Internal Revenue bulletin

Bulletin No. 2009-18
May 4, 2009

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

REG–144689–04, page 906.

Proposed regulations under section 706 of the Code relate to the determination of partners' distributive shares of partnership items of income, gain, loss, deduction and credit when a partner's interests varies during a partnership taxable year. The regulations also modify the existing regulations regarding the required taxable year of a partnership.

Notice 2009–37, page 898.

This notice announces the phase-out of the new qualified hybrid motor vehicle credit and the new advanced lean burn technology motor vehicle credit for passenger automobiles and light trucks manufactured by Ford Motor Company that are purchased for use or lease in the United States beginning on April 1, 2009.

Notice 2009–38, page 901.

Section 382. This notice provides additional guidance regarding the application of section 382 of the Code and other provisions of law to corporations whose instruments are acquired by the Treasury Department pursuant to the Emergency Economic Stabilization Act of 2008 (EESA). Notice 2009–14 amplified and superseded.

EMPLOYEE PLANS

Notice 2009–39, page 902.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates. This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in April 2009; the 24-month average segment rates; the funding transitional segment rates applicable for April 2009; and the minimum present value transitional rates for March 2009.

Announcement 2009–34, page 916.

Request for comments on revenue procedure for section 403(b) prototype plans. The Service intends to establish a program for the pre-approval of prototype plans under section 403(b) of the Code. This announcement includes a draft revenue procedure that contains the Service's proposed procedures for issuing opinion letters as to the acceptability under section 403(b) of the form of prototype plans. The Service posted draft sample plan language on the *irs.gov* website for use in drafting section 403(b) prototype plan. The Service seeks public input before finalizing these procedures and sample plan language, and invites interested persons to submit comments.

EMPLOYMENT TAX

Rev. Rul. 2009–11, page 896.

Differential wage payments to active duty members of the uniformed services. This ruling provides that differential pay that employers pay to their employees who leave their job to go on active military duty is subject to income tax withholding, but is not subject to Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes. Additionally, the ruling provides that employers may use the aggregate procedure or optional flat rate withholding to calculate the amount of income taxes required to be withheld on these payments, and that these payments must be reported on Form W–2. Rev. Rul. 69–136 modified and superseded.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

Announcement 2009–36, page 927.
This document cancels a public hearing on proposed regulations (REG–150066–08, 2009–5 I.R.B. 423) relating to the foreign base company sales income, in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC. The temporary regulations modify the foreign base company sales income regulations to address current business structures and practices, particulary the growing importance of contract manufacturing and other manufacturing arrangements. The temporary regulations, in general, will affect CFCs and their United States shareholders.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 3401.—Definitions

(Also §§ 3121(a), 3306(b).)

Differential wage payments to active duty members of the uniformed services. This ruling provides that differential pay that employers pay to their employees who leave their job to go on active military duty is subject to income tax withholding, but is not subject to Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes. Additionally, the ruling provides that employers may use the aggregate procedure or optional flat rate withholding to calculate the amount of income taxes required to be withheld on these payments, and that these payments must be reported on Form W–2. Rev. Rul. 69–136 modified and superseded.

Rev. Rul. 2009–11

ISSUES

1. Are differential wage payments made by employers to individuals while on active duty in the uniformed services of the United States for more than 30 days "wages" for purposes of taxation under the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source on Wages (income tax withholding)?
2. How do employers calculate the amount of income taxes required to be withheld on differential wage payments?
3. What information return reporting requirements apply to differential wage payments?

FACTS

M, an employer, has employees who are called or voluntarily enlist for active military service in the United States uniformed services (as defined in chapter 43 of title 38, United Sates Code) for periods exceeding 30 days. M continues making payments to the individuals in an amount equal to the difference between the compensation they receive for their military service and the wages the employees would have received from M if the employees were performing services for M. The payments supplement compensation received by the employees from the Federal government for their military service.

LAW AND ANALYSIS

Income Tax Withholding, FICA and FUTA Treatment

Section 3402(a), relating to income tax withholding, generally requires every employer making a payment of wages to deduct and withhold upon those wages a tax determined in accordance with prescribed tables or computational procedures. Sections 3101 and 3111 impose taxes under the Federal Insurance Contributions Act ("FICA") on employees and employers for wages paid with respect to employment. Section 3301 imposes tax under the Federal Unemployment Tax Act ("FUTA") on employers on wages paid with respect to employment.

Section 3401(a) defines "wages" for income tax withholding purposes as all remuneration for services performed by an employee for his employer, subject to certain exceptions. Sections 3121(a) and 3306(b) contain similar, but not identical, definitions of wages for FICA and FUTA purposes.

Revenue Ruling 69–136, 1969–1 C.B. 252, addresses the tax treatment of payments made by civilian employers to their employees who are called to or enlist in active military service for an extended time period. The payments are made by the civilian employers during the period of active military service in amounts equal to the difference between the compensation paid by the military and the wages that would have been paid if the individuals were performing services for the civilian employer. The ruling holds that the payments are not wages subject to the taxes imposed by FICA or FUTA or to income tax withholding.

Revenue Ruling 68–238, 1968–1 C.B. 420, addresses the tax treatment of payments made by civilian employers to their employees who are temporarily absent from work while serving in a State National Guard. The payments are equivalent to the difference between the employees' normal wages and the amounts received from the State for their services in the National Guard. The ruling holds that these payments are wages and are subject to FICA and FUTA taxes as well as income tax withholding.

Section 3401(h) was added to the Code by section 105(a) of the Heroes Earnings Assistance and Relief Tax Act of 2008, Pub. L. No. 110–245, 122 Stat. 1624, 1628–630. New subsection 3401(h) provides that, for purposes of income tax withholding, any differential wage payment is to be treated as a payment of wages by the employer to the employee. The term "differential wage payment" means any payment which (A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code) while on active duty for a period of more than 30 days, and (B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer. Section 3401(h) applies to differential wage payments paid after December 31, 2008. The enactment of section 3401(h) modifies the holding in Revenue Ruling 69–136 that differential wage payments are not subject to income tax withholding.

The payments made by M to the employees while they are in military service with the United States uniformed services constitute "differential wage payments" under section 3401(h) as these payments represent all or a portion of the wages the individuals would have received if still performing services for M and are made while the individuals are actively serving in the United States uniformed services for a period of duty scheduled to exceed 30 days. These payments are therefore treated as wages for income tax withholding purposes, and M must withhold income taxes on the differential wage payments.

However, because the individuals are scheduled to be on active military duty for an extended period of time, rather than being temporarily absent, the differential wage payments are not wages for purposes

of FICA and FUTA taxes. Section 3401(h) does not address the FICA and FUTA treatment of differential wage payments and does not alter the holding in Revenue Ruling 69–136 that differential wage payments do not constitute wages subject to FICA or FUTA taxes. Therefore M is not required to withhold or pay FICA or FUTA tax, with respect to the differential wage payments.

Supplemental Wage Withholding

Differential wage payments are supplemental wages because they are not a payment for services for the nonmilitary employer in the current payroll period. As a supplemental wage, if the amount of the differential pay, when added to all other supplemental wages paid by the same employer to the employee during the calendar year does not exceed $1,000,000, then the amount of the income tax withholding is determined under the rules provided in Regulations § 31.3402(g)–1(a)(6) and (7). The two alternative procedures for calculating the amount of income taxes required to be withheld from the differential wage payments are the aggregate procedure and optional flat rate withholding.

Under the aggregate procedure, M adds the differential wage payment to the employee's regular wages, if any, for the payroll period and treats the aggregate of the two as if it constituted a single wage payment for the payroll period. The withholding method used by M with respect to regular wages is then used to calculate the withholding on this single wage payment and M takes into consideration the Form W–4, Employee's Withholding Allowance Certificate, submitted by the employee.

Alternatively, M may determine the income tax withholding on the differential wage payment using optional flat rate withholding, if certain requirements are satisfied. Optional flat rate withholding may be used provided that (1) the differential wage payment is either not paid concurrently with regular wages or is separately stated on the payroll records of the employer, and (2) income tax has been withheld from the regular wages paid to the employee during the calendar year of the differential wage payment or the preceding calendar year. The rate used for optional flat rate withholding is provided in § 31.3402(g)–1(a)(7)(iii)(F) of the Regulations. For 2009, the rate for optional flat rate withholding is scheduled to be 25 percent, but this rate could change if income tax rates change. The determination of the amount of tax to be withheld under optional flat rate withholding is made without reference to any payment of regular wages, without allowance for the number of withholding allowances claimed by the employee on Form W–4, and without regard to whether the employee has requested additional withholding on Form W–4.

If the differential wage payment, when added to all supplemental wage payments previously made by M to the employee during the calendar year, exceeds $1,000,000, § 31.3402(g)–1(a)(2) of the Regulations provides that the rate used in determining the amount of withholding on the excess shall be equal to the highest rate of tax applicable under section 1 of the Code. Under current law, the highest rate of tax applicable under section 1 is 35 percent.

Information Return Reporting

Section 6051(a) provides that any person required to deduct and withhold from employees the tax under § 3402, must furnish each employee with a written statement showing the amount of wages paid and amounts withheld for income tax purposes. Section 31.6051–1(a) states that employers must use Form W–2 to fulfill this requirement. Because differential payments are treated as wages subject to income tax withholding, M must report the payments on each employee's Form W–2.

HOLDINGS

1. Differential wage payments made to an individual while on active duty in the United States uniformed services for more than 30 days are subject to income tax withholding, but are not subject to FICA or FUTA taxes.
2. Employers may use either the aggregate method or optional flat rate withholding to calculate the amount of income tax required to be withheld on differential wage payments which do not exceed $1,000,000 when added to all other supplemental wages paid by the same employer to the individual during the calendar year.
3. The amounts of the differential wage payments must be reported by the employer on the employee's Form W–2.

EFFECT ON OTHER REVENUE RULINGS

Revenue Ruling 69–136, 1969–1 C.B. 252 is modified and superseded.

PROSPECTIVE APPLICATION

This revenue ruling is effective for differential wage payments made after December 31, 2008 (the effective date of § 3401(h) under the Heroes Earnings Assistance and Relief Tax Act of 2008).

DRAFTING INFORMATION

The principal author of this revenue ruling is Joseph Perera of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue ruling, contact Mr. Perera at (202) 622–6040 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Phase-out of Credit for New Qualified Hybrid Motor Vehicles and New Advanced Lean Burn Technology Motor Vehicles

Notice 2009–37

SECTION 1. PURPOSE

This notice announces the credit phase-out schedule for advanced lean burn technology motor vehicles and hybrid passenger automobiles and light trucks manufactured by Ford Motor Company.

SECTION 2. BACKGROUND

Section 30B(a)(2) of the Internal Revenue Code provides for a credit determined under § 30B(c) for certain new advanced lean burn technology motor vehicles. Section 30B(a)(3) provides for a credit determined under § 30B(d) for certain new qualified hybrid motor vehicles. Both the new advanced lean burn technology motor vehicle credit and the new qualified hybrid motor vehicle credit begin to phase out for a manufacturer's passenger automobiles and light trucks in the second calendar quarter after the calendar quarter in which at least 60,000 of the manufacturer's passenger automobiles and light trucks that qualify for either credit have been sold for use or lease in the United States (determined on a cumulative basis for sales after December 31, 2005). Taxpayers purchasing the manufacturer's vehicles during the first two calendar quarters of the phase-out period may claim only 50 percent of the otherwise allowable credit. Taxpayers purchasing the manufacturer's vehicles during the third and fourth calendar quarters of the phase-out period may claim only 25 percent of the otherwise allowable credit. No credit is available for vehicles purchased after the last day of the fourth calendar quarter of the phase-out period.

Notice 2006–9, 2006–1 C.B. 413, provides procedures for a vehicle manufacturer (or in the case of a foreign vehicle manufacturer, its domestic distributor) to certify to the Internal Revenue Service (Service) both (1) that a particular make, model and model year of vehicle qualifies for either the new advanced lean burn technology motor vehicle credit or the new qualified hybrid motor vehicle credit and (2) the amount of the credit allowable with respect to that vehicle.

Section 5.05 of Notice 2006–9 requires a manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) that has received from the Service an acknowledgement of its certification for a particular make, model, and model year of vehicle to submit to the Service a report of the number of qualified vehicles sold by the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to retail dealers during the calendar quarter. A qualified vehicle is defined for this purpose as any passenger automobile or light truck that is a new advanced lean burn technology motor vehicle or a new qualified hybrid motor vehicle.

In accordance with section 5.05 of Notice 2006–9, Ford Motor Company has submitted quarterly reports that indicate that its cumulative sales of qualified vehicles to retail dealers reached the 60,000-vehicle limit during the calendar quarter ending December 31, 2008. Accordingly, the credit for all new advanced lean burn technology motor vehicles or new qualified hybrid passenger automobiles or light trucks manufactured by Ford Motor Company will begin to phase out on April 1, 2009.

SECTION 3. SCOPE OF NOTICE

This notice applies to any make, model, or model year of new advanced lean burn technology motor vehicle or new qualified hybrid passenger automobile or light truck that is —

(1) manufactured by Ford Motor Company; and

(2) purchased for use or lease in the United States on or after April 1, 2009.

SECTION 4. CREDIT AMOUNT

.01 *In general*. If a new advanced lean burn technology motor vehicle or a new qualified hybrid passenger automobile or light truck manufactured by Ford Motor Company is purchased for use or lease after March 31, 2009, the allowable credit is as follows:

(1) For vehicles purchased for use or lease on or after April 1, 2009, and on or before September 30, 2009, the credit is 50 percent of the otherwise allowable amount determined under § 30B(c) or (d) (whichever is applicable);

(2) For vehicles purchased for use or lease on or after October 1, 2009, and on or before March 31, 2010, the credit is 25 percent of the otherwise allowable amount determined under § 30B(c) or (d) (whichever is applicable); and

(3) For vehicles purchased for use or lease on or after April 1, 2010, no credit is allowable.

.02 *Certified Vehicles.* The following tables set forth the credit available on or after April 1, 2009, for hybrid motor vehicles for which Ford Motor Company received an acknowledgement of its certification from the Service on or before April 8, 2009.

Table 1		
April 1, 2009 – September 30, 2009		
Model Years	**Model**	**Credit Amount**
2005	Ford Escape 2WD	$1,300
2006	Ford Escape 2WD	$1,300
2007	Ford Escape 2WD	$1,300
2008	Ford Escape 2WD	$1,500
2009	Ford Escape 2WD	$1,500
2005	Ford Escape 4WD	$975
2006	Ford Escape 4WD	$975
2007	Ford Escape 4WD	$975
2008	Ford Escape 4WD	$1,100
2009	Ford Escape 4WD	$975
2010	Ford Fusion	$1,700
2008	Mercury Mariner 2WD	$1,500
2009	Mercury Mariner 2WD	$1,500
2006	Mercury Mariner 4WD	$975
2007	Mercury Mariner 4WD	$975
2008	Mercury Mariner 4WD	$1,100
2009	Mercury Mariner 4WD	$975
2010	Mercury Milan	$1,700

Table 2		
October 1, 2009 – March 31, 2010		
Model Years	**Model**	**Credit Amount**
2005	Ford Escape 2WD	$650
2006	Ford Escape 2WD	$650
2007	Ford Escape 2WD	$650
2008	Ford Escape 2WD	$750
2009	Ford Escape 2WD	$750
2005	Ford Escape 4WD	$487.50
2006	Ford Escape 4WD	$487.50
2007	Ford Escape 4WD	$487.50
2008	Ford Escape 4WD	$550
2009	Ford Escape 4WD	$487.50
2010	Ford Fusion	$850
2008	Mercury Mariner 2WD	$750
2009	Mercury Mariner 2WD	$750

Table 2		
October 1, 2009 – March 31, 2010		
Model Years	**Model**	**Credit Amount**
2006	Mercury Mariner 4WD	$487.50
2007	Mercury Mariner 4WD	$487.50
2008	Mercury Mariner 4WD	$550
2009	Mercury Mariner 4WD	$487.50
2010	Mercury Milan	$850

Table 3		
On or after April 1, 2010		
Model Years	**Model**	**Credit Amount**
2005	Ford Escape 2WD	$0.00
2006	Ford Escape 2WD	$0.00
2007	Ford Escape 2WD	$0.00
2008	Ford Escape 2WD	$0.00
2009	Ford Escape 2WD	$0.00
2005	Ford Escape 4WD	$0.00
2006	Ford Escape 4WD	$0.00
2007	Ford Escape 4WD	$0.00
2008	Ford Escape 4WD	$0.00
2009	Ford Escape 4WD	$0.00
2010	Ford Fusion	$0.00
2008	Mercury Mariner 2WD	$0.00
2009	Mercury Mariner 2WD	$0.00
2006	Mercury Mariner 4WD	$0.00
2007	Mercury Mariner 4WD	$0.00
2008	Mercury Mariner 4WD	$0.00
2009	Mercury Mariner 4WD	$0.00
2010	Mercury Milan	$0.00

The principal author of this notice is Patrick S. Kirwan of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Kirwan at (202) 622–3110 (not a toll-free call).

Application of Section 382 to Corporations Whose Instruments are Acquired by the Treasury Department Under Certain Programs Pursuant to the Emergency Economic Stabilization Act of 2008

Notice 2009–38

This notice provides additional guidance regarding the application of section 382 of the Code and other provisions of law to corporations whose instruments are acquired by the Treasury Department pursuant to the Emergency Economic Stabilization Act of 2008, P.L. 110–343 (EESA). This notice amplifies and supersedes Notice 2009–14, 2009–7 I.R.B. 516, to address other EESA programs and provide additional guidance.

I. Purpose.

The Internal Revenue Service (Service) and Treasury Department (Treasury) intend to issue regulations implementing certain of the rules as described below. Pending the issuance of further guidance, taxpayers may rely on the rules set forth in this notice to the extent provided herein.

Section 101(a)(1) of EESA authorizes the Secretary to establish the Troubled Asset Relief Program (TARP). Section 102(a) of EESA authorizes the Secretary to also establish a program to guarantee troubled assets. This notice provides guidance to corporate issuers with respect to Treasury's acquisition of instruments pursuant to the following EESA programs: (i) the Capital Purchase Program for publicly-traded issuers (Public CPP); (ii) the Capital Purchase Program for private issuers (Private CPP); (iii) the Capital Purchase Program for S corporations (S Corp CPP); (iv) the Targeted Investment Program (TARP TIP); (v) the Asset Guarantee Program; (vi) the Systemically Significant Failing Institutions Program; (vii) the Automotive Industry Financing Program; and (viii) the Capital Assistance Program for publicly-traded issuers (TARP CAP). Unless otherwise specified below, a reference to "the Programs" shall include any of the various EESA programs described in the preceding sentence.

II. Background.

Section 382(a) of the Internal Revenue Code (Code) provides that the taxable income of a loss corporation for a year following an ownership change may be offset by pre-change losses only to the extent of the section 382 limitation for such year. An ownership change occurs with respect to a corporation if it is a loss corporation on a testing date and, immediately after the close of the testing date, the percentage of stock of the corporation owned by one or more 5-percent shareholders has increased by more than 50 percentage points over the lowest percentage of stock of such corporation owned by such shareholders at any time during the testing period. See § 1.382–2T(a)(1) of the Income Tax Regulations. Section 382(m) of the Code provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of sections 382 and 383.

Section 101(c)(5) of EESA provides that the Secretary is authorized to issue such regulations and other guidance as may be necessary or appropriate to carry out the purposes of EESA.

Except as otherwise provided, any definitions and terms used in this notice have the same meaning as they do in section 382 of the Code (and the regulations thereunder) or in EESA, as applicable. Unless otherwise specified, a reference to "section" is to the particular section of the Code or regulations.

III. Guidance Regarding Corporations Whose Instruments are Acquired by the Treasury Pursuant to EESA.

Taxpayers may rely on the rules described in this Section III to the extent provided below.

RULES:

A. *Characterization of instruments (other than warrants) issued to Treasury*. Any instrument issued to Treasury pursuant to any of the Programs except TARP CAP, whether owned by Treasury or subsequent holders, shall be treated for all Federal income tax purposes as an instrument of indebtedness if denominated as such, and as stock described in section 1504(a)(4) if denominated as preferred stock. No instrument so denominated shall be treated as stock for purposes of section 382 while held by Treasury or by other holders, except that preferred stock described in section 1504(a)(4) will be treated as stock for purposes of section 382(e)(1). In the case of any instrument issued to Treasury pursuant to TARP CAP, the appropriate classification of such instrument shall be determined by applying general principles of Federal tax law.

B. *Characterization of warrants issued to Treasury*. For all Federal income tax purposes, any warrant to purchase stock issued to Treasury pursuant to any of the Programs except Private CPP and S Corp CPP, whether owned by Treasury or subsequent holders, shall be treated as an option (and not as stock). While held by Treasury, such warrant will not be deemed exercised under § 1.382–4(d)(2). For all Federal income tax purposes, any warrant to purchase stock issued to Treasury pursuant to the Private CPP shall be treated as an ownership interest in the underlying stock, which shall be treated as preferred stock described in section 1504(a)(4). For all Federal income tax purposes, any warrant issued to Treasury pursuant to the S Corp CPP shall be treated as an ownership interest in the underlying indebtedness.

C. *Value-for-value exchange*. For all Federal income tax purposes, any amount received by an issuer in exchange for instruments issued to Treasury under the Programs shall be treated as received, in its entirety, as consideration for such instruments.

D. *Section 382 treatment of stock acquired by Treasury*. For purposes of section 382, with respect to any stock (other than preferred stock described in section 1504(a)(4)) issued to Treasury pursuant to the Programs (either directly or upon the exercise of a warrant), the ownership rep-

resented by such stock on any date on which it is held by Treasury shall not be considered to have caused Treasury's ownership in the issuing corporation to have increased over its lowest percentage owned on any earlier date. Except as described below, such stock is considered outstanding for purposes of determining the percentage of stock owned by other 5-percent shareholders on a testing date.

E. *Section 382 treatment of redemptions of stock from Treasury*. For purposes of measuring shifts in ownership by any 5-percent shareholder on any testing date occurring on or after the date on which an issuing corporation redeems stock held by Treasury that had been issued to Treasury pursuant to the Programs (either directly or upon the exercise of a warrant), the stock so redeemed shall be treated as if it had never been outstanding.

F. *Section 382(l)(1) not applicable with respect to capital contributions made by Treasury pursuant to the Programs*. For purposes of section 382(l)(1), any capital contribution made by Treasury pursuant to the Programs shall not be considered to have been made as part of a plan a principal purpose of which was to avoid or increase any section 382 limitation.

G. *Certain exchanges*. Paragraphs (C), (D), (E), and (F), but not paragraphs (A) and (B), of this notice apply to "Covered Instruments" as though such instruments were issued directly to Treasury under the Programs. For purposes of this notice, the term "Covered Instrument" means any instrument acquired by Treasury in exchange for an instrument that was issued to Treasury under the Programs. In addition, the term also includes any instrument acquired by Treasury in exchange for a Covered Instrument. General principles of Federal tax law determine the characterization of all Covered Instruments.

IV. Reliance on Notice.

Taxpayers may rely on the rules described in Section III of this notice. These rules will continue to apply unless and until there is additional guidance. Any future contrary guidance will not apply to any instrument (i) issued to Treasury pursuant to the Programs, or acquired by Treasury in an exchange described in Section III(G) of this notice, prior to the publication of that guidance, or (ii) issued to Treasury pursuant to the Programs, or acquired by Treasury in an exchange described in Section III(G) of this notice, under a binding contract entered into prior to the publication of that guidance. In exercising its authority under EESA in this notice, the Treasury and the Service intend no implication regarding the Federal income tax results that would obtain with respect to instruments that are not specifically described in this notice. Accordingly, the Federal income tax consequences of instruments not described in this notice continue to be determined based upon the application of general principles of Federal tax law to the specific facts and circumstances of each case.

V. Effect on Other Documents.

This notice amplifies and supersedes Notice 2009–14, 2009–7 I.R.B. 516.

Drafting Information

The principal author of this notice is Keith Stanley of the Office of Associate Chief Counsel (Corporate). For further information regarding this notice, contact Keith Stanley at (202) 622–7750 (not a toll-free call).

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

Notice 2009–39

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 as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

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

Notice 2004–34, 2004–1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current 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, 2006–2 C.B. 366.

The composite corporate bond rate for March 2009 is 7.22 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

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

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range		
Month	*Year*		90%	to	100%
April	2009	6.39	5.75		6.39

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from March 2009 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of March 2009 are, respectively, 5.70, 7.53, and 7.85. The three 24-month average corporate bond segment rates applicable for April 2009 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
5.33	6.62	6.80

The transitional segment rates under § 430(h)(2)(G) applicable for April 2009, taking into account the corporate bond weighted average of 6.39 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	6.04	6.47	6.53
2009	5.68	6.54	6.66

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)–1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury 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 March 2009 is 3.64 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 2039.

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range		
Month	*Year*		90%	to	105%
April	2009	4.48	4.03		4.70

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. For plan years beginning in 2008 through 2011, the applicable interest rate is the monthly spot segment rate blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for March 2009, taking into account the March 2009 30-year Treasury rate of 3.64 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	4.05	4.42	4.48
2009	4.46	5.20	5.32

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.

Table I

Monthly Yield Curve for March 2009

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	4.62	20.5	7.70	40.5	7.87	60.5	7.92	80.5	7.95
1.0	4.77	21.0	7.71	41.0	7.87	61.0	7.92	81.0	7.95
1.5	4.96	21.5	7.72	41.5	7.87	61.5	7.92	81.5	7.95
2.0	5.20	22.0	7.73	42.0	7.88	62.0	7.93	82.0	7.95
2.5	5.50	22.5	7.73	42.5	7.88	62.5	7.93	82.5	7.95
3.0	5.82	23.0	7.74	43.0	7.88	63.0	7.93	83.0	7.95
3.5	6.13	23.5	7.75	43.5	7.88	63.5	7.93	83.5	7.95
4.0	6.42	24.0	7.75	44.0	7.88	64.0	7.93	84.0	7.95
4.5	6.67	24.5	7.76	44.5	7.88	64.5	7.93	84.5	7.95
5.0	6.88	25.0	7.77	45.0	7.89	65.0	7.93	85.0	7.95
5.5	7.05	25.5	7.77	45.5	7.89	65.5	7.93	85.5	7.95
6.0	7.19	26.0	7.78	46.0	7.89	66.0	7.93	86.0	7.95
6.5	7.29	26.5	7.78	46.5	7.89	66.5	7.93	86.5	7.96
7.0	7.36	27.0	7.79	47.0	7.89	67.0	7.93	87.0	7.96
7.5	7.42	27.5	7.79	47.5	7.89	67.5	7.93	87.5	7.96
8.0	7.46	28.0	7.80	48.0	7.89	68.0	7.93	88.0	7.96
8.5	7.48	28.5	7.80	48.5	7.90	68.5	7.94	88.5	7.96
9.0	7.50	29.0	7.81	49.0	7.90	69.0	7.94	89.0	7.96
9.5	7.52	29.5	7.81	49.5	7.90	69.5	7.94	89.5	7.96
10.0	7.53	30.0	7.81	50.0	7.90	70.0	7.94	90.0	7.96
10.5	7.54	30.5	7.82	50.5	7.90	70.5	7.94	90.5	7.96
11.0	7.54	31.0	7.82	51.0	7.90	71.0	7.94	91.0	7.96
11.5	7.55	31.5	7.82	51.5	7.90	71.5	7.94	91.5	7.96
12.0	7.55	32.0	7.83	52.0	7.90	72.0	7.94	92.0	7.96
12.5	7.56	32.5	7.83	52.5	7.91	72.5	7.94	92.5	7.96
13.0	7.56	33.0	7.83	53.0	7.91	73.0	7.94	93.0	7.96
13.5	7.57	33.5	7.84	53.5	7.91	73.5	7.94	93.5	7.96
14.0	7.58	34.0	7.84	54.0	7.91	74.0	7.94	94.0	7.96
14.5	7.59	34.5	7.84	54.5	7.91	74.5	7.94	94.5	7.96
15.0	7.60	35.0	7.84	55.0	7.91	75.0	7.94	95.0	7.96
15.5	7.61	35.5	7.85	55.5	7.91	75.5	7.94	95.5	7.96
16.0	7.62	36.0	7.85	56.0	7.91	76.0	7.94	96.0	7.96
16.5	7.62	36.5	7.85	56.5	7.91	76.5	7.95	96.5	7.96
17.0	7.63	37.0	7.85	57.0	7.92	77.0	7.95	97.0	7.96
17.5	7.64	37.5	7.86	57.5	7.92	77.5	7.95	97.5	7.96
18.0	7.65	38.0	7.86	58.0	7.92	78.0	7.95	98.0	7.96
18.5	7.66	38.5	7.86	58.5	7.92	78.5	7.95	98.5	7.96
19.0	7.67	39.0	7.86	59.0	7.92	79.0	7.95	99.0	7.96
19.5	7.68	39.5	7.87	59.5	7.92	79.5	7.95	99.5	7.96
20.0	7.69	40.0	7.87	60.0	7.92	80.0	7.95	100.0	7.97

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Determination of Distributive Share When a Partner's Interest Changes

REG–144689–04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the determination of partners' distributive shares of partnership items of income, gain, loss, deduction and credit when a partner's interests varies during a partnership taxable year. Also, the proposed regulations modify the existing regulations regarding the required taxable year of a partnership. These proposed regulations affect partnerships and their partners.

DATES: Written or electronic comments and requests for a public hearing must be received by July 13, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–144689–04), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–144689–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC; or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–144689–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Laura Fields or Jonathan Cornwell at (202) 622–3050, concerning submissions of comments and the hearing, Richard Hurst at (202) 622–7180 (not toll-free numbers) or *Richard.A.Hurst@irscounsel.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

These proposed regulations contain amendments to the Income Tax Regulations (26 CFR Part 1) under section 706 of the Internal Revenue Code (Code). These amendments are proposed to conform the Income Tax Regulations for certain of the provisions of section 1246 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788 (1997)) (the 1997 Act) and section 72 of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 494 (1984)) (the 1984 Act).

Also, under section 706(d)(1), the Treasury Secretary may provide in regulations various methods for determining a partner's distributive share of partnership items of income, gain, loss, deduction and credit that takes into account the varying interests of the partners for any taxable year of the partnership in which there is a change in the interest of a partner. Pursuant to that grant of regulatory authority, the proposed regulations provide methods for determining a partner's distributive share of partnership items to take into account the varying interests of the partners in any year in which there is a change in a partner's interest in the partnership. Also, the proposed regulations provide that a deemed disposition of a partner's entire interest under other sections of the regulations is a deemed disposition of a partner's entire interest for the purpose of section 706(d).

Finally, the proposed regulations amend the rules applicable to the determination of the taxable year of a partnership in those instances in which partnership interests are held by "disregarded foreign partners" (as that term is defined in §1.706–1(b)(6)(i)).

1. *Varying Interest Rule*

a. *In general*

Section 702(a) of the Code provides that the partner in determining the partner's income tax shall take into account separately the partner's distributive share of partnership items of income, gain, loss, deduction, or credit.

Section 706(a) provides that, in computing the taxable income of a partner for a taxable year, the inclusions required by sections 702 and 707(c) with respect to a partnership shall be based on the income, gain, loss, deduction, or credit of the partnership for any taxable year of the partnership ending within or with the taxable year of the partner.

Section 706(c)(1) provides that, except in the case of a termination of a partnership and except as provided in section 706(c)(2), the taxable year of a partnership shall not close as the result of the death of a partner, the entry of a new partner, the liquidation of a partner's interest in the partnership, or the sale or exchange of a partner's interest in the partnership. Under section 706(c)(2)(A), the taxable year of a partnership shall close with respect to a partner whose entire interest terminates (whether by reason of death, liquidation, or otherwise). Under section 706(c)(2)(B), the taxable year of a partnership shall not close (other than at the end of a partnership's taxable year as determined under section 706(b)(1)) with respect to a partner who sells or exchanges less than his entire interest in the partnership or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise).

Section 706(d)(1) provides that, except as required by sections 706(d)(2) and (d)(3), if there is a change in a partner's interest in the partnership during the partnership's taxable year, each partner's distributive share of any partnership item of income, gain, loss, deduction or credit for such taxable year is determined by the use of any method prescribed by the Secretary by regulations which takes into account the varying interests of the partners in the partnership during such taxable year (the varying interests rule). Section 706(d)(1) was added by the 1984 Act, in part, to clarify that the varying interests rule applies to the disposition of a partner's entire interest in the partnership as well as the disposition of less than a partner's entire interest, and to authorize the Secretary to prescribe methods for determining a partner's distributive share of partnership items when there is a change

in the partners' interests during the taxable year of the partnership.

The existing regulations under section 706 have not been revised to reflect the changes made to that section by the 1984 Act. Section 1.706–1(c)(2)(ii) provides that in the case of a disposition of a partner's entire interest in a partnership the partner's distributive share of partnership items for the taxable year of the partnership in which the disposition occurs may be determined by a closing of the partnership's books as of the date of disposition (interim closing method). Alternatively, the partners by agreement may determine the departing partner's distributive share by taking his *pro rata* part of the amount of partnership items that such partner would have included in his taxable income had he remained a partner until the end of the partnership taxable year (proration method). Section 1.706–1(c)(2)(ii). The proration may be based on the portion of the taxable year that has elapsed prior to the disposition or may be determined under any other method that is reasonable. Moreover, the transferee of such departing partner's interest shall include in his taxable income as his distributive share of partnership items with respect to the acquired interest the *pro rata* part (determined by the method used by the transferor partner) of the amount of such items that would have been included had he been a partner from the beginning of the partnership's taxable year. The existing regulations, however, do not specifically provide for the use of these methods when there has been a disposition of less a partner's entire interest in the partnership.

In Rev. Rul. 77–310, 1977–2 C.B. 217, (see §601.601(d)(2)(ii)(*b*)), the IRS provided an example of an acceptable method for allocating a partnership loss for the partnership's taxable year among the partners where their profit and loss sharing percentages were changed substantially one month before the end of the taxable year as a result of capital contributions of several existing partners. The ruling provided that an acceptable method, under the facts of the ruling, was to allocate the partnership's loss among the partners based on their differing profit and loss sharing percentages and the periods during the year each partner's differing percentage interests existed. See also Rev. Rul. 77–311, 1977–2 C.B. 218, (applying the same method to a partnership's distributive share of a loss from a lower-tier partnership). See §601.601(d)(2)(ii)(*b*).

Finally, the existing regulations under section 706 have not been revised to reflect the change to that section by the 1997 Act requiring that the taxable year of the partnership shall close with respect to a partner whose entire interest in the partnership terminates by reason of death. In that regard, §1.706–1(c)(3) provides that, when a partner dies, the partnership taxable year shall not close with respect to such partner prior to the end of the partnership's taxable year.

b. *Change in partnership allocations among contemporaneous partners*

Section 761(c) provides that a partnership agreement includes any modifications of the partnership agreement made prior to, or at, the time prescribed by law for the filing of the partnership return for the taxable year (not including extensions). In *Lipke v. Commissioner*, 81 T.C. 689 (1983), the Tax Court held that section 706(c)(2)(B) (as in effect prior to the 1984 Act) prohibited retroactive allocations of partnership losses where the allocations resulted from additional capital contributions made by both new and existing partners. However, the Tax Court held that the prohibition on retroactive allocations under section 706(c)(2)(B) did not apply to changes in the allocations among partners who were members of the partnership for the entire year (contemporaneous partners) if the changes in the allocations did not result from capital contributions. *Lipke v. Commissioner*, supra, at 696 (1983).

As previously discussed, the 1984 Act amended section 706, in part, to clarify that the varying interests rule applies to any change in a partner's interest, whether in connection with a complete disposition of the partner's interest or otherwise. To that end, Congress in the 1984 Act replaced the varying interests rule in section 706(c)(2)(B) with the rule that now appears in Section 706(d)(1). The legislative history pertaining to this amendment reflects Congress's intention that the new rule of section 706(d)(1) be comparable to the pre–1984 law without overruling the longstanding rule of section 761(c).

> The committee wishes to make clear that the varying interests rule is not intended to override the longstanding rule of section 761(c) with respect to interest shifts among partners who are members of the partnership for the entire taxable year, provided such shifts are not, in substance, attributable to the influx of new capital from such partners. *See Lipke v. Commissioner*, 81 T.C. 689 (1983).

S. Prt. 98–169, Vol. I, 98th Cong., 2d Sess. 218–19 (1984); see also H. Rep. No. 432, Pt. 2, 98th Cong., 2d Sess. 1212–13 (1984) (containing similar language).

c. *Conventions*

Section 1.706–1(c)(2)(ii) provides that, in determining the distributive share of partnership items under section 702(a) with respect to a partner whose entire interest in the partnership terminates, a partnership may use the interim closing method or alternatively, the partners may by agreement choose to use the proration method. Under the proration method, the partnership's income and losses may be prorated based on the portion of the taxable year that has elapsed prior to the date upon which the partners' interests varied, or "under any other method that is reasonable." These other reasonable methods have become known as conventions.

Staff of J. Comm. On Taxation, 98th Cong., General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984, 222 (Comm. Print 1984), provides,

> [I]n any case in which there is a disposition of less than an entire interest in the partnership by a partner (including the entry of a new partner), the partners may elect to determine the varying interests of the partners by using one or more conventions that treat any change in any partner's interest in the partnership during a particular month as occurring on one or more specified days in the month. The actual method for applying a convention is to be provided by Treasury regulations. The regulations may deny the use of any convention when the occurrence of significant, discrete events (*e.g.*, a large, unusual gain or loss) would mean that use of the convention could result in significant tax avoidance.
>
> . . Congress intended that the regulations providing for these conventions will be effective on a prospective basis only. Until these regulations are

proposed, and for a reasonable transition period thereafter, it is expected that Treasury will permit any reasonable convention to be used. This may include a method under which any partner entering during a month is treated as entering on the first day of the month, a method under which partners entering during the first 15 days of a month are treated as entering on the first day of the month and partners entering after the 15th of the month are treated as entering on the 16th day of the month, or any other method that is not abusive under the relevant facts and circumstances. As a general rule, use of a convention is not permitted when the occurrence of significant, discrete events (*e.g.*, a large, unusual gain or loss) would result in significant tax avoidance if the convention is used.

On December 13, 1984, the IRS issued a news release (IR–84–129) (*http://www.irs.gov/puv/irs-drop/ir–84–129.pdf*) announcing that partnerships using the interim closing method were permitted to use a semi-monthly convention. Under a semi-monthly convention, partners entering during the first 15 days of the month are treated as entering on the first day of the month, and partners entering after the 15th day of the month (but before the end of the month) are treated as entering on the 16th day of the month (except to the extent that section 706(c)(2)(A) applied). The news release provided that, until regulations were issued, partnerships that use the proration method were required to use a daily convention.

d. *Deemed dispositions*

Section 1.1502–76(b)(2)(i) provides that the federal income tax returns for the years that end and begin with a corporation becoming (or ceasing to be) a member (as defined in §1.1502–1(b)) of a consolidated group (as defined in §1.1502–1(h)) are separate tax years for all Federal income tax purposes. The periods ending and beginning with the corporation's change in status are different tax years, and the corporation's items of income, gain, loss, deduction and credit must be allocated between such separate tax years. Under §1.1502–76(b)(2)(vi), if the corporation is a partner in a partnership, the corporation is treated for purposes of determining the year to which the partnership's items are allocated as selling the corporation's entire interest in the partnership immediately before the corporation's change in status.

Section 1.1362–3(a) provides that, if an S election (as defined in section 1362(a)) terminates under section 1362(d) on a date other than the first day of the taxable year of the S corporation (as defined in section 1361(a)), the portion of the year ending as of the close of the day prior to the termination is treated as a short taxable year for which the corporation is an S corporation (S short year) and the portion of the S termination year beginning on the day of the termination is effective is treated as a short taxable year for which the corporation is a C corporation (as defined in section 1362(a)(2)) (C short year). Under §1.1362–3(a), the corporation's items of income, gain, loss, deduction and credit must be allocated between the S short year and C short year using the *pro rata* allocation approach stated in section 1362(e)(2) unless an election is made to allocate the items using its normal accounting method or in certain other instances described in sections 1362(e)(3), 1362(e)(6)(C) or 1362(e)(6)(D). Under §1.1362–3(c)(1), for purposes of section 706(c) only, the termination of the S election of a corporation that is a partner in a partnership is treated as a sale or exchange of the corporation's entire interest in the partnership on the last day of the S short year if (i) the *pro rata* allocation rules do not apply and (ii) the taxable year of the partnership ends with or within the C short year.

Under section 1377(a)(2), if a shareholder terminates the shareholder's entire interest in an S corporation and all affected shareholders (as defined in section 1377(a)(2)(B)) and the corporation agree, the S corporation may elect under section 1377(a)(2) (terminating election) to apply the *pro rata* allocation method (as defined in section 1377(a)(1)) as if the S corporation's taxable year consisted of two separate taxable years, the first of which ends at the close of the day on which the shareholder's entire interest in the S corporation is terminated. (See §1.1377–1(b)(1) for certain exceptions to the preceding rule.) Under §1.1377(b)(3)(iv), a terminating election by an S corporation that is a partner in a partnership is treated as a sale or exchange of the corporation's entire interest in the partnership for purposes of section 706(c) if the taxable year of the partnership ends after the shareholder's interest is terminated and within the taxable year of the S corporation.

2. *Taxable years of partnerships*

A partnership must determine its taxable year under section 706(b)(1)(B) unless the partnership establishes to the satisfaction of the Secretary a business purpose for a different year. In general, the required taxable year of a partnership is determined by reference to the taxable year of its partners. If partners owning a majority interest in a partnership have the same taxable year, the partnership is required to have the same taxable year as the majority interest owners (majority interest taxable year). If a taxable year for the partnership cannot be determined under the majority interest taxable year rule, the taxable year of the partnership shall be the taxable year of all of its principal partners (principal partner taxable year). Finally, if there is not taxable year described under the majority interest taxable year rule or principal partner taxable year rule, then the partnership is required under the regulations to have the taxable year that results in the least aggregate deferral of income. Section 1.706–1(b)(2)(C).

Under §1.706–1(b)(6)(i), the interest held by a disregarded foreign partner is not taken into account in determining the taxable year of the partnership under the foregoing rules. A foreign partner is a disregarded foreign partner unless such partner is allocated gross income that was effectively connected with the conduct of a trade or business of the partnership within the U.S. and taxation of such income is not otherwise precluded under any U.S. income tax treaty. The interest of a disregarded foreign partner is taken into account in determining the taxable year of the partnership, however, if the partners that are not disregarded foreign partners (regarded partners) hold a minority interest in the partnership (minority interest rule). Section 1.706–1(b)(6)(iii). Regarded partners hold a minority interest for this purpose if each regarded partner holds less than a 10-percent interest in capital or profits of the partnership, and the regarded partners in the aggregate hold

less than a 20-percent interest in the capital or profits of the partnership.

Explanation of Provisions

1. *Varying Interests Rule*

a. *In general*

The proposed regulations amend §1.706–1(c) to reflect the change made to section 706(c)(2)(A) in the 1997 Act which requires that the taxable year of the partnership close with respect to a partner who dies. The proposed regulations do not change the provisions in §1.706–1(c)(3)(iv) that the sale or exchange of a partnership interest does not include any transfer of a partnership interest which occurs at death as a result of inheritance or any testamentary disposition or in §1.706–1(c)(5) that the transfer of a partnership interest by gift does not close the partnership taxable year with respect to the donor.

Also, the proposed regulations add §1.706–4 to provide for the application of the varying interests rule in all cases in which a partner's interest changes during the taxable year, whether by reason of a disposition of the partner's entire interest in the partnership or a disposition of less than the partner's entire interest in the partnership.

b. *Methods and conventions*

Proposed §1.706–4(a) provides that, if a partner's interest changes during the partnership's taxable year, the partnership shall determine the partner's distributive share using the interim closing method. However, the partnership by agreement of the partners may use the proration method. For each partnership taxable year in which a partner's interest varies, the proposed regulations provide that the partnership must use the same method to take into account all changes occurring within that year.

Proposed §1.706–4(c) generally provides that a partnership shall take into account any variation in the partners' interests in the partnership during the taxable year by determining the distributive share of partnership items under section 702(a) for each segment of that taxable year using an interim closing of the books method and by allocating those items among the partners in accordance with their respective partnership interests during that segment. Proposed §1.706–4(c)(1) and (2) incorporate the principles of the former §1.706–1(c)(2)(ii) (as finalized in T.D. 6175).

Proposed §1.706–4(d) provides that by agreement among the partners a partnership may use a proration method, rather than the interim closing method, to take into account any variation in a partner's interest in the partnership during the taxable year. Under this method, except for extraordinary items (as defined in §1.706–4(d)(3)), the partnership allocates the distributive share of partnership items under section 702(a) among the partners in accordance with their *pro rata* shares of these same items for the entire taxable year. In determining a partner's *pro rata* share of partnership items, the partnership shall take into account that partner's interest in such items during each segment of the taxable year. Proposed §1.706–4(d)(1) and (2) incorporate the principles of the former §1.706–2(c)(2)(ii) (as finalized in T.D. 6175).

For purposes of accounting for the partners' varying interests in the partnership, proposed §1.706–4 requires that for each partner whose interest changes in the taxable year the partnership shall maintain segments to account for such changes. A segment is specific portion of a partnership's taxable year. The first segment of a taxable year for a partner that incurs a change will begin on the partnership's first day of its taxable year and end as of the close of business immediately preceding the date of the change as determined under the applicable convention (discussed in this preamble) used by the partnership and its partners. The next segment will begin on the day prescribed by the applicable convention and end on the earlier of the close of the day immediately preceding the date of the subsequent change as determined by the applicable convention, or the end of the partnership's taxable year. Proposed §1.706–4(a)(2) provides that the partnership shall determine the items for each segment of the taxable year created by the variation event for a partner in accordance with the partnership's method of accounting used for its entire taxable year. Each segment is treated as a separate period.

For purposes of the interim closing method in of §1.706–4(c) and the proration method in §1.706–4(d), the proposed regulations provide a special accounting rule that must be used to account for certain items. For example, for an interim closing method, the partnership may compute a net capital loss for a segment even though the partnership has net capital gain for the complete taxable year. Also, any limitation applicable to the partnership year as a whole (for example, the limitation under section 179) must be apportioned among the segments using any reasonable method provided that the method may not exceed any limitation applicable to the partnership as a whole. See proposed §§1.706–4(a)(2)(i) and (ii).

In addition, proposed §1.706–4(d)(3) requires a partnership using the proration method to allocate extraordinary items among the partners in proportion to their interests at the beginning of the day on which they are taken into account. For this purpose, an extraordinary item is (i) any item from the disposition or abandonment (other than in the ordinary course of business) of a capital asset as defined in section 1221 (determined without the application of any other rules of law); (ii) any item from the disposition or abandonment of property used in a trade or business (other than in the ordinary course of business) as defined in section 1231(b) (determined without the application of any holding period requirement); (iii) any item from the disposition or abandonment of an asset described in sections 1221(1), (3), (4), or (5), if substantially all the assets in the same category from the same trade or business are disposed of or abandoned in one transaction (or series of related transactions); (iv) any item from assets disposed of in an applicable asset acquisition under section 1060(c); (v) any section 481(a) adjustment; (vi) any item from the discharge or retirement of indebtedness (for example, if a debtor partnership transfers a capital or profits interest in such partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness, any discharge of indebtedness income recognized under section 108(e)(8) must be allocated among the persons who were partners in the partnership immediately before the discharge); (vii) any item from the settlement of a tort or similar third-party liability; (viii) any credit, to the extent it arises from activities

or items that are not ratably allocated (for example, the rehabilitation credit under section 47, which is based on placement in service); and (ix) any item which, in the opinion of the Commissioner, would, if ratably allocated, result in a substantial distortion of income in any consolidated return or separate return in which the item is included. The IRS and the Treasury Department request comments concerning whether any items should be added to or removed from the definition of extraordinary items.

Under proposed §1.706–4(e), a partnership using the interim closing method may use either a calendar day convention or a semi-monthly convention. A partnership using the proration method may use only the calendar day convention. The calendar day convention requires that, with respect to a partner whose interest terminates, the partnership's taxable year closes as of the close of the day on which the change occurs. Section 1.706–4(e)(1). The semi-monthly convention requires that any variation in a partner's interest occurring during the first through 15th day of the calendar month is deemed to occur at the beginning of the first day of the month, and any variation in a partner's interest occurring during the 16th through the last day of the month is deemed to occur at the beginning of the 16th day of that month. Section 1.706–4(e)(2).

A partnership must use the same method and convention for all variations in the partners' interests during the taxable year of the partnership. For example, a partnership could not use the proration method and interim closing method in the same taxable year. Additionally, a partnership using the interim closing method could not use the calendar day convention to account for a variation in one partner's interest during the partnership's taxable year while using a monthly convention to account for that partner's, or a different partner's, variation in an interest during the partnership's taxable year. Comments are requested with regard to the possible expansion of this rule to include other conventions or other methods.

The IRS and the Treasury Department are aware that some publicly traded partnerships (as defined in section 7704) are using conventions other than a monthly or semi-monthly convention and are using these conventions with the proration method. Thus, the IRS and the Treasury Department are requesting comments concerning the use of conventions other than monthly or semi-monthly convention. The proposed regulations regarding the use of conventions will not apply to existing publicly traded partnerships.

c. *Change in partnership allocations among contemporaneous partners*

Proposed §1.706–4(b)(1) provides that the varying interests rule will not preclude changes in the allocations among contemporaneous partners resulting from amendments to the partnership agreement made no later than the due date of the partnership return for the taxable year (excluding extensions). This exception applies only to allocations that are valid under section 704(b) and the regulations promulgated in association with that section. Moreover, consistent with the Tax Court's decision in *Lipke*, this exception to the varying interests rule will not apply to any changes in interests of the partners attributable to contributions of money or other property to the partnership. The proposed regulations further provide that this exception will not apply to changes in the interests of the partners as a result of distributions of capital from the partnership to a partner.

d. *Safe harbors for service partnerships and publicly traded partnerships*

Proposed §1.706–4(b)(2) provides that service partnerships (as defined in that section) may allocate items relating to the provision of services among the partners whose interests vary during the year using any reasonable method to account for such changes even though such method is not described in paragraph (a) of the proposed regulations and the partnership does not use the methods or conventions described in paragraphs (c) and (d), and paragraph (e) of the proposed regulations, respectively. However, the allocations must be valid under section 704(b).

Proposed §1.706–4(b)(3) provides that publicly traded partnerships (as defined in section 7704(b)) may treat all transfers of its publicly traded units (as described in §1.7704–1(b)(1)) during a calendar month as occurring on the first day of the following month under a consistent method adopted by the partnership or may use the semi-monthly convention described in §1.706–4(e)(2). Block transfers of publicly traded partnership (PTP) units (as described in §1.7704–1(e)(2)) will not qualify for this safe harbor.

e. *Deemed dispositions*

The proposed regulations amend §1.706–1(c) to provide that a deemed disposition of a partner's entire interest in the partnership pursuant to §§1.1502–76(b)(2)(vi), 1.1362–3(c)(1), and 1.1377–1(b)(3)(iv) shall be treated as a disposition of the partner's entire interest for purposes of section 706. The IRS and Treasury Department request comments concerning the relationship of §1.1502–76(b)(2)(vi)(B) and the proposed regulations regarding the deemed disposition of partnership interests.

2. *Taxable years of partnerships*

The proposed regulations amend the minority interest rule in §1.706–1(b)(6)(iii) to provide that regarded partners have a minority interest only if each regarded partner has less than a 10-percent interest in capital and profits, and the regarded partners collectively have less than a 20-percent interest in partnership capital and profits. This modification means that the interests of foreign partners will be taken into account in determining the taxable year of the partnership only if the regarded partners have interests below the stated thresholds in partnership capital and profits, rather than the current rule which requires only an interest below the threshold in either capital or profits. For example, under the current regulations, the taxable year of disregarded foreign partners would not be ignored in determining the taxable year of the partnership if the regarded partners had aggregate capital interests of less than 20-percent but profits interests of more than 20-percent. By contrast, under the proposed regulations, in that example, the taxable year of the disregarded foreign partners would not be applicable in determining the taxable year of the partnership.

Additional Requests for Comments

The IRS and the Treasury Department are also requesting comments relating to any other outstanding issues arising under section 706(d). Specifically, the IRS and

the Treasury Department are seeking comments with regard to issues that arise concerning allocable cash basis items and/or tiered partnerships.

Section 706(d)(2)(A) provides a special rule for determining a partner's distributive share of an allocable cash basis item. Section 706(d)(2) effectively requires a cash method partnership to use an economic accrual method solely for the purpose of allocating certain items. Under the statute, a partner's distributive share of any allocable cash basis item is determined by assigning a *pro rata* share of any allocable cash basis item to each day within a specified period to which it is attributable and then allocating each day's portion in an amount equivalent to each partner's interest in the partnership on that day. A list of allocable cash basis items is found in section 706(d)(2)(B). The IRS and the Treasury Department are seeking comments as to whether that list should be expanded (to include, for example, items such as property insurance), as well as on any other issue with regard to allocating cash basis items.

Section 706(d)(3) provides that if during any taxable year of the partnership there is a change in any partner's interest in the partnership (upper-tier partnership), and such partnership is a partner in another partnership (lower-tier partnership), then (except to the extent provided by regulations) each partner's distributive share of any item of the upper-tier partnership attributable to the lower-tier partnership shall be determined by first assigning the appropriate portion of each such item to the appropriate days during which the upper-tier partnership is a partner in the lower-tier partnership, and then allocating the portion assigned to any such day among the partners in proportion to their interests in the upper-tier partnership at the close of such day. Thus, the daily allocation method, used for cash basis items, is applicable to all items of the lower-tier partnership if there is a change in the partnership interests in the upper-tier partnership. The IRS and the Treasury Department are seeking comments on this and any other issue related to tiered partnerships and determining a partner's varying interests.

Proposed Effective Date

In accord with the legislative history to section 706(d), the proposed regulations provide a reasonable transition period for taxpayers in the effective date provisions of this proposed regulation. Thus, the proposed amendments to §§1.706–1 (with the exception of the change to §1.706–1(b)(6)(iii)), 1.706–4, and 1.706–5 are proposed to apply to partnership taxable years that begin after the date the final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009.

The proposed amendment to §1.706–1(b)(6)(iii) generally is applicable to the first taxable year of a partnership that begins on or after the date final regulations are published in the **Federal Register**, subject to two special rules. First, under the current regulations, partnerships formed prior to September 23, 2002 ("existing partnerships") generally are exempt from the rules of §1.706–1(b)(6) unless they have voluntarily elected to apply them or unless they have undergone a technical termination under section 708(b)(1)(B). The proposed regulation retains this special rule, such that an existing partnership will not be subject to the modified minority interest rule in proposed §1.706–1(b)(6)(iii) unless there has been such an election or technical termination. Second, because the proposed regulation would modify §1.706–1(b)(6)(iii) but otherwise leave the rules of §1.706–1(b)(6) unchanged, it is appropriate to exempt other partnerships from the modified minority interest rule if they are already subject to §1.706–1(b)(6) and the minority interest rule of the current regulations ("interim period partnerships"). Thus, interim period partnerships will be exempt from the modified minority interest rule of proposed §1.706–1(b)(6)(iii) unless they voluntarily elect to be subject to this rule or undergo a technical termination. Accordingly, the proposed amendment to §1.706–1(b)(6)(iii) would apply to the first taxable year of a partnership that begins on or after the date final regulations are published in the **Federal Register**, subject to these special rules for existing partnerships and interim period partnerships.

The proposed amendments in §§1.706–4(c)(2) and (d)(2) are proposed to apply for the taxable year of a partnership other than an existing publicly traded partnership that begin after the date the final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a 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 the Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the pubic hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Laura Fields and Jonathan Cornwell, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new entry in numerical order to read as follows:

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

Section 1.706–2 also issued under 26 U.S.C. 706(d). * * *

Par. 2. Section 1.706–0 is added to read as follows:

§1.706–0 Table of contents.

This section lists the captions contained in the regulations under section 706.

§1.706–1 Taxable years of partner and partnership.

(a) Year in which partnership income is includible.
(b) Taxable year.
(1) Partnership treated as taxpayer.
(2) Partnership's taxable year.
(i) Required taxable year.
(ii) Exceptions.
(3) Least aggregate deferral.
(i) Taxable year that results in the least aggregate deferral of income.
(ii) Determination of the taxable year of a partner or partnership that uses a 52–53 week taxable year.
(iii) Special *de minimis* rule.
(iv) Examples.
(4) Measurement of partner's profits and capital interest.
(i) In general.
(ii) Profits interest.
(A) In general.
(B) Percentage share of partnership net income.
(C) Distributive share.
(iii) Capital interest.
(5) Taxable year of a partnership with tax-exempt partners.
(i) Certain tax-exempt partners disregarded.
(ii) Example.
(iii) Effective date.
(6) Certain foreign partners disregarded.
(i) Interests of disregarded foreign partners not taken into account.
(ii) Definition of foreign partner.
(iii) Minority interest rule.
(iv) Example.
(v) Effective date.
(A) Generally.
(B) Voluntary change in taxable year.
(C) Subsequent sale or exchange of interests.
(D) Transition rule.
(7) Adoption of taxable year.
(8) Change in taxable year.
(i) Partnerships.
(A) Approval required.
(B) Short period tax return.
(C) Change in required taxable year.
(ii) Partners.
(9) Retention of taxable year.
(10) Procedures for obtaining approval or making a section 444 election.
(11) Effect on partner elections under section 444.
(i) Election taken into account.
(ii) Effective date.
(c) Closing of partnership year.
(1) General rule.
(2) Disposition of entire interest
(i) In general.
(ii) Example.
(iii) Deemed dispositions.
(3) Disposition of less than entire interest.
(4) Determination of distributive shares.
(5) Transfer of interest by gift.
(d) Effective/applicability date.

§1.706–2 Certain cash basis items prorated over period to which attributable. [Reserved]

§1.706–3 Items attributable to interest in lower-tier partnership prorated over entire taxable year. [Reserved]

§1.706–4 Determination of Distributive Share When a Partner's Interest Varies.

(a) General rule.
(1) Methods.
(2) Segments.
(i) General rule.
(ii) Other provisions.
(b) Exceptions.
(1) Permissible changes among contemporaneous partners.
(2) Safe harbor for certain service partnerships.
(3) Safe harbor for publicly traded units of publicly traded partnerships.
(c) Interim closing method.
(1) In general.
(2) Conventions.
(3) Example.
(d) Proration method.
(1) In general.
(2) Conventions.
(3) Extraordinary items.
(4) Example.
(e) Conventions.
(1) Calendar day convention.
(2) Semi-monthly convention.
(f) Effective/applicability date.

§1.706–5 Taxable year determination.

(a) General rule.
(b) Effective/applicability date.

Par. 3. Section 1.706–1 is amended as follows:

1. The language "capital or profits" in the first sentence in paragraph (b)(6)(iii) is removed and the language "capital and profits" is added in its place.

2. Paragraph (b)(6)(v)(A) is revised.

3. The last sentence of paragraph (b)(6)(v)(B) is removed and four new sentences are added in its place.

4. Paragraph (b)(6)(v)(C) is revised.

5. Add a new sentence at the end of paragraph (b)(6)(v)(D).

6. Paragraph (c)(2) is revised.

7. Paragraph (c)(3) is removed.

8. Paragraph (c)(4) is redesignated as (c)(3) and the last sentence of newly designated paragraph (c)(3) is removed.

9. New paragraph (c)(4) is added.

10. Paragraph (d) is revised.

The additions and revisions read as follows:

§1.706–1 Taxable years of partner and partnership.

* * * * *

(b) * * *

(6) * * *

(v) * * * (A) *Generally*. The provisions of this paragraph (b)(6) (other than paragraph (b)(6)(iii) of this section) are applicable for the first taxable year of a partnership other than an existing partnership that begins on or after July 23, 2002. The provisions of paragraph (b)(6)(iii) of this section are applicable for the first taxable year of a partnership other than an existing partnership or an interim period partnership that begins on or after the date these

regulations become effective. For this purpose, an existing partnership is a partnership that was formed prior to September 23, 2002, and an interim period partnership is a partnership that was formed on or after September 23, 2002, and prior to the date these regulations become effective.

(B) * * * An existing partnership that makes such a change prior to the date these regulations become effective will cease to be exempted from the requirements of paragraph (b)(6) (other than paragraph (b)(6)(iii)) of this section. An existing partnership that makes such a change on or after the date these regulations become effective will cease to be exempted from the requirements of paragraph (b)(6) of this section. An interim period partnership may change its taxable year to a year determined in accordance with paragraph (b)(6)(iii) of this section. An interim period partnership that makes such a change will cease to be exempted from the requirements of paragraph (b)(6)(iii) of this section.

(C) *Subsequent sale or exchange of interests*. If an existing partnership or an interim period partnership terminates under section 708(b)(1)(B), the resulting partnership is not an existing partnership or an interim period partnership for purposes of paragraph (b)(6)(v)(A) of this section.

(D) * * * If, in the first taxable year beginning on or after the date these regulations become effective, an interim period partnership voluntarily changes its taxable year to a year determined in accordance with paragraph (b)(6)(iii) of this section, then the partners of that partnership may apply the provisions of §1.702–3T to take into account all items of income, gain, loss, deduction, and credit attributable to the partnership year of change ratably over a four-year period.

* * * * *

(c) * * *

(2) *Disposition of entire interest*—(i) *In general*. A partnership taxable year shall close with respect to a partner who sells or exchanges his entire interest in the partnership, with respect to a partner whose entire interest in the partnership is liquidated and with respect to a partner who dies. In the case of a death or liquidation, or sale or exchange of a of partner's entire interest in the partnership, the partner shall include in his taxable income for his taxable year within or with which the partner's membership in the partnership ends, the partner's distributive share of items described in section 702(a), and any guaranteed payments under section 707(c), for the partner's partnership taxable year ending with the date of such termination. If the decedent partner's estate or other successor sells or exchanges its entire interest in the partnership, or if its entire interest is liquidated, the partnership taxable year with respect to the estate or other successor in interest shall close on the date of such sale or exchange, or the date of the completion of the liquidation. The sale or exchange of a partnership interest does not, for the purpose of this rule, include any transfer of a partnership interest which occurs at death as a result of inheritance or any testamentary disposition.

(ii) *Example*. H is a member of a partnership having a taxable year ending December 31. Both H and his wife W are on a calendar year and file joint returns. H dies on March 31, 2010. Administration of the estate is completed and the estate, including the partnership interest, is distributed to W as legatee on November 30, 2010. Such distribution by the estate is not a sale or exchange of H's partnership interest. The taxable year of the partnership will close with respect to H on March 31, 2010, and H will include in his final return for his final taxable year (January 1 through March 31, 2010) his distributive share of partnership items for that period under the rules of §1.706–4. W will include in her return for the taxable year ending December 31, 2010, her distributive share of partnership items for the period of April 1 through December 31, 2010, under the rules of §1.706–4.

(iii) *Deemed dispositions*. A deemed disposition of the partner's interest pursuant to §§1.1502–76(b)(2)(vi) (relating to corporate partners that become or cease to be members of a consolidated group within the meaning of §1.1502–1(h)), 1.1362–3(c)(1) (relating to the termination of the subchapter S election of an S corporation partner), and 1.1377–1(b)(3)(iv) (regarding an election to terminate the taxable year of an S corporation partner), shall be treated as a disposition of the partner's entire interest in the partnership.

* * * * *

(4) *Determination of distributive shares*. See §1.706–4 for rules regarding the methods to be used in determining the distributive shares of items described in section 702(a) for partners whose interests in the partnership vary as a result of a disposition of a partner's entire interest in a partnership as described in paragraph (c)(2) of this section or as a result of a disposition of less than an entire interest as described in paragraph (c)(3) of this section during the partnership's taxable year.

* * * * *

(d) *Effective/applicability date*. The rules for paragraphs (a) and (b) of this section are applicable for partnership taxable years ending on or after May 17, 2002, except for paragraph (b)(6)(iii) of this section which applies to partnership taxable years beginning the day after final regulations are published in the **Federal Register**. The rules for paragraph (c)(1) of this section apply for partnership taxable years beginning after December 31, 1953. All other paragraphs under paragraph (c) of this section apply for partnership taxable years that begin after the date the final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009.

Par. 4. Section 1.706–2 is added and reserved to read as follows:

§1.706–2 Certain cash basis items prorated over period to which attributable. [Reserved]

Par. 5. Section 1.706–3 is added and reserved to read as follows:

§1.706–3 Items attributable to interest in lower-tier partnership prorated over entire taxable year. [Reserved]

Par. 6. Section 1.706–4 is added to read as follows:

§1.706–4 Determination of distributive share when a partner's interest varies.

(a) *General rule*—(1) *Methods*. Except as provided in paragraph (b) of this section, if a partner's interest in a partnership varies during the taxable year as a result of a disposition of an entire interest in a partnership as described in §1.706–1(c)(2) or as a result of the disposition of less than the entire interest in a partnership or with respect to a partner whose interest in a partnership is reduced as described in §1.706–1(c)(3), the partnership shall determine the partner's distributive share of partnership items by using the interim closing method (described in paragraph (c) of this section). Alternatively, a partnership may, by agreement of the partners, use the proration method (described in

paragraph (d) of this section). The partnership and all of its partners shall use the same method (interim closing or proration) and, if applicable, the same convention (described in paragraph (e) of this section) for all variations in the partners' interests occurring within each partnership taxable year.

(2) *Segments*—(i) *General rule*. For purposes of accounting for a variation in a partner's interest within a taxable year of the partnership as a result of dispositions or reductions of interests as described in §1.706–1(c)(2) or (c)(3), the partnership shall maintain segments, which are specific periods of the partnership's taxable year. The first segment to account for a change in a partner's interest shall commence with the beginning of the taxable year of the partnership and end at the close of the day specified by the convention used by the partnership to account for such change. Any additional segment shall commence with the day specified by the convention used by the partnership to account for a previous change in the partner's interest and shall end as a result of an additional change in the partner's interest at the close of the day specified by the convention used by the partnership to account for such change, provided, however, that the last segment of the taxable year of the partnership shall end no later than the close of the day of the partnership's taxable year. The partnership shall determine the items of income, gain, loss, deduction and credit of the partnership for each segment in accordance with the method of accounting that it uses for the partnership's entire taxable year. In general, a partnership using the interim closing method shall treat each segment as though the segment were a separate distributive share period. For example, a partnership using the interim closing method may compute a net capital loss for a segment of a taxable year even though the partnership has a net capital gain for the entire taxable year.

(ii) *Other provisions*. Any limitation applicable to the partnership year as a whole (for example, the limitation under section 179, relating to elections to expense certain depreciable business assets) must be in connection with the interim closing method apportioned among the segments by the partnership using any reasonable method, provided, however, that the amounts apportioned among segments shall not exceed the limitation applicable to the partnership as a whole.

(b) *Exceptions*—(1) *Permissible changes among contemporaneous partners*. The general rule of paragraph (a) of this section, with respect to the varying interests of a partner described in §1.706–1(c)(3), will not preclude changes in the allocations of the distributive share of items described in section 702(a) among contemporaneous partners for the entire partnership taxable year, provided that—

(i) Any variation in a partner's interest is not attributable to a contribution of money or property by a partner to the capital of the partnership or a distribution of money or property by the partnership to a partner that is a return of capital; and

(ii) The allocations resulting from the modification satisfy the provisions of section 704(b) and the regulations promulgated in association with that section.

(2) *Safe harbor for certain service partnerships*. Notwithstanding paragraph (a) of this section, with respect to any taxable year in which there is a change in any partner's interest in a service partnership (as defined below in this subsection), the partnership and such partner may choose to determine the partner's distributive share of partnership income, gain, loss, deduction and credit using any reasonable method to account for the varying interests of the partners in the partnership during the taxable year provided that the allocations are valid under section 704(b). A service partnership is a partnership in which substantially all the activities involve the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, or consulting.

(3) *Safe harbor for publicly traded units of publicly traded partnerships*. Notwithstanding paragraph (a) of this section, a publicly traded partnership (PTP) (as defined in section 7704(b)) using either the interim closing of the books method in paragraph (c) of this section or the proration method in paragraph (d) of this section may treat all transfers of its publicly traded units (as described in §1.7704–1(b)(1)) during a calendar month as occurring for purposes of determining partner status on the first day of the following month under a consistent method adopted by the partnership or may use the semi-monthly convention described in paragraph (e)(2) of this section. For example, PRS, a PTP, uses the proration method in paragraph (d) of this section. PRS adopts a method treating all transfers of its publicly traded units as occurring on the first day of the month following the transfer. If on May 5, A, a partner in PRS, sells a unit in PRS to B, and on May 12 B sells that unit to C, who holds the interest beyond May 31, PRS may allocate all items with respect to that unit for the month of May to A, and may allocate all partnership items with respect to that unit for the month of June to C. B will not be considered a partner and will receive no allocation of partnership items. Block transfers of PTP units (as described in §1.7704–1(e)(2)) will not qualify for this safe harbor.

(c) *Interim closing method*—(1) *In general*. A partnership shall take into account any variation in a partner's interest in the partnership as described in §1.706–1(c)(2) or (c)(3) during the partnership's taxable year by determining the distributive share of partnership items under section 702(a) for each segment of that taxable year using an interim closing of the books method, and by allocating those items among the partners in accordance with their respective partnership interests during that segment.

(2) *Conventions*. A partnership using the interim closing method may use either the calendar day convention provided in paragraph (e)(1) of this section or the semi-monthly convention provided in paragraph (e)(2) of this section to determine when the segments within that taxable year end.

(3) *Example*. PRS is a partnership that was formed in 2004. It has three partners, P,R, and S, who each own a one-third interest in the partnership. PRS owns and operates a skiing enterprise and under section 706(b)(1)(C), has adopted a calendar year end of June 30th. Each partner is an individual who is on the calendar year. On December 31, 2010, S sold her entire interest in PRS to Y. PRS, for its fiscal year ending June 30, 2011, earned $150,000 of income, and under an interim closing of the books on December 31, 2010, $90,000 of income was earned for the period beginning after December 31, 2010, and $60,000 of income was earned before January 1, 2011. The partnership has no specific provision in the partnership agreement relating to which section 706 method to use with regard to varying interests of the partnership. Thus, pursuant to §1.706–4(a)(1), PRS will be required to use the interim closing of the books method to account for the varying interests of S and Y in the partnership. As a result, S is allocated one-third of the income earned prior to January 1, 2011, or $20,000. Y is allocated $30,000 which is one-third of the income earned after December 31, 2010. Since S sold her entire interest in PRS, the partnership taxable year closes with respect to her

pursuant to §1.706–1(c)(2)(i). Thus, she must include her share of PRS's income on her 2010 federal income tax return.

(d) *Proration method*—(1) *In general*. Except as provided in paragraph (d)(3) of this section, a partnership may, by agreement of the partners, take into account any variation in a partner's interest in the partnership described in §1.706–1(c)(2) or (c)(3) during the partnership's taxable year by allocating the distributive share of partnership items under section 702(a) among the partners according to their *pro rata* shares of such items for the entire taxable year. In determining a partner's *pro rata* share of partnership items, the partnership shall take into account that partner's interest in such items during each segment. For purposes of this paragraph (d), specific items that are aggregated by the partnership at the end of the year (other than extraordinary items as defined in paragraph (d)(3) of this section) shall be disregarded, and the aggregate of the items shall be considered to be the partnership item for the year.

(2) *Conventions*. A partnership using the proration method shall use the calendar day convention described in paragraph (e)(1) of this section.

(3) *Extraordinary items.* A partnership must allocate extraordinary items among the partners in proportion to their interests at the beginning of the calendar day of the day on which they are taken into account. For purposes of this paragraph (d), an extraordinary item is—

(i) Any item from the disposition or abandonment of a capital asset (other than in the ordinary course of business) as defined in section 1221 (determined without the application of any other rules of law);

(ii) Any item from the disposition or abandonment of property used in a trade or business (other than in the ordinary course of business) as defined in section 1231(b) (determined without the application of any holding period requirement);

(iii) Any item from the disposition or abandonment of an asset described in section 1221(1), (3), (4), or (5), if substantially all the assets in the same category from the same trade or business are disposed of or abandoned in one transaction (or series of related transactions);

(iv) Any item from assets disposed of in an applicable asset acquisition under section 1060(c);

(v) Any section 481(a) adjustment;

(vi) Any item from the discharge or retirement of indebtedness (for example, if a debtor partnership transfers a capital or profits interest in such partnership to a creditor in satisfaction of its recourse or nonrecourse indebtedness, any discharge of indebtedness income recognized under section 108(e)(8) must be allocated among the persons who were partners in the partnership immediately before the discharge);

(vii) Any item from the settlement of a tort or similar third-party liability or payment of a judgment;

(viii) Any credit, to the extent it arises from activities or items that are not ratably allocated (for example, the rehabilitation credit under section 47, which is based on placement in service); or

(ix) Any item which, in the opinion of the Commissioner, would, if ratably allocated, result in a substantial distortion of income in any return in which the item is included.

(4) *Example*. PRS is a partnership that was formed in 2004. It has three partners, P,R, and S, who each own a one-third interest in the partnership. PRS owns and operates a skiing enterprise, and under section 706(b)(1)(C), has adopted a calendar year end of June 30th. Each partner is an individual who is on the calendar year. On December 31, 2010, S sold her entire interest in PRS to Y. PRS, for its fiscal year ending June 30, 2010, earned $150,000 of income. The partnership has a specific provision in the partnership agreement agreeing to use the proration method when accounting for varying interests in the partnership. (See §1.706–4(a)(1)). Using the proration method, $75,000 of income is included in the first segment of the year that begins July 1, 2010 and ends December 31, 2010, and $75,000 is included in the second segment of the year that begins January 1, 2011 and ends June 30, 2011. For the first segment, S's distributive share of partnership income is one-third of $75,000, or $25,000. For the second segment, Y's distributive share of partnership income is one-third of $75,000, or $25,000. Because S sold her entire interest in PRS, the partnership taxable year closes with respect to her pursuant to §1.706–1(c)(2)(i). Thus, she must include her distributive share of PRS's income, or $25,000, on her 2010 Federal income tax return.

(e) *Conventions*—(1) *Calendar day convention*. Under the calendar day convention, the first segment of the partnership's taxable year commences with the beginning of the partnership's taxable year and ends at the close of any day on which the variation occurs in the partner's interest in the partnership. Any additional segment shall commence with the beginning of the day following a prior variation in a partner's interest and end on the earlier of the close of the day on which an additional variation occurs in the partner's interest or the close of the partnership's taxable year, as applicable.

(2) *Semi-monthly convention*. Under the semi-monthly convention, the first segment of the partnership's taxable year commences with the beginning of the partnership's taxable year, and with respect to a partner's variation in interest occurring on the first through the 15th day of a calendar month, is deemed to close at the end of the last day of the immediately preceding calendar month, and with respect to any variation in interest occurring on the 16th through the last day of a calendar month, is deemed to close at the end of the 15th calendar day of that month. Any additional segment of the partnership taxable year shall commence with beginning of the first day, or 16th day of the month of the last segment, as the case may be, as determined for a prior change and shall close at the earlier of the close of the partnership's taxable year, or with respect to a partner's variation in interest occurring on the first through 15th day of a calendar month, is deemed to close at the end of the last day of the immediately preceding calendar month, and with respect to any variation in interest occurring on the 16th through last day of a calendar month, is deemed to close at the end of the 15th calendar day of that month.

(f) *Effective/applicability date*. Except with respect to paragraphs (c)(2) and (d)(2) of this section, this section is applicable for partnership taxable years that begin the day after the date final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009. The rules of paragraphs (c)(2) and (d)(2) of this section are applicable for the taxable year of partnerships other than existing publicly traded partnerships that begin after the date the final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009. For purposes of the immediately preceding sentence, an existing publicly traded partnership is a partnership described in section 7704(b) of the Internal Revenue Code that was formed on a date before these proposed regulations are published in the **Federal Register**. However, existing publicly traded partnerships may rely on the provisions of this section.

Par. 7. Section 1.706–5 is added to read as follows:

§1.706–5 Taxable year determination.

(a) *In general.* For purposes of §1.706–4, the taxable year of a partnership shall be determined without regard to section 706(c)(2)(A) and the regulations promulgated under that Internal Revenue Code section.

(b) *Effective/applicability date.* This section is applicable for partnership taxable years that begin the day after the date final regulations are published in the **Federal Register**, but not before taxable years beginning after December 31, 2009.

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

(Filed by the Office of the Federal Register on April 13, 2009, 8:45 a.m., and published in the issue of the Federal Register for April 14, 2009, 74 F.R. 17119)

Request for Comments on Revenue Procedure for § 403(b) Prototype Plans

Announcement 2009–34

The Internal Revenue Service intends to establish a program for the pre-approval of prototype plans under § 403(b) of the Internal Revenue Code (Code). This announcement includes a draft revenue procedure that contains the Service's proposed procedures for issuing opinion letters as to the acceptability under § 403(b) of the form of prototype plans. The Service is simultaneously posting draft sample plan language on the *irs.gov* website for use in drafting § 403(b) prototype plans. The Service seeks public input before finalizing these procedures and sample plan language, and invites interested persons to submit comments.

Background

Final regulations under § 403(b) (the 2007 regulations) were published on July 26, 2007 (T.D. 9340, 2007–36 I.R.B. 487 [72 Fed. Reg. 41128]). These regulations are a comprehensive update of the § 403(b) regulations and are generally effective January 1, 2009. Under the 2007 regulations, sponsors of § 403(b) plans are required to maintain a written plan. Notice 2009–3, 2009–2 I.R.B. 250, provides, in part, that the Service will not treat a § 403(b) plan as failing to satisfy the requirements of § 403(b) and the 2007 regulations during the 2009 calendar year if certain conditions are met. One condition is that by no later than December 31, 2009, the sponsor of the plan has adopted a written plan that is intended to satisfy the requirements of § 403(b) (including the 2007 regulations) effective as of January 1, 2009.

In Rev. Proc. 2007–71, 2007–51 I.R.B. 1184, the Service provided guidance regarding compliance with the 2007 regulations and published model plan language that may be used by public schools either to adopt a written plan to reflect the requirements of § 403(b) and the 2007 regulations or to amend a § 403(b) plan to reflect the requirements of § 403(b) and the 2007 regulations. Rev. Proc. 2007–71 also provides that other eligible employers may use the model language as sample language to comply with one or more of the requirements imposed by the 2007 regulations. Rev. Proc. 2007–71, including its provisions regarding the extent to which the model plan language may be relied upon, is not modified by the draft revenue procedure in this announcement. Accordingly, absent further notice, public schools and other eligible employers may continue to use the model language in Rev. Proc. 2007–71.

§ 403(b) Prototype Plan Program

In order to promote compliance with § 403(b) and the 2007 regulations, the Service is establishing an opinion letter program for § 403(b) prototype plans. This is described in detail in the draft revenue procedure in the appendix of this announcement. While this will be the first time the Service has had a § 403(b) prototype plan program, the procedures and rules of this program, as set forth in the draft revenue procedure, will generally be similar to those that apply under Rev. Proc. 2005–16, 2005–1 C.B. 674, the Service's opinion letter program for master and prototype plans qualified under § 401(a), except for differences related to the requirements of § 403(b).

This program for § 403(b) prototype plans will allow employee benefits practitioners and financial organizations, such as mutual funds and insurance companies, to obtain advance approval of the form of a § 403(b) prototype plan. Generally, under the draft revenue procedure, a § 403(b) prototype plan is a plan document prepared by a vendor (or other person) who expects the plan to be adopted by at least 30 employers, along with an adoption agreement to be completed by each adopting employer. Employers who adopt these § 403(b) prototype plans will generally have assurance that the form of the plan meets the requirements under § 403(b) and the 2007 regulations. As described in Notice 2009–3, the draft revenue procedure would provide for a retroactive remedial amendment of § 403(b) plans for years after 2009.

The Service will announce the date that it will start accepting applications for opinion letters for § 403(b) prototype plans when the draft revenue procedure has been finalized after consideration of the comments received. Vendors will be able to sponsor an approved prototype plan that the Service expects will enable most eligible employers to satisfy the written plan requirement of the 2007 regulations. However, the Service also intends to establish a determination letter program for § 403(b) plans at a later date that would allow eligible employers to obtain determination letters for individually designed plans.

Request for Comments and Information

Interested persons are invited to comment on the draft revenue procedure, the sample plan language draft *(http://www.irs.gov/pub/irs-tege/draft_lrm_403b_prototypes.pdf)*, or any other aspect of the § 403(b) prototype plan program, generally.

Written comments should be submitted by June 1, 2009, to CC:PA:LPD:PR (Announcement 2009–34), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Announcement 2009–34), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, D.C. Alternatively, comments may be submitted via the Internet at *Notice.Comments@irscounsel.treas.gov*.

All materials submitted will be available for public inspection and copying.

In order to anticipate its future workload, the Service also requests each entity that expects to file an opinion letter application for a § 403(b) prototype plan, either as a prototype plan sponsor or as a mass submitter (each within the meaning of section 7 of the draft revenue procedure), to so advise the Service in writing by June 1, 2009, at the following address: *ep.prototype.projections@irs.gov*. Each entity that expects to file as a mass submitter is also asked to provide an estimate of how many opinion letter applications it will submit on behalf of prototype sponsors that use the mass submitter's plan. This information should be submitted separately from any comments on the draft revenue procedure and sample plan language.

Drafting Information

The principal authors of this announcement are Angelique Carrington and James P. Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this announcement, please contact the Employee Plans taxpayer assistance answering service at 1–877–829–5500 (a toll-free number) or e-mail Ms. Carrington or Mr. Flannery at *RetirementPlanQuestions@irs.gov*.

Appendix

Draft Revenue Procedure

Rev. Proc.

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SECTION 1. PURPOSE

.01 This revenue procedure establishes an opinion letter program for § 403(b) prototype plans. Under this program, the Service will accept applications for opinion letters regarding the acceptability under § 403(b) of the Internal Revenue Code of the form of prototype plans starting **[DATE TO BE DETERMINED]**. The procedures and rules of this program are generally similar to those that apply under Rev. Proc. 2005–16, 2005–1 C.B. 674, to the Service's opinion letter program for master and prototype (M&P) plans qualified under § 401(a), except for differences related to the requirements of § 403(b).

.02 The Service expects that most eligible employers will be able to adopt a prototype plan approved under this revenue procedure to satisfy the requirement in § 1.403(b)–3(b)(3) of the Income Tax Regulations that a § 403(b) contract be issued pursuant to a written plan. However, the Service also intends to establish a determination letter program for § 403(b)

plans ("the determination letter program") that will allow eligible employers that maintain § 403(b) plans with features which preclude the use of a prototype document under this revenue procedure or that choose not to use a prototype document to receive assurance that the form of a plan satisfies the requirements of § 403(b).

.03 An eligible employer that adopts an approved § 403(b) prototype plan will generally be able to rely directly on the prototype plan's opinion letter and will not need to request an individual determination letter under the determination letter program. In the case of a plan that provides for contributions that, under § 403(b)(12)(A)(i), are subject to the nondiscrimination requirements of §§ 401(a)(4) and 410(b), this reliance will be limited to contributions that satisfy certain uniform coverage and contribution standards. If such a plan does not satisfy these standards, the eligible employer will still generally be able to rely directly on the prototype § 403(b) plan's opinion letter, except with respect to whether those contributions satisfy the requirements of §§ 401(a)(4) and 410(b). In this case, if the eligible employer wishes to obtain reliance with respect to the requirements of §§ 401(a)(4) and 410(b), the employer will have the opportunity to request a determination letter after the determination letter program is established.

.04 This revenue procedure allows an eligible employer to retroactively correct defects in the form of its written § 403(b) plan by timely adopting an approved § 403(b) prototype plan that was submitted to the Service for an opinion letter by a date that will be announced in the future (and will not be earlier than March 15, 2010), or by otherwise timely amending its plan and submitting a request for a determination letter. Future guidance will specify the date(s) for timely adoption and for timely amendment and submission.

SECTION 2. BACKGROUND

.01 Contributions for an annuity contract purchased for an employee by an eligible employer are generally excluded from the employee's gross income if the requirements described in § 403(b) are met. Amounts paid by an eligible employer to a custodial account which satisfies the requirements of § 401(f)(2) are treated as contributed to an annuity contract for an employee if the requirements of § 403(b)(7)(A)(i) and (ii) are met. For purposes of this revenue procedure, and except where otherwise indicated, an eligible employer is a public school or an employer described in § 501(c)(3) which is exempt from tax under § 501(a).

.02 Final regulations under § 403(b) ("the 2007 regulations") were published on July 26, 2007 (72 FR 41128). The 2007 regulations are generally effective as of January 1, 2009.

.03 Section 1.403(b)–3(b)(3) of the 2007 regulations provides that a contract (or custodial account) does not satisfy the requirements of § 403(b) unless it is maintained pursuant to a plan. A plan means a written defined contribution plan which, in both form and operation, satisfies the requirements of the 2007 regulations.

.04 The Service has not heretofore maintained a program for the issuance of determination or opinion letters as to the acceptability of a plan under § 403(b). However, the Service did on occasion issue private letter rulings regarding the excludability of contributions to a contract under § 403(b).

.05 The Service has received comments from the public recommending ways to assist eligible employers in complying with the written plan requirement of the 2007 regulations. Among the recommendations have been the publication of model plan language for § 403(b) plans of public schools, the establishment of a determination letter process for individually designed § 403(b) plans, and the expansion of the scope of the Service's master and prototype plan opinion letter program for the pre-approval of plans qualified under § 401(a) to include § 403(b) plans.

.06 In Rev. Proc. 2007–71, 2007–2 C.B. 1184, the Service provided guidance regarding compliance with the 2007 regulations and published model plan language that may be used by public schools either to adopt a written plan to reflect the requirements of § 403(b) and the 2007 regulations or to amend a § 403(b) plan to reflect the requirements of § 403(b) and the 2007 regulations. Rev. Proc. 2007–71 also provides that other eligible employers may use the model language as sample language to comply with one or more of the requirements imposed by the 2007 regulations. Rev. Proc. 2007–71, including its provisions regarding the extent to which the model plan language may be relied upon, is not modified by this revenue procedure. Accordingly, absent further notice, public schools and other eligible employers may continue to utilize the language in Rev. Proc. 2007–71 as model or sample language.

.07 Notice 2009–3, 2009–2 I.R.B. 250, states that the Service and Treasury have concluded that compliance with the 2007 regulations would be facilitated by the establishment of both pre-approved and individually designed plan programs and that transition relief should be provided to all § 403(b) plan sponsors who have made appropriate efforts to comply with the written plan requirement in the 2007 regulations. The transition relief under the notice provides that the Service will not treat a § 403(b) plan as failing to satisfy the requirements of § 403(b) and the 2007 regulations during the 2009 calendar year, provided that:

(1) on or before December 31, 2009, the sponsor of the plan has adopted a written § 403(b) plan that is intended to satisfy the requirements of § 403(b) (including the 2007 regulations) effective as of January 1, 2009;

(2) during 2009, the sponsor operates the plan in accordance with a reasonable interpretation of § 403(b), taking into account the 2007 regulations; and

(3) before the end of 2009, the sponsor makes its best efforts to retroactively correct any operational failure during the 2009 calendar year to conform to the terms of the written § 403(b) plan, with such correction to be based on the general principles of correction set forth in the Service's Employee Plans Compliance Resolution System (EPCRS) at section 6 of Rev. Proc. 2008–50, 2008–35 I.R.B. 464.

The relief in Notice 2009–3 applies solely with respect to the 2009 calendar year, and may not be relied on with respect to the operation of a § 403(b) plan or correction of operational defects in any prior or subsequent year.

.08 The Service expects that most eligible employers will be able to adopt a § 403(b) prototype plan approved under the opinion letter program described in this revenue procedure. As indicated in Notice 2009–3 and in section 1.02 above, the Service also intends to establish a determination letter program that will enable other eligible employers to receive assur-

ance that the form of a plan satisfies the requirements of § 403(b). Eligible employers that utilize either the opinion letter program or the determination letter program will be able to retroactively correct defects in the form of a written § 403(b) plan for years after 2009 by timely adopting remedial amendments.

SECTION 3. OVERVIEW OF THE REVENUE PROCEDURE

.01 The Service is establishing a § 403(b) prototype plan program through this revenue procedure with the intent of assisting eligible employers in complying with the written plan requirement of the 2007 regulations. For many years the Service has maintained a similar program for plans qualified under § 401(a). Based on the Service's experience with the prototype plan program for qualified plans, it believes that the prototype program for § 403(b) plans offers most eligible employers a lower-cost way to satisfy the written plan requirement and obtain assurance from the Service that a plan meets the requirements of § 403(b) than an individual determination letter.

.02 As more fully described in section 4, a § 403(b) prototype plan is a two-part plan document intended to satisfy the requirements of § 403(b) and the 2007 regulations which a vendor or other entity (referred to as "the prototype sponsor") provides to eligible employers that wish to adopt a written § 403(b) plan. The prototype sponsor submits the document to the Service for approval, in the form of an opinion letter issued to the sponsor by the Service, that the form of the document meets the requirements of § 403(b) and the 2007 regulations.

.03 The first part of a § 403(b) prototype plan document, called the basic plan document, contains provisions that apply to the plan of any eligible employer that uses the document to adopt a written § 403(b) plan. Under the prototype program, an eligible employer may not modify the provisions of a basic plan document. The second part of the document, called the adoption agreement, is the part of the plan document which the eligible employer completes and signs in order to establish a written plan. The adoption agreement gives the eligible employer elections and options to choose among in order to customize the particular features of its plan. Thus, many eligible employers can use the same § 403(b) prototype plan document to adopt a written § 403(b) plan, with the plans differentiated by the different choices each eligible employer makes in its plan's adoption agreement and the different investment arrangements (*i.e.*, annuity contracts and custodial accounts) offered under each plan. This revenue procedure does not impose any special restrictions on the types, number, or features of investment arrangements that may be offered under an eligible employer's § 403(b) prototype plan. However, the terms of the § 403(b) prototype plan must override any inconsistent provisions of investment arrangements under the plan.

.04 Because the terms of a § 403(b) prototype plan apply to each eligible employer that adopts the plan (with variations according to the different adoption agreement elections made by each employer) and because the revenue procedure does not impose special restrictions on investment arrangements under a § 403(b) prototype plan, the terms of the prototype plan must satisfy the requirements of § 403(b) and the 2007 regulations, regardless of the employer's choices in the adoption agreement or the terms of investment arrangements under the plan, and the Service therefore will not review the terms of any investment arrangements or documents other than the basic plan document and adoption agreement. Section 5 describes the provisions that must therefore be included in every § 403(b) prototype plan. Also see section 9 regarding the scope of an opinion letter.

.05 Some of the provisions described in section 5 that must be included in every § 403(b) prototype plan reflect requirements of the prototype program rather than requirements of law. One of those requirements is that each § 403(b) prototype plan allow the prototype sponsor to amend the § 403(b) prototype plan on behalf of each eligible employer that has adopted the plan. Under this revenue procedure, each prototype sponsor obligates itself to carry out certain duties under the procedure, among them to keep the document up to date for changes in law and to provide copies of amendments to the document to eligible employers. See section 7 for eligibility to sponsor a § 403(b) prototype plan, section 12 for opinion letter application procedures, and sections 8 and 11 through 15 regarding the duties of sponsorship.

.06 One of the Service's goals in establishing the § 403(b) prototype plan program is to ensure that § 403(b) prototype plans will be broadly suitable for the majority of eligible employers. The Service does not intend that prototype plans be suitable for every eligible employer or every circumstance. Thus, the revenue procedure does not permit § 403(b) prototype plans to include certain provisions that the Service believes do not apply to most eligible employers, such as vesting schedules and provisions applicable only to churches and organizations described in § 3121(w)(3). See section 5.06 and section 9.

.07 While the Service intends to establish a determination letter program for § 403(b) plans in the future, the § 403(b) prototype plan program is designed to enable eligible employers that adopt a § 403(b) prototype plan to obtain assurance (referred to in section 10 as "reliance"), without the need to apply for an individual determination letter, that the Service has determined that the terms of the eligible employer's § 403(b) prototype plan satisfy § 403(b) and the 2007 regulations. However, if the adopting eligible employer is neither a governmental entity nor a church, the extent to which the employer may rely directly on the § 403(b) prototype plan's opinion letter without applying for an individual determination letter depends on the form of the eligible employer's § 403(b) prototype plan, as explained in section 3.08 (next paragraph).

.08 There are two forms of § 403(b) prototype plan under this revenue procedure: a "standardized plan" and a "nonstandardized plan." A plan is a standardized plan if the only contributions the employer may choose to provide under the plan are elective deferrals or if the plan automatically satisfies uniform coverage and contribution standards with respect to any other contributions under the plan. A nonstandardized plan is a plan that is not a standardized plan. An eligible employer that adopts a standardized plan generally may rely directly on the opinion letter for the plan. An eligible employer that adopts a nonstandardized plan generally may rely directly on the opinion letter for the plan except with respect to whether the plan sat-

isfies the nondiscrimination requirements of §§ 401(a)(4) and 410(b) relating to contributions under the plan other than elective deferrals. The eligible employer will be able to request a determination letter on the nondiscrimination requirements, if desired, after the determination letter program is open. Finally, if the § 403(b) prototype plan is a governmental plan as described in § 414(d) or a "nonelecting church plan" (see section 5.05(4)), the eligible employer may generally rely on the opinion letter regardless of whether the plan is a standardized plan or a nonstandardized plan. Of course, an opinion letter may not be relied upon with respect to Title I of ERISA, although the Service may decline to issue an opinion letter on a plan that fails to satisfy a Code provision that is parallel to a provision of Part 2 of Subtitle B of Title I of ERISA. Standardized and nonstandardized plans are discussed in section 6, and reliance is discussed in section 10. Also see section 9 regarding the scope of reliance on an opinion letter.

.09 As indicated in Notice 2009–3, this revenue procedure provides a remedial amendment provision that allows eligible employers to retroactively correct defects in the form of their § 403(b) plans for certain years through the timely adoption of remedial amendments. This provision applies to eligible employers that timely adopt a § 403(b) prototype plan or that otherwise timely amend and request a determination letter for a § 403(b) plan. Plan sponsors should not draw any inferences from this provision regarding the application of § 401(b) regarding retroactive changes in plans qualified under § 401(a). See section 16.

SECTION 4. WHAT IS A § 403(b) PROTOTYPE PLAN?

.01 A § 403(b) prototype plan is a defined contribution plan that is intended to satisfy the requirements of § 403(b) and is made available by a prototype sponsor for adoption by eligible employers. A § 403(b) prototype plan consists of a basic plan document and an adoption agreement. The basic plan document contains all the nonelective provisions of the prototype plan that apply to the plans of all adopting eligible employers. The basic plan document may not include any options or blanks to be completed. The adoption agreement contains all the options that may be selected by an adopting eligible employer.

.02 An adoption agreement can be used with only one basic plan document. A basic plan document can be used with more than one adoption agreement, but each basic plan document/adoption agreement pair constitutes a separate § 403(b) prototype plan. A § 403(b) prototype plan adopted by an eligible employer is a single plan regardless of whether there are multiple investment arrangements or multiple vendors (*i.e.*, insurance companies or regulated investment company custodians) under the plan. Adoption of two prototype § 403(b) plans (that is, execution of two separate adoption agreements) constitutes the adoption of two separate § 403(b) plans.

.03 A prototype sponsor may maintain more than one basic plan document. For example, a prototype sponsor may maintain one basic plan document to be used only with plans that limit contributions to elective deferrals and another basic plan document to be used with plans that provide for elective deferrals and employer nonelective contributions, whether or not such plans also provide for matching contributions and/or after-tax employee contributions.

.04 As described above, a basic plan document may have more than one adoption agreement. For example, a basic plan document may have one adoption agreement to be used to adopt a standardized plan and another adoption agreement to be used to adopt a nonstandardized plan. See section 6 for an explanation of the difference between a standardized plan and a nonstandardized plan.

SECTION 5. PROVISIONS REQUIRED IN EVERY § 403(b) PROTOTYPE PLAN

.01 Subsections .05 though .11 of this section 5 describe provisions that must be included in every § 403(b) prototype plan. Some of these requirements reflect requirements in the 2007 regulations; others derive from the nature and purposes of the prototype plan program and are generally similar to requirements that apply under Rev. Proc. 2005–16 to the Service's opinion letter program for M&P plans qualified under § 401(a).

.02 As provided in section 9.02, the Service's review of a § 403(b) prototype plan will consider only the terms of the basic plan document and adoption agreement. Accordingly, the provisions described in subsections .05 though .11 of this section 5 must be included in the basic plan document or adoption agreement of every § 403(b) prototype plan, regardless of the terms of any investment arrangements under the plan or any documents that may be incorporated by reference. This does not preclude the adoption of a § 403(b) prototype plan (including a standardized plan, as described in section 6) in cases where different investment arrangements (annuity contracts or custodial accounts) under a plan have different features or prevent the inclusion of additional provisions in the terms of the investment arrangements under the plan or documents incorporated by reference. However, the terms of the basic plan document and adoption agreement must satisfy the requirements of law and subsections .05 though .11 of this section 5 without regard to the terms of investment arrangements under the plan or any documents incorporated by reference.

.03 For example, an eligible employer's § 403(b) prototype plan may offer both investment arrangements that permit loans and investment arrangements that do not. In this case, the basic plan document and adoption agreement, as completed by the employer, must (1) provide that participant loans are available, depending on the choice of investment arrangements, (2) include provisions reflecting the requirements of the 2007 regulations, including § 1.403(b)–6, and § 1.72(p)–1, and (3) identify the party responsible (*e.g.*, the employer) for coordination among the vendors to ensure compliance with the requirements and limitations on participant loans. For sample plan language that satisfies these requirements, see the Listing of Required Modifications (for § 403(b) plans) which may be downloaded from the Internet at the following address: *(http://www.irs.gov/pub/irs-tege/draft_lrm_403b_prototypes.pdf)*. As another example, a § 403(b) prototype plan may provide that the forms of annuity benefit available under the plan are those described in the contracts under the plan. However, the terms of the basic plan document and adoption agreement must ensure that the required minimum distributions

of § 401(a)(9) will be satisfied regardless of the form of benefit paid, and the distributable events under the plan must be described in the basic plan document and adoption agreement.

.04 As provided in subsection .07 of this section 5, the terms of the basic plan document and adoption agreement must override any inconsistent provisions of investment arrangements under the plan or documents incorporated by reference. An eligible employer that adopts a § 403(b) prototype plan should take this and the other requirements of this section 5 into account in considering investment arrangements to be offered under the plan as well as other documents that may be incorporated by reference.

.05 Every § 403(b) prototype plan must satisfy the requirements of §§ 1.403(b)–1 through 1.403(b)–11, including the following requirements:

(1) The plan must contain all the material terms and conditions for eligibility, benefits, applicable limitations, the investment arrangements available under the plan, and the time and form under which benefit distributions will be made.

(2) The plan must satisfy the universal availability requirement with respect to elective deferrals described in § 1.403(b)–5(b), whether or not this requirement is applicable to the plan under § 1.403(b)–5.

(3) The plan must limit the amount of compensation that can be taken into account with respect to any contribution under the plan to the limitation in effect under § 401(a)(17), whether or not this limitation is applicable to the plan under § 1.403(b)–5.

(4) Unless the plan is designed by the prototype sponsor to be available for adoption only as a governmental plan as defined in § 414(d) or a church plan as defined in § 414(e) for which the election under § 410(d) has not been made (a "nonelecting church plan"), the plan must include terms that satisfy the applicable requirements of § 401(m) if the plan provides for matching or after-tax employee contributions.

(5) The plan must set forth the terms governing any hardship distributions, loans, plan-to-plan transfers, contract-to-contract exchanges, and rollovers into the plan that are available under the plan.

.06 Every § 403(b) prototype plan must provide for full and immediate vesting of all contributions under the plan.

.07 Every § 403(b) prototype plan must provide that in the event of any conflict between the terms of the plan and the terms of any annuity contract or custodial account under the plan, or of any other document that is incorporated by reference in the plan, the terms of the plan shall control.

.08 Every § 403(b) prototype plan must provide a procedure for amendment of the plan by the prototype sponsor, so that changes in the Code, regulations, revenue rulings, or other guidance published by the Service, or corrections of prior approved plans, may be applied to all eligible employers that have adopted the plan.

.09 Under § 1.415(f)–1(a)(3), all § 403(b) annuity contracts purchased by an employer for a participant are treated as one § 403(b) annuity contract for purposes of § 415. Every § 403(b) prototype plan must include plan language reflecting this rule. In particular, the plan language must coordinate the application of the § 415 limits to all the § 403(b) prototype plans of the adopting eligible employer and its related employers so that, if the only § 403(b) plans maintained by the adopting employer and its related employers are prototype plans, the plans will satisfy § 415(c) and § 1.415(f)–1(a)(3) without requiring the addition of overriding plan language. The plan language must also allow the adopting eligible employer to add overriding language to the adoption agreement if necessary to coordinate the application of the § 415 limits where the adopting eligible employer or its related employers also maintain § 403(b) plans that are not prototype plans. For this purpose, the term "related employers" means all employers that are aggregated with the adopting eligible employer under § 414(b) and (c) (each as modified by § 415(h)), (m), and (o), including § 1.414(c)–5. Sample language provided in the Listing of Required Modifications (for § 403(b) plans) may be downloaded from the Internet at the following address: *(http://www.irs.gov/pub/irs-tege/draft_lrm_403b_prototypes.pdf).*

.10 Every § 403(b) prototype plan must provide that the eligible employer is considered to have adopted an individually designed plan, and the eligible employer is not entitled to reliance on an opinion letter issued with respect to the plan, if:

(1) the eligible employer amends any provision of the plan, including its adoption agreement (other than to (a) change the choice of options or procedures in the adoption agreement, (b) add overriding language in the adoption agreement if necessary to satisfy § 415 because of the required aggregation of multiple plans, or (c) adopt sample or model amendments published by the Service that specifically provide that their adoption by an adopter of an approved § 403(b) prototype plan will not cause such plan to be treated as individually designed); or

(2) the eligible employer chooses to discontinue participation in the plan as amended by the prototype sponsor and does not substitute another approved § 403(b) prototype plan.

.11 The adoption agreement of every § 403(b) prototype plan must satisfy the following requirements:

(1) The adoption agreement must require the adopting employer to indicate whether:

(a) the plan is a governmental plan as defined in § 414(d),

(b) the plan is a nonelecting church plan, or

(c) the adopting eligible employer is an organization described in § 501(c)(3) and the plan is neither a governmental plan as defined in § 414(d) nor a nonelecting church plan.

(2) The adoption agreement must allow the adopting eligible employer to add overriding plan language if necessary to satisfy § 415 because of the required aggregation of multiple plans.

(3) The adoption agreement must identify who: (a) is responsible for the various administrative functions under the plan to comply with the requirements of § 403(b) and other tax requirements, including such requirements that apply on the basis of the aggregated contracts issued to a participant under the plan; and (b) is responsible to maintain a list of all the vendors of annuity contracts and custodial accounts under the plan.

(4) The adoption agreement must contain a dated employer signature line. The eligible employer must sign the adoption agreement when it first adopts the plan and must complete and sign a new adoption agreement if the plan has been restated. In

addition, the eligible employer must complete a new signature page if it modifies any prior elections or makes new elections in its adoption agreement. The signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment or modification thereof, by the eligible employer.

(5) The adoption agreement must state that it is to be used only with one specific basic plan document, and must identify that document.

(6) The adoption agreement must contain a cautionary statement to the effect that the failure to properly fill out the adoption agreement may result in failure of the plan to satisfy the requirements of § 403(b). The Service expects that § 403(b) prototype plan documents will be written in a manner designed to assist adopting eligible employers in the correct completion of the adoption agreement.

(7) The adoption agreement must also state that the prototype sponsor will inform the adopting eligible employer of any amendments made to the plan or of the discontinuance or abandonment of the plan.

(8) The adoption agreement must include the prototype sponsor's name, address, and telephone number (or a space for the address and telephone number of the prototype sponsor's authorized representative) for inquiries by adopting eligible employers regarding the adoption of the plan, the meaning of plan provisions, or the effect of the opinion letter.

SECTION 6. STANDARDIZED PLANS AND NONSTANDARDIZED PLANS

.01 Each § 403(b) prototype plan is either a standardized plan or a nonstandardized plan. A § 403(b) prototype plan is a standardized plan if:

(1) the only contributions which an adopting eligible employer may elect to provide under the plan are elective deferrals; or

(2) the form of the plan satisfies the requirements in section 6.02 with respect to any contributions under the plan other than elective deferrals, regardless of the adopting eligible employer's elections in the adoption agreement or the terms of any investment arrangements under the plan or any documents incorporated by reference in the plan.

.02 The form of a § 403(b) prototype plan satisfies the requirements in this section 6.02 with respect to any contributions under the plan other than elective deferrals if:

(1) The plan by its terms benefits all employees except those that may be excluded under § 1.410(b)–6. For this purpose, employee means an employee, within the meaning of § 1.403(b)–2(b)(9), of the adopting eligible employer and any eligible employer within the meaning of § 1.403(b)–2(b)(8) in the adopting eligible employer's controlled group. The controlled group consists of the adopting eligible employer and each other employer that is aggregated with the adopting eligible employer under § 414(b), (c), (m) or (o), including § 1.414(c)–5. Thus, if there is more than one eligible employer in the controlled group, the plan must benefit all the employees of all the eligible employers in the controlled group except those employees that may be excluded under § 1.410(b)–6. (A plan does not fail to satisfy this requirement with respect to contributions other than elective deferrals merely because the plan provides, either as the result of an elective provision or by default in the absence of an election to the contrary, that individuals who become employees as the result of a transaction described in § 410(b)(6)(C), relating to certain employer acquisitions and dispositions, are excluded from eligibility to participate in the plan during the period beginning on the date of the transaction and ending on a date that is not later than the earlier of the last day of the first plan year beginning after the date of the transaction or the date of a significant change in the plan or in the coverage of the plan.)

(2) All benefits, rights, and features under the plan (other than those, if any, that have been prospectively eliminated) are currently available to all employees benefiting under the plan. (For information regarding benefits, rights, and features, see § 1.401(a)(4)–4.) Thus, for example, all employees benefiting under the plan must be able to choose among all the investment arrangements available under the plan.

(3) If the plan provides for employer nonelective contributions (other than matching contributions), the plan must satisfy one of the design-based safe harbors described in § 1.401(a)(4)–2(b)(2) with respect to such contributions.

(4) The plan must define compensation for purposes of determining the amount of contributions other than elective deferrals as total compensation. For this purpose, total compensation means a definition of compensation that includes all compensation within the meaning of § 415(c)(3) (disregarding § 415(c)(3)(E)) and excludes all other compensation, or that otherwise satisfies § 414(s) under § 1.414(s)–1(c).

.03 A nonstandardized plan is a § 403(b) prototype plan that is not a standardized plan.

SECTION 7. WHO CAN SPONSOR A § 403(b) PROTOTYPE PLAN? / WHO CAN BE A MASS SUBMITTER?

.01 A person is eligible to sponsor a § 403(b) prototype plan if the person (1) has an established place of business in the United States where it is accessible during every business day and (2) expects at least 30 eligible employers to adopt its § 403(b) prototype plan basic plan document(s). A person eligible to sponsor a § 403(b) prototype plan may request opinion letters for any number of basic plan documents and adoption agreements.

.02 Any person that has an established place of business in the United States where it is accessible during every business day may sponsor a plan as a word-for-word identical adopter of a § 403(b) prototype plan of a mass submitter, regardless of the number of eligible employers expected to adopt the plan. A mass submitter is any person that (1) has an established place of business in the United States where it is accessible during every business day and (2) submits opinion letter applications on behalf of at least 30 prototype sponsors each of which is sponsoring, on a word-for-word identical basis, the same basic plan document. A § 403(b) prototype plan of a mass submitter must include language designating the mass submitter as agent for the prototype sponsor for purposes of making plan amendments. A mass submitter may request opinion letters for any number of basic plan documents and adoption agreements.

.03 The filing of an application for an opinion letter for a § 403(b) prototype plan constitutes a representation that the

requirements in .01 or .02 of this section 7 are satisfied.

SECTION 8. DUTIES OF A PROTOTYPE SPONSOR

.01 A prototype sponsor must maintain a written record of the eligible employers that have adopted the plan. Upon written request, the prototype sponsor must provide the Service a list of the names, addresses, and employer identification numbers of all eligible employers that have adopted the plan, excluding employers that ceased to maintain the plan as a prototype plan more than three years prior to the request.

.02 Unless the prototype sponsor has withdrawn its opinion letter application pursuant to section 13, notified the Service and adopting eligible employers that it is abandoning the plan pursuant to section 14, or been notified by the Service under section 15 that its opinion letter has been revoked, the prototype sponsor must continue to maintain the approved status of the plan as provided in section 11. Thus, the prototype sponsor must timely amend the plan for changes in the Code, regulations, revenue rulings, or other guidance published by the Service, and must apply for new opinion letters when required. The prototype sponsor must provide to the eligible employer copies of the plan and any restatements thereof, all amendments and all opinion letters, and must comply with the notice requirements under this procedure and any other written guidance.

.03 The prototype sponsor must have a procedure to verify that an adopting eligible employer has timely completed and signed a new adoption agreement when required (*i.e.*, upon initial adoption and restatement of the prototype plan). If the prototype sponsor is unable to verify an adopting eligible employer's timely completion of a new adoption agreement, the prototype sponsor must notify the eligible employer that failure to timely complete a new adoption agreement could result in adverse tax consequences to participants.

.04 The prototype sponsor must have a procedure for adopting eligible employers to acknowledge receipt of plan amendments when an adopting eligible employer is not required to complete a new adoption agreement. The prototype sponsor must notify any adopting eligible employers that fail to acknowledge receipt of a plan amendment that failure to take the amendment into account in the operation of the plan could result in adverse tax consequences to participants.

.05 The filing of an application for an opinion letter for a § 403(b) prototype plan constitutes a representation that the prototype sponsor agrees to comply with the requirements of this revenue procedure. Failure to do so may result in the loss of eligibility to sponsor § 403(b) prototype plans and the revocation of opinion letters that have been issued to the prototype sponsor.

SECTION 9. SCOPE OF AN OPINION LETTER

.01 An opinion letter for a § 403(b) prototype plan constitutes a determination that the plan as adopted by a particular adopting eligible employer satisfies the requirements of § 403(b) only under the circumstances, and to the extent, described in section 10.

.02 The Service's review of a prototype sponsor's application for an opinion letter for a § 403(b) prototype plan, or of an adopting eligible employer's application for a determination letter for the eligible employer's § 403(b) prototype plan, will consider only the terms of the basic plan document and adoption agreement. The Service's review will not consider, and an opinion or determination letter will not express an opinion with respect to, the terms of any annuity contracts or custodial accounts under the plan of any adopting eligible employer or any other documents that may be incorporated into an adopting eligible employer's plan by reference.

.03 An opinion letter for a § 403(b) plan does not express an opinion, and may not be relied upon, with respect to whether any plan is subject to the requirements of Title I of ERISA or whether a plan satisfies any of those requirements.

.04 Opinion letters will not be issued for any of the following:

(1) TEFRA church defined benefit plans. (See § 1.403(b)–10(f)(2).)

(2) Plans that:

(a) include provisions applicable only to churches or qualified church-controlled organizations as described in § 3121(w)(3), church-related organizations described in § 1.403(b)–2(b)(6), or ministers described in § 414(e)(5)(A), such as the provisions of § 1.403(b)–9, relating to retirement income accounts and special limitations under § 415(c)(7); or

(b) fail to satisfy requirements that apply to organizations other than churches and qualified church-controlled organizations as described in § 3121(w)(3), such as universal availability for elective deferrals or the limitation of § 401(a)(17).

(3) Plans grandfathered under Rev. Rul. 82–102, 1982–1 C.B. 62.

(4) Plans that include blanks or fill-in provisions for the eligible employer to complete unless the provisions have parameters that preclude the eligible employer from completing the provisions in a manner that could cause the plan to fail to satisfy § 403(b).

(5) Plans that incorporate by reference the limitations of § 415 or the ACP test of § 401(m)(2).

Paragraph (2) of this section 9.04 does not preclude the adoption of a § 403(b) prototype plan by an exempt organization under § 501(c)(3) that is one of the entities described in paragraph (2). The Service may, in its discretion, decline to issue opinion letters for other types of plans not described in this section 9.04. For example, in the case of a plan that provides for nonelective contributions and is neither a governmental plan as defined in § 414(d) nor a nonelecting church plan, the Service may, in its discretion, decline to issue an opinion letter where the plan fails to satisfy a Code provision that is parallel to a provision in Part 2 of Subtitle B of Title I of ERISA (such as §§ 410 and 411 of the Internal Revenue Code).

SECTION 10. EMPLOYER RELIANCE

.01 An eligible employer that adopts a standardized § 403(b) prototype plan may rely upon a favorable opinion letter issued for the plan that the form of the adopting eligible employer's plan satisfies the requirements of § 403(b) if (1) the only contributions under the plan are elective deferrals or (2) all of the employers in the adopting eligible employer's controlled group are eligible employers within the meaning of § 1.403(b)–2(b)(8). If the plan provides for contributions other than elective deferrals and the adopting eligible employer's controlled group includes any

employer that is not an eligible employer within the meaning of § 1.403(b)–2(b)(8), the adopting eligible employer may rely on the opinion letter, except with respect to whether contributions under the plan other than elective deferrals satisfy the requirements of §§ 401(a)(4) and 410(b). In this case, the adopting eligible employer may request an individual determination letter in order to obtain reliance with respect to the requirements of §§ 401(a)(4) and 410(b). The Service intends to publish procedures for requesting such a letter in the future.

.02 An eligible employer that adopts a standardized or a nonstandardized § 403(b) prototype plan may rely upon a favorable opinion letter issued for the plan that the form of the adopting eligible employer's plan satisfies the requirements of § 403(b) if the plan is a governmental plan as defined in § 414(d) or a nonelecting church plan. However, the issuance of a favorable opinion letter does not constitute a determination that the plan is a governmental plan as defined in § 414(d) or a nonelecting church plan, but instead is conditioned on the adopting eligible employer's representation to that effect.

.03 An eligible employer that adopts a nonstandardized § 403(b) prototype plan may rely upon a favorable opinion letter issued for the plan that the form of the adopting eligible employer's plan satisfies the requirements of § 403(b), except with respect to whether contributions under the plan other than elective deferrals satisfy the requirements of §§ 401(a)(4) and 410(b), if applicable. The adopting eligible employer may request an individual determination letter in order to obtain reliance with respect to the requirements of §§ 401(a)(4) and 410(b), under procedures to be published in the future.

.04 Notwithstanding the other provisions of this section, an opinion letter issued for a § 403(b) prototype plan may not be relied upon with respect to the requirements of § 415 if the adopting eligible employer or any of its related employers maintains another § 403(b) plan covering any of the same participants as the § 403(b) prototype plan, unless the other plan is also a § 403(b) prototype plan. For this purpose, the term "related employers" means all employers that are aggregated with the adopting eligible employer under § 414(b) and (c) (each as modified by § 415(h)), (m), and (o), including § 1.414(c)–5. The adopting eligible employer may request an individual determination letter in order to obtain reliance with respect to the requirements of § 415 under procedures to be published in the future.

.05 An opinion letter for a § 403(b) prototype plan also may not be relied upon with respect to issues of an inherently factual nature, such as whether the effective availability of any benefits, rights, and features is nondiscriminatory, or with respect to whether a plan satisfies the requirements of §§ 401(a)(4) and 410(b) with respect to former employees.

.06 An eligible employer's reliance on an opinion letter will not be adversely affected by the prototype sponsor's correction, after the § 403(b) prototype plan has been approved, of obvious and unambiguous typographical errors in the approved plan and/or cross-references in the plan that merely correct a reference but that do not in any way change the original intended meaning of the provisions. The Service in its discretion may determine whether any changes made by the prototype sponsor to the approved § 403(b) prototype plan conform to these standards.

SECTION 11. MAINTENANCE OF APPROVED STATUS

.01 An approved § 403(b) prototype plan must be amended by the prototype sponsor and, if necessary, the eligible employer, to retain its approved status if any provisions therein fail to meet the requirements of § 403(b) as a result of a changes in the Code, regulations, revenue rulings, or other guidance published by the Service. The Service expects future guidance to require the restatement of every § 403(b) prototype plan by the prototype sponsor every six years. Upon issuance of a new opinion letter for the restated plan, adopting eligible employers would be required to complete new adoption agreements. Future guidance will also address operational compliance and whether interim amendments may be required between plan restatements.

.02 If a prototype sponsor determines that a § 403(b) prototype plan as adopted by an eligible employer may no longer satisfy the requirements of § 403(b) and the prototype sponsor does not or cannot submit a request to correct under the Voluntary Correction Program (VCP) component of the Employee Plans Compliance Resolution System (EPCRS), the prototype sponsor must notify the eligible employer that the plan may no longer satisfy § 403(b), advise the eligible employer that adverse tax consequences to participants may ensue, and inform the eligible employer about the availability of EPCRS. See Rev. Proc. 2008–50, or any successor thereto.

SECTION 12. HOW TO APPLY FOR AN OPINION LETTER

.01 The Service will accept applications for opinion letters for § 403(b) prototype plans beginning **[DATE TO BE DETERMINED]**.

.02 A separate application is required for each adoption agreement that is offered for adoption by the prototype sponsor. For example, if a prototype sponsor maintains two basic plan documents and there are two adoption agreements that may be used with each basic plan document, the prototype sponsor must submit four separate applications.

.03 An application for an opinion letter for a § 403(b) prototype plan may be filed by a prototype sponsor as defined in section 7.01, by a mass submitter as defined in section 7.02 with respect to its mass submitter plan, or by a mass submitter on behalf of a word-for-word identical adopter of the mass submitter's plan. An application filed by a prototype sponsor or by a mass submitter with respect to a mass submitter plan must be submitted on Form 8929, *Application for Approval of § 403(b) Prototype Plan*. An application filed by a mass submitter on behalf of a word-for-word identical adopter of the mass submitter's plan must be filed on Form 8929–A, *Application for Approval of § 403(b) Prototype Plan Mass Submitter Adopting Sponsor*. The forms (and instructions) specify what to include with the application. These forms may be downloaded from the Internet at the following address: **[TO BE ADDED WHEN FINALIZED]**. All information on the first page of the application must be typed. The applicable user fee, determined under section 6.03 of Rev. Proc. 2009–8, 2009–1 I.R.B. 229, as if the application were for a master and prototype plan, should be included with the application. The request is to be sent to:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201
Attn: § 403(b) Prototype Coordinator
Room 5106

A request shipped by Express Mail or a delivery service should be sent to:

Internal Revenue Service
550 Main Street
P.O. Box 2508
Cincinnati, OH 45202
Attn: § 403(b) Prototype Coordinator
Room 5106

.04 In the case of an initial submission of a mass submitter's basic plan document under this revenue procedure, the mass submitter's application(s) must also be accompanied by applications for opinion letters filed on behalf of at least 30 word-for-word identical adopters, unless the mass submitter has already satisfied this requirement in connection with a previous application under this revenue procedure involving another basic plan document. After satisfying the 30 word-for-word identical adopter requirement, the mass submitter may submit additional applications on behalf of other prototype sponsors that wish to adopt a word-for-word identical plan. In addition, the mass submitter may then submit requests for opinion letters for its other § 403(b) prototype plans regardless of the number of identical adopters of such other plans.

.05 Sample plan language to be used in drafting § 403(b) prototype plans is available from Employee Plans Rulings and Agreements. Such language is not automatically required in § 403(b) prototype plans, but should be used as a guide in drafting such plans. To expedite the review of their plans, prototype sponsors are encouraged to use the Service's sample plan language and to identify where such language is being used in their plan documents. The sample plan language may be downloaded from the Internet at the following address: *(http://www.irs.gov/pub/irs-tege/draft_lrm_403b_prototypes.pdf)*.

.06 The Service may determine the extent of review of a § 403(b) prototype plan based on the application. A failure to disclose a material fact or misrepresentation of a material fact in the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable opinion letter. Similarly, failure to accurately provide any of the information called for on any form required by this revenue procedure may result in no reliance.

.07 The Service may, at its discretion, require any additional information that it deems necessary in connection with its review of a § 403(b) prototype plan. If a letter requesting changes to plan documents is sent to the prototype sponsor or an authorized representative, the changes must be received no later than 30 days from the date of the letter, and the response must include either a copy of the plan with the changes highlighted or, if the changes are not extensive, replacement pages. If the changes are not received within 30 days, the application may be considered withdrawn. An extension of the 30-day time limit will only be granted for good cause.

.08 The Service will return, without further action, plans that are not in substantial compliance with the approval requirements or plans that are so deficient that they cannot be reviewed in a reasonable amount of time. A plan may be considered not to be in substantial compliance if, for example, it omits an applicable Code section or merely incorporates by reference an applicable Code section. The Service will not consider these plans until after they are revised, and they will be treated as new requests as of the date they are resubmitted. No additional user fee will be charged if an inadequate submission is amended to be in substantial compliance and is resubmitted to the Service within 30 days following the date the prototype sponsor is notified of such inadequacy.

.09 If the plan document submitted as part of an opinion letter request contains a provision that gives rise to an issue for which contrary published authorities exist, failure to disclose and address significant contrary authorities may result in requests for additional information, which will delay action on the request.

.10 An opinion letter issued to a prototype sponsor is not transferable to any other entity. For this purpose, a change of employer identification number is deemed to be a change of entity.

.11 A change in a prototype sponsor's name only is not deemed to be a change of entity. However, the prototype sponsor must notify the Service in writing of the change in name and certify that it still meets the conditions for sponsorship described in section 7. No opinion letter will be issued and no user fee will be required for a mere change in name.

SECTION 13. WITHDRAWAL OF REQUESTS

.01 A prototype sponsor may withdraw its request for an opinion letter at any time prior to the issuance of such letter by notifying EP Rulings and Agreements in writing of such withdrawal. The prototype sponsor must also notify each eligible employer that has adopted the plan that the request has been withdrawn. Such an eligible employer will be deemed to have an individually designed plan.

.02 Even though a request is withdrawn, EP Rulings and Agreements will retain all correspondence and documents associated with that request and will not return them to the prototype sponsor. EP Rulings and Agreements may furnish it views concerning the approval status of the plan to EP Examinations, which has audit jurisdiction over the returns of the eligible employers that have adopted the plan.

SECTION 14. ABANDONMENT OF SPONSORSHIP OF § 403(b) PLANS

.01 A prototype sponsor must notify EP Rulings and Agreements in writing of an approved § 403(b) prototype plan that is no longer used by any eligible employer and which the prototype sponsor no longer intends to offer for adoption. Such written notification should be sent to the address in section 12.03 and should refer to the file folder number appearing on the latest opinion letter issued.

.02 A prototype sponsor that intends to abandon an approved § 403(b) prototype plan that is in use by any adopting eligible employer must inform each adopting eligible employer that the form of the plan has been terminated, that the eligible employer's plan will become an individually designed plan (unless the eligible employer adopts another approved § 403(b) prototype plan), and that any employer reliance will not continue if there is a change in § 403(b), the regulations, revenue rulings, or other guidance published by the Service. After so informing all adopting

eligible employers, the prototype sponsor must notify EP Rulings and Agreements in accordance with subsection .01 of this section 14.

SECTION 15. REVOCATION

An opinion letter found to be in error or not in accord with the current views of the Service may be revoked. However, except in rare or unusual circumstances, such revocation will not be applied retroactively if the conditions set forth in sections 13 and 14 of Rev. Proc. 2009–4, 2009–1 I.R.B. 118 (disregarding references therein to §§ 7428 and 7476) are met. For this purpose, opinion letters will be given the same effect as rulings. Revocation may be effected by a notice to the prototype sponsor to which the letter was originally issued, or by a regulation, revenue ruling, or other statement published in the Internal Revenue Bulletin. The prototype sponsor should then notify each adopting eligible employer of the revocation as soon as possible. The content of the notification to each adopting eligible employer must explain how the revocation affects any reliance an adopting eligible employer has on the applicable opinion letter.

SECTION 16. RETROACTIVE REMEDIAL AMENDMENT

.01 Effective January 1, 2009, a contract does not satisfy the requirements of § 403(b) unless the contract is maintained pursuant to a written plan which, in both form and operation, satisfies the requirements of the 2007 regulations. The transition relief in Notice 2009–3 sets forth conditions under which a § 403(b) plan will not be treated as failing to satisfy the requirements of § 403(b) and the 2007 regulations during the 2009 calendar year. The relief in Notice 2009–3 applies solely with respect to the 2009 calendar year.

.02 This section 16 allows an eligible employer to retroactively correct defects in the form of its written § 403(b) plan by timely adopting an approved § 403(b) prototype plan or by otherwise timely amending its plan and submitting a request for a determination letter. Under this remedial amendment provision, an eligible employer must amend its plan to the extent necessary to correct any form defects retroactive to the first day of the plan's remedial amendment period. For this purpose, "the first day of the plan's remedial amendment period" means the later of January 1, 2010, or the effective date of the plan.

.03 The form of a plan will be treated as satisfying the requirements of the 2007 regulations as of the first day of the plan's remedial amendment period if, on or before such day, the eligible employer adopts a written plan that is intended to satisfy the requirements of § 403(b) and the 2007 regulations and the conditions in paragraphs (1) or (2) of this section 16.02 are satisfied:

(1) The eligible employer amends the plan to the extent necessary to correct any form defects retroactive to the first day of the plan's remedial amendment period by timely adopting an approved § 403(b) prototype plan. (An eligible employer that timely adopts an approved § 403(b) prototype plan is not required, but may nevertheless choose, to amend its plan retroactive to January 1, 2009. However, for purposes of Notice 2009–3 and whether the Service will treat the eligible employer's § 403(b) plan as satisfying the requirements of § 403(b) and the 2007 regulations during the 2009 calendar year, only the plan that was adopted and in effect on December 31, 2009, will be taken into account.) For this purpose, an approved § 403(b) prototype plan means a plan for which a favorable opinion letter is issued pursuant to a timely filed application under this revenue procedure. An application for an opinion letter under this revenue procedure is timely filed if (a) the application is filed with the Service by a date to be announced in the future (which will not be earlier than March 15, 2010), or (b) if the plan is a word-for-word identical adopter of a mass submitter plan, the opinion letter application for the mass submitter plan is filed with the Service by a date to be announced in the future (which will not be earlier than March 15, 2010), irrespective of when the opinion letter application for the identical adopter plan is filed. The Service will announce, in subsequent guidance, the date by which an approved § 403(b) prototype plan must be adopted to be considered timely adopted for purposes of this section. The Service expects that eligible employers will have a period in excess of one year from the date of the announcement in which to timely adopt an approved § 403(b) prototype plan.

(2) The eligible employer timely amends the plan to the extent necessary to correct any form defects retroactive to the first day of the plan's remedial amendment period and timely submits the plan to the Service for a determination letter. (An eligible employer that timely submits its plan for a determination letter is not required, but may nevertheless choose, to amend the plan retroactive to January 1, 2009. However, for purposes of Notice 2009–3 and whether the Service will treat the eligible employer's § 403(b) plan as satisfying the requirements of § 403(b) and the 2007 regulations during the 2009 calendar year, only the plan that was adopted and in effect on December 31, 2009, will be taken into account.) Future guidance regarding the determination letter program for § 403(b) plans will specify the date by which a § 403(b) plan must be amended and submitted to the Service to be considered timely amended and submitted for purposes of this section, but this date will not be earlier than March 15, 2010. Any amendments required by the Service as a result of its review of a timely submitted determination letter application for a § 403(b) plan will be considered timely adopted if they are adopted by the 91st day following issuance of a determination letter.

.04 For purposes of this section 16, a "written plan intended to satisfy the requirements of § 403(b) and the 2007 regulations" includes both a new plan that is intended to satisfy those requirements and an existing plan that has been amended with the intent of satisfying those requirements, including a plan that is based on the model plan language in Rev. Proc. 2007–71 and a plan that is an adoption of a § 403(b) prototype plan that has been timely submitted for an opinion letter under this revenue procedure.

SECTION 17. EFFECT ON OTHER DOCUMENTS

Section 6.03 of Rev. Proc. 2009–8 is modified to provide that the user fee for an application for an opinion letter for a § 403(b) prototype plan is the same user fee that would apply if the application were for a master or prototype plan.

SECTION 18. EFFECTIVE DATE

This revenue procedure is effective **[TO BE ADDED WHEN FINALIZED]**.

SECTION 19. PAPERWORK REDUCTION ACT

[TO BE ADDED WHEN FINALIZED].

DRAFTING INFORMATION

The principal authors of this revenue procedure are Angelique Carrington and James P. Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans taxpayer assistance answering service at 1–877–829–5500 (a toll-free number) or e-mail Ms. Carrington or Mr. Flannery at *RetirementPlanQuestions@irs.gov*.

Guidance Regarding Foreign Base Company Sales Income; Hearing Cancellation

Announcement 2009–36

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking relating to the foreign base company sales income, in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC. The temporary regulations modify the foreign base company sales income regulations to address current business structures and practices, particularly the growing importance of contract manufacturing and other manufacturing arrangements. The temporary regulations, in general, will affect CFCs and their United States shareholders.

DATE: The public hearing, originally scheduled for April 20, 2009, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

A notice of public hearing that appeared in the **Federal Register** on Monday, December 29, 2008 (REG–150066–08, 2009–5 I.R.B. 423 [73 FR 79421]), announced that a public hearing was scheduled for April 20, 2009, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is under section 954 of the Internal Revenue Code.

The public comment period for these regulations expired on March 30, 2009. Outlines of topics to be discussed at the hearing were due on April 2, 2009. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Monday, April 6, 2009, no one has requested to speak. Therefore, the public hearing scheduled for April 20, 2009, is cancelled.

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

(Filed by the Office of the Federal Register on April 8, 2009, 8:45 a.m., and published in the issue of the Federal Register for April 9, 2009, 74 F.R. 16161)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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