 (Jul-Dec)	24.00	
	048-004-02480-2	Cum. Bulletin 2001-3	71.00	
	048-004-02470-5	Cum. Bulletin 2002-2 (Jul-Dec)	28.80	
	048-004-02486-1	Cum. Bulletin 2002-3	54.00	
	048-004-02483-7	Cum. Bulletin 2004-2 (July-Dec)	54.00	
	048-004-02488-8	Cum. Bulletin 2005-2	56.00	
<b>Total for Publications</b>				

**Subscriptions**

Qty.	List ID	Title	Price Each	Total Price
	IRS	Internal Revenue Bulletin	\$247	
		Optional - Add \$50 to open Deposit Account		
<b>Total for Subscriptions</b>				
<b>Total for Publications and Subscriptions</b>				

**NOTE: Price includes regular shipping and handling and is subject to change. International customers please add 40 percent.**

**Standing Order Service\***

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

**Authorization**

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:  
(enter account information at right)

VISA  MasterCard  Discover/NOVUS  American Express

Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

---

Please print or type your name.

Daytime phone number (\_\_\_\_\_) \_\_\_\_\_

**SuDocs Deposit Account**

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of \$50 you can establish your Superintendent of Documents Deposit Account.

**YES!** Open a SOD Deposit Account for me so I can order future publications quickly and easily.  
I am enclosing the \$50 initial deposit.



**Check method of payment:**

- Check payable to Superintendent of Documents
- SOD Deposit Account  -
- VISA     MasterCard     Discover/Novus     American Express

(expiration date)

**Thank you for your Order!**

\_\_\_\_\_  
Authorizing signature 06/06

\_\_\_\_\_  
Company or personal name (Please type or print)

\_\_\_\_\_  
Additional address/attention line

\_\_\_\_\_  
Street address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
E-mail address

\_\_\_\_\_  
Daytime phone including area code

\_\_\_\_\_  
Purchase order number (optional)

**\*Standing Order Service**

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA or MasterCard, Discover/NOVUS, or American Express account. Or open a Deposit Account with an initial deposit of \$50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted, but must be followed up with a written cancellation within 10 days).

**Important:** Please include this completed order form with your payment.

# INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

## CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

---

## ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at [www.irs.gov](http://www.irs.gov). Under information for: select Businesses. Under related topics, select More Topics. Then select Internal Revenue Bulletins.

---

## INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

---

## HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh PA, 15250-7954. Please allow two to six weeks, plus mailing time, for delivery.

---

## WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page ([www.irs.gov](http://www.irs.gov)) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:T:SP, Washington, DC 20224

---

**Internal Revenue Service**  
**Washington, DC 20224**

Official Business  
Penalty for Private Use, \$300