Internal Revenue
bulletin

Bulletin No. 2005-13
March 28, 2005

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2005–16, page 777.

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period January through June 2005. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through June 2005.

Rev. Rul. 2005–22, page 787.

LIFO; price indexes; department stores. The January 2005 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, January 31, 2005.

T.D. 9186, page 790.
REG–122847–04, page 804.

Temporary and proposed regulations under section 6664 of the Code provide additional circumstances that end the period within which a taxpayer may file an amended return that constitutes a qualified amended return. The regulations provide that the period for filing a qualified amended return is terminated once the IRS has served a John Doe summons on a third party with respect to the taxpayer's tax liability. In addition, for taxpayers who have claimed tax benefits from undisclosed listed transactions, the regulations provide that the period for filing a qualified amended return is terminated once the IRS contacts a promoter, organizer, seller, or material advisor concerning the listed transaction. The regulations also provide that the date on which published guidance is issued announcing a settlement initiative for a listed transaction in which penalties are compromised or waived is an additional date by which a taxpayer must file a qualified amended return. Notice 2004–38 obsoleted.

T.D. 9187, page 778.

Final regulations under sections 337(d) and 1502 of the Code disallow certain losses recognized on sales of subsidiary stock by members of a consolidated group. The regulations apply to corporations filing consolidated returns and to purchasers of stock of members of a consolidated group.

REG–148701–03, page 802.

Proposed regulations under section 6502 of the Code incorporate the changes imposed by the IRS Restructuring and Reform Act of 1988 that limit the IRS's ability to enter into agreements extending the statute of limitations for collection. The regulations also incorporate a provision governing the continued effect of collection statute extension agreements executed prior to January 1, 2000.

Notice 2005–27, page 795.

This notice discusses the proper exchange rate to be used under the dollar approximate separate transactions method (DASTM) of regulations section 1.985–3(d) to translate certain types of assets transferred from a qualified business unit to its U.S. home office.

Notice 2005–28, page 796.

This notice extends the deadline by which state and local governments must nominate projects for designation by the Secretary as qualified green building and sustainable design projects under section 142(l) of the Code.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 809.
Finding Lists begin on page ii.
Index for January through March begins on page iv.

Department of the Treasury
Internal Revenue Service

Notice 2005–29, page 796.
Transition relief for certain partnerships and other pass-thru entities under section 470. This notice provides transition relief under section 470 of the Code to partnerships and other pass-thru entities that are treated as holding tax-exempt use property because of the application of section 168(h)(6).

EMPLOYEE PLANS

REG–152354–04, page 805.
Proposed regulations under section 401(k) of the Code would provide guidance concerning the requirements for designated Roth contributions to qualified cash or deferred arrangements. The regulations would affect section 401(k) plans that provide for designated Roth contributions and participants eligible to make elective contributions under these plans.

ADMINISTRATIVE

T.D. 9189, page 788.
Final regulations under section 6334 of the Code revise regulations relating to property exempt from levy. The regulations were revised to reflect changes made by the IRS Restructuring and Reform Act of 1998 and the Taxpayer Relief Act of 1997. These changes include the procedures for obtaining prior judicial approval of certain principal residence seizures and the exemption from levy for certain business assets in the absence of administrative approval or jeopardy.

REG–148701–03, page 802.
Proposed regulations under section 6502 of the Code incorporate the changes imposed by the IRS Restructuring and Reform Act of 1988 that limit the IRS's ability to enter into agreements extending the statute of limitations for collection. The regulations also incorporate a provision governing the continued effect of collection statute extension agreements executed prior to January 1, 2000.

Notice 2005–28, page 796.
This notice extends the deadline by which state and local governments must nominate projects for designation by the Secretary as qualified green building and sustainable design projects under section 142(l) of the Code.

Rev. Proc. 2005–17, page 797.
This procedure modifies Rev. Proc. 2005–9 to waive the 5-year prior change scope limitation for taxpayers seeking the Commissioner's automatic consent to change a method of accounting for the costs of acquiring or creating intangibles. Rev. Proc. 2005–9 modified.

Rev. Proc. 2005–18, page 798.
This document provides procedures for making, withdrawing, or otherwise identifying deposits under new section 6603 of the Code to suspend the running of interest under section 6601 on potential underpayments of tax. Section 6603 was added to the Code by the American Jobs Creation Act of 2004. The procedure also invites comments from the public regarding rules and standards relating to new section 6603. Rev. Proc. 84–58 superseded.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 42.—Low-Income Housing Credit

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period January through June 2005. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through June 2005.

Rev. Rul. 2005–16

In Rev. Rul. 90–60, 1990–2 C.B. 3, the Internal Revenue Service provided guidance to taxpayers concerning the general methodology used by the Treasury Department in computing the bond factor amounts used in calculating the amount of bond considered satisfactory by the Secretary under § 42(j)(6) of the Internal Revenue Code. It further announced that the Secretary would publish in the Internal Revenue Bulletin a table of bond factor amounts for dispositions occurring during each calendar month.

Rev. Proc. 99–11, 1999–1 C.B. 275, established a collateral program as an alternative to providing a surety bond for taxpayers to avoid or defer recapture of the low-income housing tax credits under § 42(j)(6). Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) or the amount of United States Treasury securities to pledge in a Treasury Direct Account under Rev. Proc. 99–11 for dispositions of qualified low-income buildings or interests therein during the period January through June 2005.

Table 1
Rev. Rul. 2005–16
Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year										
Month of Disposition	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Jan '05	14.99	27.92	39.03	48.55	56.77	56.71	56.86	57.15	57.52	58.00	58.83
Feb '05	14.99	27.92	39.03	48.55	56.77	56.59	56.74	57.04	57.41	57.89	58.72
Mar '05	14.99	27.92	39.03	48.55	56.77	56.47	56.63	56.93	57.30	57.79	58.61
Apr '05	15.85	29.52	41.27	51.33	60.03	60.18	60.95	61.89	62.92	64.10	65.66
May '05	15.85	29.52	41.27	51.33	60.03	60.05	60.83	61.77	62.80	63.98	65.54
Jun '05	15.85	29.52	41.27	51.33	60.03	59.93	60.71	61.65	62.69	63.87	65.42

Table 1 (cont'd)
Rev. Rul. 2005–16
Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year										
Month of Disposition	2002	2003	2004	2005							
Jan '05	59.92	61.22	62.49	62.68							
Feb '05	59.80	61.09	62.33	62.68							
Mar '05	59.69	60.97	62.19	62.68							
Apr '05	67.52	69.62	71.64	72.55							
May '05	67.40	69.48	71.49	72.55							
Jun '05	67.28	69.36	71.35	72.55							

For a list of bond factor amounts applicable to dispositions occurring during other calendar years, see: Rev. Rul. 98–3, 1998–1 C.B. 248; Rev. Rul. 2001–2, 2001–1 C.B. 255; Rev. Rul. 2001–53, 2001–2 C.B. 488; Rev. Rul. 2002–72, 2002–2 C.B. 759; Rev. Rul. 2003–117, 2003–2 C.B. 1051; and Rev. Rul. 2004–100, 2004–44 I.R.B. 718.

DRAFTING INFORMATION

The principal author of this revenue ruling is David McDonnell of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. McDonnell at (202) 622–3040 (not a toll-free call).

Section 168.—Accelerated Cost Recovery System

Transition relief is provided to partnerships and other pass-thru entities that are treated as holding tax-exempt use property because of the application of § 168(h)(6). See Notice 2005-29, page 796.

Section 337.—Nonrecognition for Property Distributed to Parent in Complete Liquidation of Subsidiary

26 CFR 1.337(d)–2: Loss limitation rules.

T.D. 9187

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Loss Limitation Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations under sections 337(d) and 1502 of the Internal Revenue Code (Code). These regulations disallow certain losses recognized on sales of subsidiary stock by members of a consolidated group. These regulations apply to corporations filing consolidated returns, both during and after the period of affiliation, and also affect purchasers of the stock of members of a consolidated group.

DATES: *Effective Date:* These regulations are effective April 4, 2005.

Applicability Date: For dates of applicability, see §§1.337(d)–2(g), 1.1502–20(i), and 1.1502–32(b).

FOR FURTHER INFORMATION CONTACT: Theresa Abell (202) 622-7700 or Martin Huck (202) 622-7750 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1774.

The collection of information in these final regulations is in §§1.337(d)–2(c), 1.1502–20(i), and 1.1502–32(b)(4). The information is required to allow the taxpayer to make certain elections to determine the amount of allowable loss under §1.337(d)–2, §1.1502–20 as currently in effect, or under §1.1502–20 modified so that the amount of allowable loss determined pursuant to §1.1502–20(c)(1) is computed by taking into account only the amounts computed under §1.1502–20(c)(1)(i) and (ii); to allow the taxpayer to reapportion a section 382 limitation in certain cases; to allow the taxpayer to waive certain loss carryovers; to allow acquiring groups to reduce the amount of certain loss carryovers deemed to expire; and to ensure that loss is not disallowed and basis is not reduced under §1.337(d)–2 to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain on the disposition of an asset. The collection of information is required to obtain a benefit. The likely respondents are corporations that file consolidated income tax returns.

The estimated burden is as follows:

Estimated total annual reporting and/or recordkeeping burden: 36,720 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 18,360.

Estimated annual frequency of responses: once.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the **Office of Management and Budget**, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

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

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

Background

On March 7, 2002, the IRS and Treasury Department issued a Treasury decision that included temporary regulations and cross-referencing proposed regulations (T.D. 8984, 2002–1 C.B. 668 [67 FR 11034]; REG–102740–02, 2002–1 C.B. 701) implementing the repeal of the *General Utilities* doctrine in the consolidated return context pursuant to the mandate of section 337(d). Those regulations included §§1.337(d)–2T, 1.1502–20T(i), and 1.1502–32T(b)(4)(v).

For dispositions and deconsolidations of subsidiary stock before March 7, 2002, and dispositions and deconsolidations of subsidiary stock on or after March 7, 2002, that were effected pursuant to a binding written contract entered into before such date that was in continuous effect until the disposition or deconsolidation, §1.1502–20T(i) permits consolidated groups to elect to calculate allowable loss on the sale of subsidiary stock, or the basis reduction required on the deconsolidation of subsidiary stock, by applying §1.1502–20 in its entirety, §1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or

§1.337(d)–2T. Section 1.337(d)–2T disallows certain losses recognized on sales of subsidiary stock by members of a consolidated group and, under certain circumstances, requires the basis of subsidiary stock to be reduced to its value immediately before a deconsolidation of the stock. For dispositions and deconsolidations on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation, groups must apply §1.337(d)–2T to calculate allowable loss on the sale of subsidiary stock or the basis reduction required on the deconsolidation of subsidiary stock.

The Treasury decision also included a number of correlative provisions, in both §§1.1502–20T and 1.1502–32T, designed to address certain issues that could arise if a group elected to apply §1.1502–20 without regard to the duplicated loss factor of the loss disallowance formula, or §1.337(d)–2T. Technical changes to §§1.337(d)–2T, 1.1502–20T, and 1.1502–32T were made by Treasury decisions 8998, 2002–2 C.B. 1 [67 FR 37998], 9057, 2003–1 C.B. 964 [68 FR 24351], 9118, 2004–15 I.R.B. 718 [69 FR 12799], and 9155, 2004–40 I.R.B. 562 [69 FR 51175].

On August 25, 2004, the IRS issued Notice 2004–58, 2004–39 I.R.B. 520, describing the basis disconformity method and announcing that the IRS will accept that method as a method for determining whether subsidiary stock loss is disallowed and subsidiary stock basis is reduced under §1.337(d)–2T. Contemporaneous with the issuance of the Notice, the IRS and Treasury Department published temporary and cross-referencing proposed regulations (T.D. 9154, 2004–40 I.R.B. 560 [69 FR 52419]; REG–135898–04, 2004–40 I.R.B. 568) extending the time for making an election under §1.1502–20T(i) and permitting taxpayers to amend or revoke prior elections made under §1.1502–20T(i).

In response to the promulgation of §1.337(d)–2T and the issuance of Notice 2004–58, the IRS and Treasury Department have received a number of comments on the regulations, the basis disconformity method, and, more generally, on the manner in which the repeal of the *General Utilities* doctrine should be implemented in the consolidated group context. The IRS and Treasury Department have studied and are continuing to study those comments. In that regard, the IRS and Treasury Department intend to publish within the near term proposed regulations with an alternative approach to this problem. Until those proposed regulations are published as final or temporary regulations, whether certain losses recognized on sales of subsidiary stock are disallowed and whether basis of subsidiary stock must be reduced immediately before a deconsolidation of the stock will continue to be determined under the rules of §1.337(d)–2T. Accordingly, this Treasury decision adopts the rules of §1.337(d)–2T (as in effect on March 2, 2005) as final regulation §1.337(d)–2 without substantive change. The IRS will accept the basis disconformity method as a method for determining whether subsidiary stock loss is disallowed and subsidiary stock basis is reduced under that final regulation.

In addition, to permit taxpayers to make the election to apply §1.1502–20 without regard to the duplicated loss factor of the loss disallowance rule, or the rule of §1.337(d)–2, as provided in this Treasury Decision, this Treasury decision also adopts the rules of §1.1502–20T and the correlative rules of §1.1502–32T (as in effect on March 2, 2005) as final regulations without substantive change.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Theresa Abell and Martin Huck of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.337(d)–2T and adding an entry in numerical order to read, in part, as follows:

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

Section 1.337(d)–2 also issued under 26 U.S.C. 337(d). * * *

Par. 2. Section 1.337(d)–2 is revised to read as follows:

§1.337(d)–2 Loss limitation rules.

(a) *Loss disallowance*—(1) *General rule*. No deduction is allowed for any loss recognized by a member of a consolidated group with respect to the disposition of stock of a subsidiary.

(2) *Definitions*. For purposes of this section:

(i) The definitions in §1.1502–1 apply.

(ii) *Disposition* means any event in which gain or loss is recognized, in whole or in part.

(3) *Coordination with loss deferral and other disallowance rules*. For purposes of this section, the rules of §1.1502–20(a)(3) apply, with appropriate adjustments to reflect differences between the approach of this section and that of §1.1502–20.

(4) *Netting*. Paragraph (a)(1) of this section does not apply to loss with respect to the disposition of stock of a subsidiary, to the extent that, as a consequence of the same plan or arrangement, gain is taken into account by members with respect to stock of the same subsidiary having the same material terms. If the gain to which this paragraph applies is less than the amount of the loss with respect to the disposition of the subsidiary's stock, the gain is applied to offset loss with respect to each share disposed of as a consequence

of the same plan or arrangement in proportion to the amount of the loss deduction that would have been disallowed under paragraph (a)(1) of this section with respect to such share before the application of this paragraph (a)(4). If the same item of gain could be taken into account more than once in limiting the application of paragraphs (a)(1) and (b)(1) of this section, the item is taken into account only once.

(b) *Basis reduction on deconsolidation*—(1) *General rule*. If the basis of a member of a consolidated group in a share of stock of a subsidiary exceeds its value immediately before a deconsolidation of the share, the basis of the share is reduced at that time to an amount equal to its value. If both a disposition and a deconsolidation occur with respect to a share in the same transaction, paragraph (a) of this section applies and, to the extent necessary to effectuate the purposes of this section, this paragraph (b) applies following the application of paragraph (a) of this section.

(2) *Deconsolidation*. *Deconsolidation* means any event that causes a share of stock of a subsidiary that remains outstanding to be no longer owned by a member of any consolidated group of which the subsidiary is also a member.

(3) *Value*. *Value* means fair market value.

(4) *Netting*. Paragraph (b)(1) of this section does not apply to reduce the basis of stock of a subsidiary, to the extent that, as a consequence of the same plan or arrangement, gain is taken into account by members with respect to stock of the same subsidiary having the same material terms. If the gain to which this paragraph applies is less than the amount of basis reduction with respect to shares of the subsidiary's stock, the gain is applied to offset basis reduction with respect to each share deconsolidated as a consequence of the same plan or arrangement in proportion to the amount of the reduction that would have been required under paragraph (b)(1) of this section with respect to such share before the application of this paragraph (b)(4).

(c) *Allowable loss*—(1) *Application*. This paragraph (c) applies with respect to stock of a subsidiary only if a separate statement entitled *§1.337(d)–2(c) statement* is included with the return in accordance with paragraph (c)(3) of this section.

(2) *General rule*. Loss is not disallowed under paragraph (a)(1) of this section and basis is not reduced under paragraph (b)(1) of this section to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built-in gain, net of directly related expenses, on the disposition of an asset (including stock and securities). Loss or basis may be attributable to the recognition of built-in gain on the disposition of an asset by a prior group. For purposes of this section, gain recognized on the disposition of an asset is built-in gain to the extent attributable, directly or indirectly, in whole or in part, to any excess of value over basis that is reflected, before the disposition of the asset, in the basis of the share, directly or indirectly, in whole or in part, after applying section 1503(e) and other applicable provisions of the Internal Revenue Code and regulations. Federal income taxes may be directly related to built-in gain recognized on the disposition of an asset only to the extent of the excess (if any) of the group's income tax liability actually imposed under Subtitle A of the Internal Revenue Code for the taxable year of the disposition of the asset over the group's income tax liability for the taxable year redetermined by not taking into account the built-in gain recognized on the disposition of the asset. For this purpose, the group's income tax liability actually imposed and its redetermined income tax liability are determined without taking into account the foreign tax credit under section 27(a) of the Internal Revenue Code.

(3) *Contents of statement and time of filing*. The statement required under paragraph (c)(1) of this section must be included with or as part of the taxpayer's return for the year of the disposition or deconsolidation and must contain—

(i) The name and employer identification number (E.I.N.) of the subsidiary; and

(ii) The amount of the loss not disallowed under paragraph (a)(1) of this section by reason of this paragraph (c) and the amount of basis not reduced under paragraph (b)(1) of this section by reason of this paragraph (c).

(4) *Example*. The principles of paragraphs (a), (b), and (c) of this section are illustrated by the examples in §§1.337(d)–1(a)(5) and 1.1502–20(a)(5) (other than *Examples 3*, *4*, and *5*) and (b), with appropriate adjustments to reflect differences between the approach of this section and that of §1.1502–20, and by the following example. For purposes of the examples in this section, unless otherwise stated, the group files consolidated returns on a calendar year basis, the facts set forth the only corporate activity, and all sales and purchases are with unrelated buyers or sellers. The basis of each asset is the same for determining earnings and profits adjustments and taxable income. Tax liability and its effect on basis, value, and earnings and profits are disregarded. *Investment adjustment system* means the rules of §1.1502–32. The example reads as follows:

Example. *Loss offsetting built-in gain in a prior group*. (i) P buys all the stock of T for $50 in Year 1, and T becomes a member of the P group. T has 2 assets. Asset 1 has a basis of $50 and a value of $0, and asset 2 has a basis of $0 and a value of $50. T sells asset 2 during Year 3 for $50 and recognizes a $50 gain. Under the investment adjustment system, P's basis in the T stock increased to $100 as a result of the recognition of gain. In Year 5, all of the stock of P is acquired by the P1 group, and the former members of the P group become members of the P1 group. T then sells asset 1 for $0, and recognizes a $50 loss. Under the investment adjustment system, P's basis in the T stock decreases to $50 as a result of the loss. T's assets decline in value from $50 to $40. P then sells all the stock of T for $40 and recognizes a $10 loss.

(ii) P's basis in the T stock reflects both T's unrecognized gain and unrecognized loss with respect to its assets. The gain T recognizes on the disposition of asset 2 is built-in gain with respect to both the P and P1 groups for purposes of paragraph (c)(2) of this section. In addition, the loss T recognizes on the disposition of asset 1 is built-in loss with respect to the P and P1 groups for purposes of paragraph (c)(2) of this section. T's recognition of the built-in loss while a member of the P1 group offsets the effect on T's stock basis of T's recognition of the built-in gain while a member of the P group. Thus, P's $10 loss on the sale of the T stock is not attributable to the recognition of built-in gain, and the loss is therefore not disallowed under paragraph (c)(2) of this section.

(iii) The result would be the same if, instead of having a $50 built-in loss in asset 1 when it becomes a member of the P group, T has a $50 net operating loss carryover and the carryover is used by the P group.

(d) *Successors*. For purposes of this section, the rules and examples of §1.1502–20(d) apply, with appropriate adjustments to reflect differences between the approach of this section and that of §1.1502–20.

(e) *Anti-avoidance rules*. For purposes of this section, the rules and examples of §1.1502–20(e) apply, with appropriate adjustments to reflect differences between

the approach of this section and that of §1.1502–20.

(f) *Investment adjustments*. For purposes of this section, the rules and examples of §1.1502–20(f) apply, with appropriate adjustments to reflect differences between the approach of this section and that of §1.1502–20.

(g) *Effective dates*. This section applies with respect to dispositions and deconsolidations on or after March 3, 2005. In addition, this section applies to dispositions and deconsolidations for which an election is made under §1.1502–20(i)(2) to determine allowable loss under this section. If loss is recognized because stock of a subsidiary became worthless, the disposition with respect to the stock is treated as occurring on the date the stock became worthless. For dispositions and deconsolidations after March 6, 2002, and before March 3, 2005, see §1.337(d)–2T as contained in the 26 CFR part 1 in effect on March 2, 2005.

§1.337(d)–2T [Removed]

Par. 3. Section 1.337(d)–2T is removed.

Par. 4. In §1.1502–20, paragraph (i) is revised to read as follows:

§1.1502–20 Disposition or deconsolidation of subsidiary stock.

* * * * *

(i) *Limitations on the applicability of §1.1502–20*—(1) *Dispositions and deconsolidations on or after March 7, 2002*. Except to the extent specifically incorporated in §1.337(d)–2, paragraphs (a) and (b) of this section do not apply to a disposition or deconsolidation of stock of a subsidiary on or after March 7, 2002, unless the disposition or deconsolidation was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation.

(2) *Dispositions and deconsolidations prior to March 7, 2002*. In the case of a disposition or deconsolidation of stock of a subsidiary by a member before March 7, 2002, or a disposition or deconsolidation on or after March 7, 2002, that was effected pursuant to a binding written contract entered into before March 7, 2002, that was in continuous effect until the disposition or deconsolidation, a consolidated group may determine the amount of the member's allowable loss or basis reduction by applying this section in its entirety, or, in lieu thereof, subject to the conditions set forth in this paragraph (i), by making an irrevocable election to apply the provisions of either—

(i) This section, except that in applying paragraph (c)(1) of this section, the amount of loss disallowed under paragraph (a)(1) of this section and the amount of basis reduction under paragraph (b)(1) of this section with respect to a share of stock will not exceed the sum of the amounts described in paragraphs (c)(1)(i) and (ii) of this section; or

(ii) Section 1.337(d)–2.

(3) *Operating rules*—(i) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section*. If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, an election described in paragraph (g) of this section to reattribute losses will be respected only if the requirements of paragraph (g) of this section, including the requirement that the election be filed with the group's income tax return for the year of the disposition, have been or are satisfied. For example, if a consolidated group did not file a valid election described in paragraph (g) of this section with its return for the year of the disposition, this section does not authorize the group that disposed of the stock to make such an election with its return for the year in which it elects to determine its allowable stock loss under the provisions described in paragraph (i)(2)(i) of this section. If a consolidated group that made a valid election described in paragraph (g) of this section with respect to the disposition of stock elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(i) of this section, the election described in paragraph (g) of this section may not be revoked, and the amount of loss treated as reattributed as of the time of the disposition pursuant to the election described in paragraph (g) of this section is the amount of loss originally reattributed, reduced to the extent that it exceeds the greater of—

(A) The amount of stock loss disallowed after applying the provisions described in paragraph (i)(2)(i) of this section; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(i) of this section is filed and at all times thereafter.

(ii) *Reattribution of losses in the case of an election to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section*. If a consolidated group elects to determine allowable loss by applying the provisions described in paragraph (i)(2)(ii) of this section, the consolidated group may not make an election described in paragraph (g) of this section to reattribute any losses. If the consolidated group made an election described in paragraph (g) of this section with respect to the disposition of subsidiary stock, the amount of loss treated as reattributed pursuant to such election will be the greater of—

(A) Zero; and

(B) The amount of reattributed losses that the group that disposed of the stock absorbed in years for which the assessment of a deficiency is prevented by any law or rule of law as of the date the election to apply the provisions described in paragraph (i)(2)(ii) of this section is filed and at all times thereafter.

(iii) *Apportionment of section 382 limitation in the case of a reduction of reattributed losses*—(A) *Losses subject to a separate section 382 limitation*. If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change separate attributes that were subject to a separate section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limitation to itself under §1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself.

(B) *Losses subject to a subgroup section 382 limitation*. If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change subgroup attributes that were subject to a subgroup section 382 limitation are treated as losses of a subsidiary and the common parent previously elected to apportion all or a part of such limi-

tation to itself under §1.1502–96(d), the common parent may reduce the amount of such limitation apportioned to itself. In addition, if such subsidiary has ceased to be a member of the loss subgroup to which the pre-change subgroup attributes relate, the common parent may increase the total amount of such limitation apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under §1.1502–95(c) by an amount not in excess of the amount by which such limitation that is apportioned to the common parent is reduced pursuant to the previous sentence.

(C) *Losses subject to a consolidated section 382 limitation*. If, as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section, pre-change consolidated attributes (or pre-change subgroup attributes) that were subject to a consolidated section 382 limitation (or subgroup section 382 limitation where the common parent was a member of the loss subgroup) are treated as losses of a subsidiary, and the subsidiary has ceased to be a member of the loss group (or loss subgroup), the common parent may increase the amount of such limitation that is apportioned to such subsidiary (or loss subgroup that includes such subsidiary) under §1.1502–95(c). The amount of each element of such limitation that can be apportioned to a subsidiary (or loss subgroup that includes such subsidiary) pursuant to this paragraph (i)(3)(iii)(C), however, cannot exceed the product of (x) the element and (y) a fraction the numerator of which is the amount of pre-change consolidated attributes (or subgroup attributes) subject to that limitation that are treated as losses of the subsidiary (or loss subgroup) as a result of the application of paragraph (i)(3)(i) or (ii) and paragraph (i)(3)(vii) of this section and the denominator of which is the total amount of pre-change attributes subject to that limitation determined as of the close of the taxable year in which the subsidiary ceases to be a member of the group (or loss subgroup).

(D) *Operating rules*—(*1*) *Limitations on apportionment*. In making any adjustment to an apportionment of a subgroup section 382 limitation or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the common parent must take into account the extent, if any, to which such limitation has previously been apportioned to another subsidiary or loss subgroup prior to the date the election to apply the provisions described in paragraph (i)(2)(i) or (ii) of this section is filed.

(*2*) *Manner and effect of adjustment to previous apportionment of limitation to common parent*. Any reduction in a previous apportionment of a separate section 382 limitation or a subgroup section 382 limitation to the common parent made pursuant to paragraph (i)(3)(iii)(A) or (B) of this section is treated as effective when the previous apportionment was effective. Any such adjustment must be made in a manner consistent with the principles of §1.1502–95(c). For example, to the extent the apportionment of a separate section 382 limitation or a subgroup section 382 limitation to a common parent is reduced pursuant to paragraph (i)(3)(iii)(A) or (B) of this section, the amount of such limitation available to the subsidiary or loss subgroup, as applicable, is increased.

(*3*) *Manner and effect of adjustment to apportionment of limitation to departing subsidiary or loss subgroup*. Any increase in an amount of a subgroup section 382 limitation or a consolidated section 382 limitation apportioned to a departing subsidiary (or loss subgroup that includes such subsidiary) made pursuant to paragraph (i)(3)(iii)(B) or (C) of this section is treated as effective for taxable years ending after the date the subsidiary ceases to be a member of the group or loss subgroup. Any such adjustment may be made regardless of whether the common parent previously elected to apportion all or a part of such limitation to such subsidiary (or loss subgroup that includes such subsidiary) under §1.1502–95(c) or 1.1502–95A(c), but must be made in a manner consistent with the principles of §1.1502–95(c). For example, to the extent the apportionment of an element of a subgroup section 382 limitation or a consolidated section 382 limitation to a departing subsidiary is increased pursuant to paragraph (i)(3)(iii)(B) or (C) of this section, the amount of such element of such limitation that is available to the loss subgroup or loss group is reduced consistent with §1.1502–95(c)(3).

(*4*) *Prohibition against other adjustments*. This paragraph (i)(3)(iii) does not authorize the common parent to adjust the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation that it previously apportioned to a subsidiary, to a loss subgroup, or to itself under §1.1502–95(c), 1.1502–95A(c), or 1.1502–96(d), other than as provided in paragraphs (i)(3)(iii)(A), (B), and (C) of this section.

(E) *Time and manner of making apportionment adjustment*. An adjustment to the apportionment of any separate section 382 limitation, subgroup section 382 limitation, or consolidated section 382 limitation pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section must be made as part of the group's election to apply the provisions of paragraph (i)(2)(i) or (ii) of this section, as described in paragraph (i)(4) of this section.

(iv) *Notification of reduction of reattributed losses and adjustment of apportionment of section 382 limitation*. If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the losses treated as reattributed pursuant to an election described in paragraph (g) of this section, then, prior to the date that the group files its income tax return for the taxable year that includes August 26, 2004, the common parent must send the notification required by this paragraph to the subsidiary, at the subsidiary's last known address. In addition, if the acquirer of the subsidiary stock was a member of a consolidated group at the time of the disposition, the common parent must send a copy of such notification to the person that was the common parent of the acquirer's group at the time of the acquisition, at its last known address. The notification is to be in the form of a statement entitled *Recomputation of Losses Reattributed Pursuant to the Election Described in §1.1502–20(g)*, that is signed by the common parent and that includes the following information—

(A) The name and employer identification number (E.I.N.) of the subsidiary;

(B) The original and the recomputed amount of losses treated as reattributed pursuant to the election described in paragraph (g) of this section; and

(C) If the apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and the adjusted apportionment of such limitation.

(v) *Items taken into account in open years*—(A) *General rule*. An election under paragraph (i)(2) of this section affects a taxpayer's items of income, gain, deduction, or loss only to the extent that the election gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund of overpayment, as the case may be, is not prevented by any law or rule of law. Under this paragraph, if the election increases the loss allowed with respect to a disposition of subsidiary stock, but the year of the disposition (or the year to which such loss would have been carried back or carried forward) is a year for which a refund of overpayment is prevented by law, to the extent that the absorption of such excess loss in such year would have affected the tax treatment of another item (*e.g.*, another loss that was absorbed in such year) that has an effect in a year for which a refund of overpayment is not prevented by any law or rule of law, the election will affect the treatment of such other item. Therefore, if the absorption of the excess loss in the year of the disposition (which is a year for which a refund of overpayment is prevented by law) would have prevented the absorption of another loss (the second loss) in such year and such loss would have been carried to and used in a year for which a refund of overpayment is not prevented by any law or rule of law (the other year), the election makes the second loss available for use in the other year.

(B) *Special rule*. If a member's basis in stock of a subsidiary was reduced pursuant to §1.1502–32 because a loss with respect to stock of a lower-tier subsidiary was treated as disallowed under this section, then, to the extent such disallowed loss is allowed as a result of an election under paragraph (i) of this section but would have been properly absorbed or expired in a year for which a refund of overpayment is prevented by law or rule of law, the member's basis in the subsidiary stock may be increased for purposes of determining the group's or the shareholder-member's Federal income tax liability in all years for which a refund of overpayment is not prevented by law or rule of law.

(vi) *Conforming amendments for items previously taken into account in open years*. To the extent that, on any Federal income tax return, the common parent absorbed losses that were reattributed pursuant to an election described in paragraph (g) of this section and the amount of losses so absorbed is in excess of the amount of losses that are treated as reattributed after application of paragraph (i)(3)(i) or (ii) of this section, or that may be taken into account after any adjustment to an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation pursuant to paragraph (i)(3)(iii) of this section, such returns must be amended to the greatest extent possible to reflect the reduction in the amount of losses treated as reattributed and any adjustment to the apportionment of such limitation.

(vii) *Availability of losses to subsidiary*. To the extent that any losses of a subsidiary are reattributed to the common parent pursuant to an election described in paragraph (g) of this section, such reattribution is binding on the subsidiary and any group of which the subsidiary is or becomes a member. Therefore, if the subsidiary ceases to be a member of the group, any reattributed losses are not thereafter available to the subsidiary and may not be utilized by the subsidiary or any other group of which such subsidiary is or becomes a member. To the extent that the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction in the amount of losses treated as reattributed to the common parent pursuant to an election described in paragraph (g) of this section, however, losses in the amount of such reduction are available to the subsidiary and may be utilized by the subsidiary or any group of which such subsidiary is a member, subject to applicable limitations (*e.g.*, section 382).

(viii) *Apportionment of section 382 limitation in the case of an amendment of an election made pursuant to §1.1502–32(b)(4)*—(A) *In general*. If, in connection with a disposition or deconsolidation of subsidiary stock, the subsidiary the stock of which was disposed of or deconsolidated became a member of another consolidated group (the acquiring group), and, pursuant to §1.1502–32(b)(4)(vii), the acquiring group amends an election made pursuant to §1.1502–32(b)(4) to treat all or a portion of the loss carryovers of such subsidiary (or a lower-tier corporation of such subsidiary) as expiring for all Federal income tax purposes, then the common parent may reapportion a separate, subgroup, or consolidated section 382 limitation with respect to such subsidiary or lower-tier corporation in a manner consistent with the principles of paragraphs (i)(3)(iii)(A) through (D) of this section. Any reapportionment of a section 382 limitation made pursuant to the previous sentence shall have the effects described in paragraphs (i)(3)(iii)(D)(*ii*) and (*iii*) of this section. For purposes of this section, a lower-tier corporation is a corporation that was a member of the group of which the subsidiary was a member immediately before becoming a member of the acquiring group and that became a member of the acquiring group as a result of the subsidiary becoming a member of the acquiring group.

(B) *Time and manner of adjustment of apportionment of section 382 limitation*. The common parent must include a statement entitled *Adjustment of Apportionment of Section 382 Limitation in Connection with Amendment of Election under §1.1502–32(b)(4)* with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004, is due (with regard to extensions). The statement must set forth the name and E.I.N. of the subsidiary and both the original and the adjusted apportionment of a separate section 382 limitation, a subgroup section 382 limitation, and a consolidated section 382 limitation, as applicable. The requirements of this paragraph (i)(3)(viii)(B) will be treated as satisfied if the information required by this paragraph (i)(3)(viii)(B) is included in the statement required by paragraph (i)(4) of this section rather than in a separate statement.

(4) *Time and manner of making the election*. An election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii) of this section is made by including the statement required by this paragraph with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return

filed before the date the original return for the taxable year that includes August 26, 2004, is due (including any extensions). Filing a statement in accordance with the provisions of this paragraph satisfies the requirement to file a "statement of allowed loss" otherwise imposed under paragraph (c)(3) of this section or §1.337(d)–2(c)(3). The statement required by this paragraph satisfies the requirement that a statement be filed in order to claim allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) or (ii). The statement filed under this paragraph shall be entitled *Allowed Loss under Section [Specify Section under Which Allowed Loss Is Determined] Pursuant to Section 1.1502–20(i)* and must include the following information—

(i) The name and E.I.N. of the subsidiary and of the member(s) that disposed of the subsidiary stock;

(ii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(i) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iii) In the case of an election to determine allowable loss or basis reduction by applying the provisions described in paragraph (i)(2)(ii) of this section, a statement that the taxpayer elects to determine allowable loss or basis reduction by applying such provisions;

(iv) If an election described in paragraph (g) of this section was made with respect to the disposition of the stock of the subsidiary, the amount of losses originally treated as reattributed pursuant to such election and the amount of losses treated as reattributed pursuant to paragraph (i)(3)(i) or (ii) of this section;

(v) If an apportionment of a separate section 382 limitation, a subgroup section 382 limitation, or a consolidated section 382 limitation is adjusted pursuant to paragraph (i)(3)(iii)(A), (B), or (C) of this section, the original and redetermined apportionment of such limitation; and

(vi) If the application of paragraph (i)(3)(i) or (ii) of this section results in a reduction of the amount of losses treated as reattributed pursuant to an election described in paragraph (g) of this section, a statement that the notification described in paragraph (i)(3)(iv) of this section was sent to the subsidiary and, if the acquirer was a member of a consolidated group at the time of the stock sale, to the person that was the common parent of such group at such time, as required by paragraph (i)(3)(iv) of this section.

(5) *Revocation or amendment of prior elections*—(i) *In general*. Notwithstanding anything to the contrary in this paragraph (i), if a consolidated group made an election under §1.1502–20T(i) to apply the provisions described in §1.1502–20T(i)(2)(i) or (ii), the consolidated group may revoke or amend that election as provided in this paragraph (i)(5).

(ii) *Time and manner of revoking or amending an election*. An election to apply the provisions described in §1.1502–20T(i)(2)(i) or (ii) is revoked or amended by including the statement required by paragraph (i)(5)(iii) of this section with or as part of any timely filed (including any extensions) original return for a taxable year that includes any date on or before August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004, is due (including any extensions).

(iii) *Required statement*—(A) *Revocation*. To revoke an election to apply the provisions described in §1.1502–20T(i)(2)(i) or (ii), the consolidated group must file a statement entitled *Revocation of Election Under Section 1.1502–20T(i)*. The statement must include the name and E.I.N. of the subsidiary and of the member(s) that disposed of the subsidiary stock.

(B) *Amendment*. To amend an election to apply the provisions described in §1.1502–20T(i)(2)(i) or (ii), the consolidated group must file a statement entitled *Amendment of Election Under Section 1.1502–20T(i)*. The statement must include the following information—

(*1*) The name and E.I.N. of the subsidiary and of the member(s) that disposed of the subsidiary stock; and

(*2*) The provision the taxpayer elects to apply to determine allowable loss or basis reduction (described in paragraph (i)(2)(i) or (ii) of this section).

(iv) *Special rule*. If a consolidated group revokes an election made under §1.1502–20T(i), an election described in paragraph (g) of this section to reattribute losses will not be respected, even if such election was filed with the group's return for the year of the disposition.

(6) *Effective date*. This paragraph (i) is applicable on and after March 3, 2005.

(7) *Cross references*. See §1.1502–32(b)(4)(v) for a special rule for filing a waiver of loss carryovers.

§1.1502–20T(i) [Removed]

Par. 5. In §1.1502–20T, paragraph (i) is removed.

Par. 6. Section 1.1502–32 is amended by revising paragraphs (b)(4)(v) and (b)(4)(vii) to read as follows:

§1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(4) * * *

(v) *Special rule for loss carryovers of a subsidiary acquired in a transaction for which an election under §1.1502–20(i)(2) is made*—(A) *Expired losses*. Notwithstanding paragraph (b)(4)(iv) of this section, unless a group otherwise chooses, to the extent that S's loss carryovers are increased by reason of an election under §1.1502–20(i)(2) and such loss carryovers expire or would have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in §1.1502–20(i)(3)(iv) and at all times thereafter, the group will be deemed to have made an election under paragraph (b)(4) of this section to treat all of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. A group may choose not to apply the rule of the previous sentence to all of such loss carryovers of S by taking a position on an original or amended tax return for each relevant taxable year that is consistent with having made such choice.

(B) *Available losses*. Notwithstanding paragraph (b)(4)(iv) of this section, to the extent that S's loss carryovers are increased by reason of an election under §1.1502–20(i)(2) and such loss carryovers have not expired and would not have been properly used to offset income in a taxable year for which the refund of an overpayment is prevented by any law

or rule of law as of the date the group files its original return for the taxable year in which S receives the notification described in §1.1502–20(i)(3)(iv) and at all times thereafter, the group may make an election under paragraph (b)(4) of this section to treat all or a portion of such loss carryovers as expiring for all Federal income tax purposes immediately before S became a member of the consolidated group. Such election must be filed with the group's original return for the taxable year in which S receives the notification described in §1.1502–20(i)(3)(iv).

(C) *Effective dates*. Paragraph (b)(4)(v) of this section is applicable on and after March 3, 2005. For prior periods, see §1.1502–32T(b)(4)(v) as contained in the 26 CFR part 1 in effect on March 2, 2005.

(vi) * * *

(vii) *Special rules for amending waiver of loss carryovers from separate return limitation year*—(A) *Waivers that increased allowable loss or reduced basis reduction required*. If, in connection with the acquisition of S, the group made an election pursuant to paragraph (b)(4) of this section to treat all or any portion of S's loss carryovers as expiring, and the prior group elected to determine the amount of the allowable loss or the basis reduction required with respect to the stock of S or a higher-tier corporation of S by applying the provisions described in §1.1502–20(i)(2)(i) or (ii), then the group may reduce the amount of any loss carryover deemed to expire (or increase the amount of any loss carryover deemed not to expire) as a result of the election made pursuant to paragraph (b)(4) of this section. The aggregate amount of loss carryovers that may be treated as not expiring as a result of amendments made pursuant to this paragraph (b)(4)(vii)(A) with respect to S and any higher- and lower-tier corporation of S may not exceed the amount described in §1.1502–20(c)(1)(iii) with respect to the acquired stock (computed without regard to the effect of the group's election or elections pursuant to paragraph (b)(4) of this section, but with regard to the effect of the prior group's election pursuant to §1.1502–20(g), if any, prior to the application of §1.1502–20(i)(3)). For purposes of determining the aggregate amount of loss carryovers that may be treated as not expiring as a result of amendments made pursuant to this paragraph (b)(4)(vii)(A) with respect to S and any higher- and lower-tier corporation of S, the group may rely on a written notification provided by the prior group. Nothing in this paragraph shall be construed as permitting a group to increase the amount of any loss carryover deemed to expire (or reduce the amount of any loss carryover deemed not to expire) as a result of the election made pursuant to paragraph (b)(4) of this section.

(B) *Inadvertent waivers of loss carryovers previously subject to an election described in §1.1502–20(g)*. If, in connection with the acquisition of S, the group made an election pursuant to paragraph (b)(4) of this section to waive loss carryovers of S by identifying the amount of each loss carryover deemed not to expire, the prior group elected to determine the amount of the allowable loss or the basis reduction required with respect to the stock of S or a higher-tier corporation of S by applying the provisions described in §1.1502–20(i)(2)(i) or (ii), and the amount of S's loss carryovers treated as reattributed to the prior group pursuant to the election described in §1.1502–20(g) is reduced pursuant to §1.1502–20(i)(3), then the group may amend its election made pursuant to paragraph (b)(4) of this section to provide that all or a portion of the loss carryovers of S that are treated as loss carryovers of S as a result of the prior group's election to apply the provisions described in §1.1502–20(i)(2)(i) or (ii) are deemed not to expire. This paragraph (b)(4)(vii)(B), however, does not permit a group to reduce the amount of any loss carryover deemed not to expire as a result of the election made pursuant to paragraph (b)(4) of this section.

(C) *Time and manner of amending an election under §1.1502–32(b)(4)*. The amendment of an election made pursuant to paragraph (b)(4) of this section must be made in a statement entitled *Amendment of Election to Treat Loss Carryover as Expiring Under §1.1502–32(b)(4) Pursuant to §1.1502–32(b)(4)(vii)*. The statement must be filed with or as part of any timely filed (including extensions) original return for the taxable year that includes August 26, 2004, or with or as part of an amended return filed before the date the original return for the taxable year that includes August 26, 2004, is due (with regard to extensions). A separate statement shall be filed for each election made pursuant to paragraph (b)(4) of this section that is being amended pursuant to this paragraph (b)(4)(vii). For purposes of making this statement, the group may rely on the statements set forth in a written notification provided by the prior group. The statement filed under this paragraph must include the following—

(*1*) The name and employer identification number (E.I.N.) of S;

(*2*) In the case of an amendment made pursuant to paragraph (b)(4)(vii)(A), a statement that the group has received a written notification from the prior group confirming that the group's prior election or elections pursuant to paragraph (b)(4) of this section had the effect of either increasing the prior group's allowable loss on the disposition of subsidiary stock or reducing the prior group's amount of basis reduction required;

(*3*) The amount of each loss carryover of S deemed to expire (or the amount of loss carryover deemed not to expire) as set forth in the election made pursuant to paragraph (b)(4) of this section;

(*4*) The amended amount of each loss carryover of S deemed to expire (or the amended amount of loss carryover deemed not to expire); and

(*5*) In the case of an amendment made pursuant to paragraph (b)(4)(vii)(A) of this section, a statement that the aggregate amount of loss carryovers of S and any higher- and lower-tier corporation of S that will be treated as not expiring as a result of amendments made pursuant to paragraph (b)(4)(vii)(A) of this section will not exceed the amount described in §1.1502–20(c)(1)(iii) with respect to the acquired stock (computed without regard to the effect of the group's election or elections pursuant to paragraph (b)(4) of this section, but with regard to the effect of the prior group's election pursuant to §1.1502–20(g), if any, prior to the application of §1.1502–20(i)(3)).

(D) *Items taken into account in open years*. An amendment to an election made pursuant to paragraph (b)(4) of this section affects the group's items of income, gain, deduction, or loss only to the extent that the amendment gives rise, directly or indirectly, to items or amounts that would properly be taken into account in a year for which an assessment of deficiency or a refund for overpayment, as the case may

be, is not prevented by any law or rule of law. Under this paragraph, if the year to which a loss previously deemed to expire as a result of an election made pursuant to paragraph (b)(4) of this section is deemed not to expire as a result of an election made pursuant to this paragraph would have been carried back or carried forward is a year for which a refund of overpayment is prevented by law, then to the extent that the absorption of such loss in such year would have affected the tax treatment of another item (*e.g.*, another loss that was absorbed in such year) that has an effect in a year for which a refund of overpayment is not prevented by any law or rule of law, the amendment to the election made pursuant to paragraph (b)(4) of this section will affect the treatment of such other item. Therefore, if the absorption of such loss (the first loss) in a year for which a refund of overpayment is prevented by law would have prevented the absorption of another loss (the second loss) in such year and such second loss would have been carried to and used in a year for which a refund of overpayment is not prevented by any law or rule of law (the other year), the amendment of the election makes the second loss available for use in the other year.

(E) *Higher- and lower-tier corporations of S*. A *higher-tier corporation of S* is a corporation that was a member of the prior group and, as a result of such higher-tier corporation becoming a member of the group; S became a member of the group. A *lower-tier corporation of S* is a corporation that was a member of the prior group and became a member of the group as a result of S becoming a member of the group.

(F) *Effective date*. This paragraph (b)(4)(vii) is applicable on and after March 3, 2005. For prior periods, see §1.1502–32T(b)(4)(vii) as contained in the 26 CFR part 1 in effect on March 2, 2005.

* * * * *

Par. 7. In §1.1502–32T, paragraphs (b)(4)(v) and (b)(4)(vii) are revised to read as follows:

§1.1502–32T Investment adjustments (temporary).

* * * * *

(b) * * *

(4) * * *

(v) For further guidance see §1.1502–32(b)(4)(v).

(vi) * * *

(vii) For further guidance see §1.1502–32(b)(4)(vii).

* * * * *

Par. 8. The following sections in the table below are amended by revising "§1.337(d)–2T" to "§1.337(d)–2," each time it appears in the paragraph:

Section	Remove	Add
§1.267(f)–1(k)	§1.337(d)–2T	§1.337(d)–2
§1.597–4(g)(2)(v)	§1.337(d)–2T	§1.337(d)–2
§1.1502–11(b)(3)(ii)(c)	§1.337(d)–2T	§1.337(d)–2
§1.1502–12(r)	§1.337(d)–2T	§1.337(d)–2
§1.1502–15(b)(2)(iii)	§1.337(d)–2T	§1.337(d)–2
§1.1502–35T(b)(6)(ii)	§1.337(d)–2T	§1.337(d)–2
§1.1502–35T(c)(9)	§1.337(d)–2T	§1.337(d)–2
§1.1502–91(h)(2)	§1.337(d)–2T	§1.337(d)–2

602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. In §602.101, paragraph (b) is amended by removing the entry for §1.337(d)–2T and adding entries to the table in numerical order to read, in part, as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.337(d)–2	1545–1160 1545–1774
* * * * *	
1.1502–20	1545–1160 1545–1218 1545–1774
* * * * *	
1.1502–32	1545–1344 1545–1774
* * * * *	

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

Approved February 18, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 2, 2005, 8:45 a.m., and published in the issue of the Federal Register for March 3, 2005, 70 F.R. 10319)

Section 470.—Limitation on Deductions Allocable to Property Used by Governments or Other Tax-Exempt Entities

Transition relief under § 470 is provided to certain partnerships and pass-thru entities. See Notice 2005-29, page 796.

Section 472.—Last-in, First-out Inventories

26 CFR 1.472–1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The January 2005 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, January 31, 2005.

Rev. Rul. 2005–22

The following Department Store Inventory Price Indexes for January 2005 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, January 31, 2005.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups — soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

	Groups	Jan. 2004	Jan. 2005	Percent Change from Jan. 2004 to Jan. 2005[1]
1.	Piece Goods	468.0	494.0	5.6
2.	Domestics and Draperies	543.5	536.5	-1.3
3.	Women's and Children's Shoes	599.6	643.3	7.3
4.	Men's Shoes	849.6	840.6	-1.1
5.	Infants' Wear	578.1	578.4	0.1
6.	Women's Underwear	504.8	515.2	2.1
7.	Women's Hosiery	350.5	338.9	-3.3
8.	Women's and Girls' Accessories	544.8	560.4	2.9
9.	Women's Outerwear and Girls' Wear	335.6	333.3	-0.7
10.	Men's Clothing	530.7	534.9	0.8

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	Jan. 2004	Jan. 2005	Percent Change from Jan. 2004 to Jan. 2005[1]
11. Men's Furnishings	574.2	561.9	-2.1
12. Boys' Clothing and Furnishings	416.3	414.9	-0.3
13. Jewelry	888.4	879.0	-1.1
14. Notions	788.2	784.4	-0.5
15. Toilet Articles and Drugs	981.0	994.7	1.4
16. Furniture and Bedding	617.5	604.9	-2.0
17. Floor Coverings	595.4	598.2	0.5
18. Housewares	710.7	711.8	0.2
19. Major Appliances	205.5	202.6	-1.4
20. Radio and Television	43.5	40.0	-8.0
21. Recreation and Education[2]	81.3	78.3	-3.7
22. Home Improvements[2]	127.7	135.6	6.2
23. Automotive Accessories[2]	112.3	113.8	1.3
Groups 1–15: Soft Goods	545.3	546.2	0.2
Groups 16–20: Durable Goods	386.5	380.7	-1.5
Groups 21–23: Misc. Goods[2]	93.6	92.8	-0.9
Store Total[3]	488.6	487.2	-0.3

[1]Absence of a minus sign before the percentage change in this column signifies a price increase.

[2]Indexes on a January 1986 = 100 base.

[3]The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622–7924 (not a toll-free call).

Section 6334.—Property Exempt From Levy

26 CFR 301.6334–1: Property exempt from levy.

T.D. 9189

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Property Exempt From Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains the final regulations relating to property exempt from levy, which revise regulations currently published under Internal Revenue Code section 6334. The regulation reflects changes made by the IRS Restructuring and Reform Act of 1998 (the RRA 98) and provides guidance regarding: (1) procedures for obtaining prior judicial approval of certain principal residence levies; (2) an exemption from levy for certain residences in small deficiency cases and for certain business assets in the absence of administrative approval or jeopardy; and (3) the applicable dollar amounts for certain exemptions. The regulation also reflects changes made by the Taxpayer Relief Act of 1997, which permits levy on certain specified payments with the prior approval of the Secretary.

EFFECTIVE DATE: These regulations are effective March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Robin Ferguson at (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains a final regulation amending the Procedure and Adminis-

tration Regulations (26 CFR part 301) under section 6334 of the Internal Revenue Code of 1986 (Code). The final regulation provides guidance reflecting the amendments to section 6334 made by RRA 98 (Public Law 105–206), and the Taxpayer Relief Act of 1997 (Public Law 105–34) (TRA 97). A notice of proposed rulemaking (REG–140378–01, 2003–2 C.B. 825) was published in the **Federal Register** on August 19, 2003 (68 FR 49729). No written comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested, scheduled or held. This final regulation adopts the provisions of the notice of proposed rulemaking with no changes.

Comments on the Proposed Regulation

None.

Modifications of the Proposed Regulation

None.

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of the final regulation is Robin Ferguson of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

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

Par. 2. Section 301.6334–1 is amended as follows:

1. Paragraphs (a)(2), (a)(3), (a)(8), (a)(13), (d), (e), and (f) are revised.

2. Paragraphs (g) and (h) are added.

The revisions and additions read as follows:

§301.6334–1 Property exempt from levy.

(a) * * *

(2) *Fuel, provisions, furniture, and personal effects*. So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed $6,250 in value.

(3) *Books and tools of a trade, business or profession*. So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate $3,125 in value.

* * * * *

(8) *Judgments for support of minor children*. If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of that taxpayer's minor children, so much of that taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Service is not required to release a levy until such time as it is established that the amount to be released from levy actually will be applied in satisfaction of the support obligation. The Service may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period that shall be exempt from levy, for purposes of complying with a support obligation. If the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy, at the discretion of the Service, may be allocated entirely to one salary, wage or source of other income or be apportioned between the several salaries, wages, or other sources of income.

* * * * *

(13) *Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy*—(i) Residences in small deficiency cases. If the amount of the levy does not exceed $5,000, any real property used as a residence of the taxpayer or any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(ii) *Principal residences and certain business assets*. Except to the extent provided in section 6334(e), the principal residence (within the meaning of section 121) of the taxpayer and tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.

* * * * *

(d) *Levy allowed on principal residence*. The Service will seek approval, in writing, by a judge or magistrate of a district court of the United States prior to levy of property that is owned by the taxpayer and used as the principal residence of the taxpayer, the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child.

(1) *Nature of judicial proceeding*. The Government will initiate a proceeding for judicial approval of levy on a principal residence by filing a petition with the appropriate United States District Court demonstrating that the underlying liability has not been satisfied, the requirements of any applicable law or administrative procedure relevant to the levy have been met, and no reasonable alternative for collection of the taxpayer's debt exists. The petition will ask the court to issue to the taxpayer an order to show cause why the principal residence property should not be levied and will also ask the court to issue a notice of hearing.

(2) The taxpayer will be granted a hearing to rebut the Government's *prima facie* case if the taxpayer files an objection within the time period required by the court raising a genuine issue of material fact demonstrating that the underlying tax liability has been satisfied, that the taxpayer has other assets from which the liability can be satisfied, or that the Service did not follow the applicable laws or procedures pertaining to the levy. The taxpayer is not permitted to challenge the merits underlying the tax liability in the proceeding. Unless the taxpayer files a timely and appropriate objection, the court would be expected to enter an order approving the levy of the principal residence property.

(3) *Notice letter to be issued to certain family members*. If the property to be levied is owned by the taxpayer but is used as the principal residence of the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child, the Government will send a letter to each such person providing notice of the commencement of the proceeding. The letter will be addressed in the name of the taxpayer's spouse or ex-spouse, individually or on behalf of any minor children. If it is unclear who is living in the principal residence property and/or what such person's relationship is to the taxpayer, a letter will be addressed to "Occupant". The purpose of the letter is to provide notice to the family members that the property may be levied. The family members may not be joined as parties to the judicial proceeding because the levy attaches only to the taxpayer's legal interest in the subject property and the family members have no legal standing to contest the proposed levy.

(e) *Levy allowed on certain business assets*. The property described in section 6334(a)(13)(B)(ii) shall not be exempt from levy if—

(1) An Area Director of the Service personally approves (in writing) the levy of such property; or

(2) The Secretary finds that the collection of tax is in jeopardy. An Area Director may not approve a levy under paragraph (e)(1) unless the Area Director determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceeding. When other assets of an individual taxpayer include permits issued by a State and required under State law for the harvest of fish or wildlife in the taxpayer's trade or business, the taxpayer's other assets also include future income that may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

(f) *Levy allowed on certain specified payments*. Any payment described in section 6331(h)(2)(B) or (C) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h).

(g) *Inflation adjustment*. For any calendar year beginning after 1999, each dollar amount referred to in paragraphs (a)(2) and (3) of this section will be increased by an amount equal to the dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (using the language "calendar year 1998" instead of "calendar year 1992" in section 1(f)(3)(B)). If any dollar amount as adjusted is not a multiple of $10, the dollar amount will be rounded to the nearest multiple of $10 (rounding up if the amount is a multiple of $5).

(h) *Effective date*. This section is generally effective with respect to levies made on or after July 1, 1989. However, any reasonable attempt by a taxpayer to comply with the statutory amendments addressed by the regulations in this section prior to February 21, 1995, will be considered as meeting the requirements of the regulations in this section. In addition, paragraph (a)(11)(i) of this section is applicable with respect to levies issued after December 31, 1996. Paragraphs (a)(2), (a)(3), (a)(8), (a)(13), (d), (e), (f), (g) and (h) of this section apply as of March 7, 2005.

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

Approved February 15, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 4, 2005, 8:45 a.m., and published in the issue of the Federal Register for March 7, 2005, 70 F.R. 10885)

Section 6664.—Definitions and Special Rules

26 CFR 1.6664–1T: Accuracy-related and fraud penalties; definitions and special rules (temporary).

T.D. 9186

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Qualified Amended Returns

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that modify the rules relating to qualified amended returns by providing additional circumstances that end the period within which a taxpayer may file an amended return that constitutes a qualified amended return. These regulations provide that the period for filing a qualified amended return is terminated once the IRS has served a John Doe summons on a third party with respect to the taxpayer's tax liability. In addition, for taxpayers who have claimed tax benefits from undisclosed listed transactions, the regulations provide that the period for filing a qualified amended return is terminated once the IRS contacts a promoter, organizer, seller, or material advisor concerning the listed transaction. The regulations also provide that the date on which published guidance is issued announcing a settlement initiative for a listed transaction in which penalties are compromised or waived is an additional date by which a taxpayer must file a qualified amended return. The text of these temporary regulations also serves as the text of the proposed regulations (REG–122847–04) set forth in the notice of proposed rulemaking on this subject published elsewhere in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective March 2, 2005.

Applicability Dates: For dates of applicability, see §1.6664–1T(b)(3).

FOR FURTHER INFORMATION CONTACT: Nancy M. Galib,

202–622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations under 26 CFR part 1 relating to qualified amended returns. Section 1.6664–2(c) provides that the amount reported on a qualified amended return will be treated as an amount shown as tax on the taxpayer's return for purposes of determining whether there is an underpayment of tax subject to an accuracy-related penalty. Section 1.6664–2(c)(3) provides that an amended return, or request for administrative adjustment under section 6227 of the Internal Revenue Code, is a qualified amended return if it is filed before the earliest of: (1) the date on which the IRS first contacts the taxpayer concerning an examination of the return; (2) the date on which the IRS first contacts a person described in section 6700(a) concerning the examination of an activity described in section 6700(a) with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A); or (3) for certain pass-through items, the date on which the IRS first contacts the pass-through entity in connection with an examination of the return to which the pass-through item relates. These provisions are intended to encourage voluntary compliance by permitting taxpayers to avoid accuracy-related penalties by filing an amended return before the IRS begins an investigation of the taxpayer or the promoter of a transaction in which the taxpayer participated.

The Treasury Department and the IRS have determined that additional rules providing for the termination of the period for filing a qualified amended return are necessary because existing rules may encourage taxpayers to delay filing amended returns until after the IRS has taken steps to identify taxpayers as participants in potentially abusive transactions. To discourage the wait-and-see approach of some taxpayers and to encourage voluntary compliance, the Treasury Department and the IRS announced in Notice 2004–38, 2004–21 I.R.B. 949, that regulations modifying the definition of *qualified amended return* in §1.6664–2(c)(3) would be issued. Notice 2004–38 announced that the regulations would provide that the period for filing a qualified amended return is terminated when the IRS serves a John Doe summons under section 7609(f) with respect to the taxpayer's tax liability. Notice 2004–38 also announced that the regulations would provide that the period for filing a qualified amended return would terminate when the IRS contacts an organizer, seller, or material advisor concerning a listed transaction for which the taxpayer has claimed a tax benefit. Notice 2004–38 provided that the regulations would be effective for amended returns or requests for administrative adjustment filed on or after April 30, 2004.

Explanation of Provisions

These regulations provide the rules announced in Notice 2004–38 that identify additional circumstances that terminate the period within which a taxpayer may file a qualified amended return. Temporary regulation §1.6664–2T(c)(3)(i) provides that a qualified amended return must be filed before the IRS serves on a third party a John Doe summons relating to the tax liability of a person, group, or class that includes the taxpayer or pass-through entity of which the taxpayer is a partner, shareholder, beneficiary, or holder of a residual interest in a REMIC with respect to a return that reflects the activity that is the subject of the summons. Any taxpayer so identified also is precluded from filing a qualified amended return in a year not identified in the summons if the original return for that year reflected the taxpayer's participation in the transaction or activity to which the summons relates.

Temporary regulation §1.6664–2T(c)(3)(ii) provides special rules with respect to undisclosed listed transactions. An *undisclosed listed transaction* is a transaction that: (1) is the same or substantially similar to a listed transaction as defined in §1.6011–4(b)(2) (regardless of whether §1.6011–4 requires the taxpayer to disclose the transaction); and (2) was not previously disclosed by the taxpayer within the meaning of §1.6011–4 or §1.6011–4T, or had not been disclosed under Announcement 2002–2 by the deadline therein. In the case of an undisclosed listed transaction for which a taxpayer claims any direct or indirect tax benefits on its return, a taxpayer may not file a qualified amended return on or after the earlier of: (1) the date on which the IRS first contacts any person regarding an examination of that person's liability under section 6707(a) with respect to the undisclosed listed transaction of the taxpayer; or (2) the date on which the IRS issues to any person a request for information required to be included on a list under section 6112 relating to a type of listed transaction regarding which that person made a tax statement to or for the benefit of the taxpayer (regardless of whether the taxpayer's information is required to be included on the list requested by the IRS). For purposes of this section, an examination of a person's liability under section 6707(a) includes examinations under section 6707, in effect prior to and after the amendments made by section 816 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418).

An amended return that is filed to disclose a transaction, but that does not show an additional amount due, is treated as a qualified amended return for purposes of §1.6662–3(c) or §1.6662–4(e) and (f). These temporary regulations also provide that a qualified amended return includes an amended return filed solely to disclose information pursuant to §1.6011–4, provided that the taxpayer also makes the required disclosure to the Office of Tax Shelter Analysis.

In addition to these rules, temporary regulation §1.6664–2T(c)(3)(i) also provides that the date on which published guidance is issued providing for a settlement initiative for a listed transaction is an additional date by which a taxpayer who participated in the listed transaction must file a qualified amended return for the taxable years in which the taxpayer claimed any direct or indirect tax benefits from the listed transaction. The Commissioner may waive the requirements of this provision or identify a later date by which a taxpayer who participated in the listed transaction must file a qualified amended return in the published guidance announcing the listed transaction settlement initiative.

These temporary regulations also clarify the existing rules applicable to qualified amended returns. Temporary regulation §1.6664–2T(c)(3)(i)(B) clarifies that

the period for filing a qualified amended return terminates on the date the IRS first contacts a person concerning an examination under section 6700, regardless of whether the IRS ultimately establishes that such person violated section 6700. Temporary regulation §1.6664–2T(c)(3)(i) also clarifies that a taxpayer must file a qualified amended return before the IRS first contacts the taxpayer concerning a criminal investigation of the taxpayer that includes the tax period covered by the return.

Effective Date

Paragraphs (c)(1), (c)(2), (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(i)(D) (second sentence), (c)(3)(i)(E), and (c)(4) of §1.6664–2T are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Paragraphs (c)(3)(i)(D) (first sentence) and (c)(3)(ii) of §1.6664–2T are applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004.

Effect on Other Documents

Notice 2004–38, 2004–21 I.R.B. 949, is obsolete as of March 2, 2005.

Special Analyses

It has been determined that this Treasury decision 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), this Treasury decision will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Nancy M. Galib, Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1 — INCOME TAXES

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

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

Par. 2. Section 1.6664–1T is added to read as follows:

§1.6664–1T Accuracy-related and fraud penalties; definitions and special rules (temporary).

(a) through (b)(2) [Reserved]. For further guidance, see §1.6664–1.

(b)(3) *Qualified amended returns*. Sections 1.6664–2T(c)(1), (c)(2), (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(i)(D) (second sentence), (c)(3)(i)(E), and (c)(4) are applicable for amended returns and requests for administrative adjustment filed on or after March 2, 2005. Sections 1.6664–2T(c)(3)(i)(D) (first sentence) and (c)(3)(ii) are applicable for amended returns and requests for administrative adjustment filed on or after April 30, 2004.

Par. 3. Section 1.6664–2 is amended to read as follows:

§1.6664–2 Underpayment.

* * * * *

(c) [Reserved]. For further guidance, see §1.6664–2T.

* * * * *

Par. 4. Section 1.6664–2T is added to read as follows:

§1.6664–2T Underpayment (temporary).

(a) through (b) [Reserved]. For further guidance, see §1.6664–2.

(c) *Amount shown as the tax by the taxpayer on his return* — (1) *Defined*. For purposes of paragraph (a) of this section, the "amount shown as the tax by the taxpayer on his return" is the tax liability shown by the taxpayer on his return, determined without regard to the items listed in §1.6664–2(b)(1), (2), and (3), except that it is reduced by the excess of —

(i) The amounts shown by the taxpayer on his return as credits for tax withheld under section 31 (relating to tax withheld on wages) and section 33 (relating to tax withheld at source on nonresident aliens and foreign corporations), as payments of estimated tax, or as any other payments made by the taxpayer with respect to a taxable year before filing the return for such taxable year; over

(ii) The amounts actually withheld, actually paid as estimated tax, or actually paid with respect to a taxable year before the return is filed for such taxable year.

(2) *Effect of qualified amended return*. The "amount shown as the tax by the taxpayer on his return" includes an amount shown as additional tax on a qualified amended return (as defined in paragraph (c)(3) of this section), except that such amount is not included if it relates to a fraudulent position on the original return.

(3) *Qualified amended return defined*. (i) *General rule*. A qualified amended return is an amended return, or a timely request for an administrative adjustment under section 6227, filed after the due date of the return for the taxable year (determined with regard to extensions of time to file) and before the earliest of —

(A) The date the taxpayer is first contacted by the Internal Revenue Service concerning any examination (including a criminal investigation) with respect to the return;

(B) The date any person is first contacted by the Internal Revenue Service concerning an examination of that person under section 6700 (relating to the penalty for promoting abusive tax shelters) of an activity with respect to which the taxpayer claimed any tax benefit on the return directly or indirectly through the entity, plan or arrangement described in section 6700(a)(1)(A);

(C) In the case of a pass-through item (as defined in §1.6662–4(f)(5)), the date the pass-through entity (as defined in §1.6662–4(f)(5)) is first contacted by the Internal Revenue Service in connection with an examination of the return to which the pass-through item relates;

(D) The date on which the Internal Revenue Service serves a summons described in section 7609(f) relating to the tax liability of a person, group, or class that includes the taxpayer (or pass-through entity of which the taxpayer is a partner, shareholder, beneficiary, or holder of a residual interest in a REMIC) with respect to an activity for which the taxpayer claimed any

tax benefit on the return directly or indirectly. This rule applies to any return on which the taxpayer claimed a direct or indirect tax benefit from the type of activity that is the subject of the summons, regardless of whether the summons seeks the production of information for the taxable period covered by such return; and

(E) The date on which the Commissioner announces by revenue ruling, revenue procedure, notice, or announcement, to be published in the Internal Revenue Bulletin (see §601.601(d)(2)), a settlement initiative to compromise or waive penalties with respect to a listed transaction. This rule applies only to a taxpayer who participated in the listed transaction and for the taxable year(s) in which the taxpayer claimed any direct or indirect tax benefits from the listed transaction. The Commissioner may waive the requirements of this paragraph or identify a later date by which a taxpayer who participated in the listed transaction must file a qualified amended return in the published guidance announcing the listed transaction settlement initiative.

(ii) *Undisclosed listed transactions*. An *undisclosed listed transaction* is a transaction that is the same as, or substantially similar to, a listed transaction within the meaning of §1.6011–4(b)(2) (regardless of whether §1.6011–4 requires the taxpayer to disclose the transaction) and was not previously disclosed by the taxpayer within the meaning of §1.6011–4 or §1.6011–4T, or had not been disclosed under Announcement 2002–2, 2002–1 C.B. 304, by the deadline therein. In the case of an undisclosed listed transaction for which a taxpayer claims any direct or indirect tax benefits on its return (regardless of whether the transaction was a listed transaction at the time the return was filed), an amended return or request for administrative adjustment under section 6227 will not be a qualified amended return if filed on or after the earliest of —

(A) The dates described in §1.6664–2(c)(3)(i);

(B) The date on which the Internal Revenue Service first contacts any person regarding an examination of that person's liability under section 6707(a) with respect to the undisclosed listed transaction of the taxpayer; or

(C) The date on which the Internal Revenue Service requests, from any person who made a tax statement to or for the benefit of the taxpayer, or who is a material advisor (within the meaning of section 6111) with respect to the taxpayer, the information required to be included on a list under section 6112 relating to a transaction that is the same as, or substantially similar to, the undisclosed listed transaction, regardless of whether the taxpayer's information is required to be included on that list.

(4) *Special rules*. (i) A qualified amended return includes an amended return that is filed to disclose information pursuant to §1.6662–3(c) or §1.6662–4(e) and (f) and that does not report any additional tax liability. A qualified amended return also includes an amended return filed solely to disclose information pursuant to §1.6011–4, if the taxpayer also makes the required disclosure to the Office of Tax Shelter Analysis under §1.6011–4(e). See §1.6662–3(c), §1.6662–4(f), and §1.6664–4(c) for rules relating to adequate disclosure.

(ii) The Commissioner may by revenue procedure prescribe the manner in which the rules of paragraph (c) of this section regarding qualified amended returns apply to particular classes of taxpayers.

(5) *Examples*. The following examples illustrate the provisions of paragraphs (c)(3) and (c)(4) of this section:

Example 1. T, an individual taxpayer, claimed tax benefits on its 2002 Federal income tax return from a transaction that is substantially similar to the transaction identified as a listed transaction in Notice 2002–65, 2002–2 C.B. 690 (Partnership Entity Straddle Tax Shelter). T did not disclose his participation in this transaction on a Form 8886, *Reportable Transaction Disclosure Statement*, as required by §1.6011–4. On June 30, 2004, the IRS requested from P, T's material advisor, an investor list required to be maintained under section 6112. The section 6112 request, however, related to the type of transaction described in Notice 2003–81, 2003–2 C.B. 1223 (Tax Avoidance Using Offsetting Foreign Currency Option Contracts). T did not participate in (within the meaning of §1.6011–4(c)), and claimed no tax benefits from, a transaction described in Notice 2003–81. T may file a qualified amended return relating to the transaction described in Notice 2002–65 because T did not claim a tax benefit with respect to the listed transaction that is the subject of the section 6112 request.

Example 2. The facts are the same as in Example 1, except that T's 2002 Federal income tax return reflected T's participation in the transaction described in Notice 2003–81. As of June 30, 2004, T may not file a qualified amended return for the 2002 tax year.

Example 3. Corporation X claimed tax benefits from a transaction on its 2002 Federal income tax return. In October 2004, the IRS and Treasury identified the transaction as a listed transaction. In December 2004, the IRS contacted P concerning an examination of P's liability under section 6707(a) (as in effect prior to the amendment to section 6707 by section 816 of the American Jobs Creation Act of 2004, P.L. 108–357, 118 Stat. 1418). P is the organizer of a section 6111 tax shelter who provided representations to X regarding tax benefits from the transaction, and the IRS has contacted P about the failure to register that transaction. Three days later, X filed an amended return.

X's amended return is not a qualified amended return, because X did not disclose the transaction before the IRS contacted P. X's amended return would have been a qualified amended return if it was submitted prior to the date on which the IRS contacted P.

Example 4. The facts are the same as in Example 3 except that, instead of contacting P concerning an examination under section 6707(a), in December 2004, the IRS served P a summons described in section 7609(f). X cannot file a qualified amended return after the summons has been served regardless of when, or whether, the transaction becomes a listed transaction.

Example 5. On November 30, 2003, the Internal Revenue Service served Corporation Y, a credit card company, a summons described in section 7609(f). The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. In obtaining court approval for the summons, the IRS provided reports and declarations that established a reasonable basis for believing that this ascertainable group of taxpayers may have been using these offshore credit card accounts to avoid complying with the internal revenue laws of the United States. Corporation Y complied with the summons, and identified, among others, Taxpayer B. On May 31, 2004, before the IRS first contacted Taxpayer B concerning an examination of Taxpayer B's federal income tax return for the taxable year 2002, Taxpayer B filed an amended return for that taxable year, that showed an increase in Taxpayer B's federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the summons was served on Corporation Y.

Example 6. The facts are the same as in Example 5. Taxpayer B continued to maintain the offshore credit card account through 2003 to avoid compliance with the internal revenue laws. On March 21, 2005, Taxpayer B filed an amended return for the taxable year 2003, that showed an increase in Taxpayer B's federal income tax liability. Under paragraph (c)(3)(i)(D) of this section, the amended return is not a qualified amended return because it was not filed before the summons for 2001 and 2002 was served on Corporation Y, and the return reflects an activity that is the subject of the same summons.

Example 7. On November 30, 2003, the Internal Revenue Service served Corporation Y, a credit card company, a summons described in section 7609(f). The summons requested the identity of, and information concerning, United States taxpayers who, during the taxable years 2001 and 2002, had signature authority over Corporation Y's credit cards issued by, through, or on behalf of certain offshore financial institutions. In obtaining court approval for the sum-

mons, the IRS established a reasonable basis for believing that this ascertainable group of taxpayers may have been using these offshore credit card accounts to avoid complying with the internal revenue laws of the United States. Taxpayer C did not have signature authority over any of Corporation Y's credit cards during either 2001 or 2002 and, therefore, was not a person described in the summons.

In 2003, Taxpayer C first acquired signature authority over a Corporation Y credit card issued by an offshore financial institution. Taxpayer C's ability to file a qualified amended return for 2003 is not limited by paragraph (c)(3)(i)(D) because Taxpayer C's return does not reflect an activity that was the subject of the summons that was served on Corporation Y for 2001 and 2002.

Example 8. On April 15, 2004, Taxpayer D timely filed his 2003 federal income tax return. The return reported tax benefits from a transaction that had previously been identified as a listed transaction. The tax treatment of the transaction also reflected a position that was contrary to a revenue ruling. D did not include with his return a Form 8275, *Disclosure Statement*, as required by §1.6662–3(c), or a Form 8886, *Reportable Transaction Disclosure Statement*, as required by §1.6011–4. On March 21, 2005, D filed a qualified amended return that disclosed the listed transaction on an attached Form 8886, but that did not report any additional tax. D also filed the Form 8886 with the Office of Tax Shelter Analysis as required by §1.6011–4. D has not adequately disclosed the transaction under §1.6662–3(c) because D failed to file a Form 8275.

(d) through (g) [Reserved]. For further guidance, see §1.6664–2.

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

Approved February 23, 2005.

Eric Solomon,
Acting Deputy Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 1, 2005, 8:45 a.m., and published in the issue of the Federal Register for March 2, 2005, 70 F.R. 10037)

Part III. Administrative, Procedural, and Miscellaneous

Dollar Approximate Separate Transactions Method

Notice 2005–27

SECTION 1. PURPOSE

This notice provides guidance with respect to, and announces the intention to amend, Treas. Reg. § 1.985–3(d) regarding the proper exchange rate for determining dollar approximate separate transactions method ("DASTM") gain or loss when translating current and historical assets upon a transfer from a qualified business unit (a "QBU") to its U.S. home office.

SECTION 2. BACKGROUND

Generally, a taxpayer and each QBU must make all determinations under subtitle A of the Code in its respective functional currency. Treas. Reg. § 1.985–1(a)(1). For taxable years beginning after August 24, 1994, a U.S. corporation's QBU that would otherwise be required to use a hyperinflationary currency as its functional currency generally must use the dollar as its functional currency and must compute income or loss under the DASTM method of accounting described in § 1.985–3. See Treas. Reg. § 1.985–1(b)(2)(ii).

Under the DASTM method of accounting, a QBU's income or loss for a taxable year is computed in U.S. dollars and adjusted to account for its DASTM gain or loss. See Treas. Reg. § 1.985–3(b). A QBU's DASTM gain or loss for a taxable year is determined under Treas. Reg. § 1.985–3(d) by first computing the QBU's change in net worth from the prior year and then making specified adjustments. The QBU's change in net worth is computed by comparing the year-end balance sheets for the current and preceding taxable years. See Treas. Reg. § 1.985–3(d)(1)(i). Special rules provide that some balance-sheet items are translated at the exchange rate for the translation period in which the cost of the item was incurred and so do not give rise to DASTM gain or loss from year to year ("historical items"). See Treas. Reg. § 1.985–3(d)(5). Other items are translated at the exchange rate for the last translation period for the taxable year and therefore do give rise to DASTM gain or loss ("current items"). See *id*. The classification of an item as historical or current generally reflects the extent to which the item's dollar value changes with fluctuations in exchange rates. For example, the value of a financial asset, such as a unit of hyperinflationary local currency, necessarily changes with fluctuations in exchange rates. Accordingly, a financial asset generally is a current item. See Treas. Reg. § 1.985–3(d)(5)(iv). By contrast, the value of a nonfinancial asset generally does not change with fluctuations in exchange rates. Accordingly, a nonfinancial asset generally is an historical item. See Treas. Reg. § 1.985–3(d)(5)(v). In a hyperinflationary environment, currency exposure with respect to a financial asset typically is expected to give rise to loss.

The computed change in the QBU's net worth is then adjusted to reflect transactions that increase or decrease the QBU's net worth without affecting the QBU's income or loss. For example, an asset transferred from a QBU branch to its home office decreases the QBU's net worth but does not affect the QBU's income or loss and so must be added back to the QBU's net worth for purposes of computing DASTM gain or loss. See Treas. Reg. § 1.985–3(d)(3).

A rule is required for translating the amount of any such adjustment into dollars. The DASTM method of accounting provides that adjustments generally shall be translated into dollars at the exchange rate on the date the amount is paid. Treas. Reg. § 1.985–3(d)(3). This rule ensures that the QBU branch properly takes into account a current item's change in value due to currency fluctuations while the item was in the QBU branch. However, because historical items do not give rise to DASTM gain or loss, applying the existing translation rule to an adjustment relating to an historical item would inappropriately give rise to DASTM gain or loss.

SECTION 3. GUIDANCE

In view of the potentially anomalous results that may arise due to the application of the existing translation regulation in Treas. Reg. § 1.985–3(d)(3), the Treasury Department and the Internal Revenue Service intend to amend that regulation to require as follows. If the item giving rise to the adjustment would be translated under Treas. Reg. § 1.985–3(d)(5) at the exchange rate for the last translation period of the year if it were on the QBU's year-end balance sheet, for purposes of Treas. Reg. § 1.985–3(d)(3) such item shall be translated at the exchange rate on the date the item is transferred. If the item giving rise to the adjustment would be translated under Treas. Reg. § 1.985–3(d)(5) at the exchange rate for the translation period in which the cost of the item was incurred if it were on the QBU's year-end balance sheet, for purposes of Treas. Reg. § 1.985–3(d)(3) such item shall be translated at the same historical rate.

SECTION 4. EXAMPLE

The following example illustrates the guidance provided in Section 3 of this notice. C is a U.S. corporation with a foreign branch, B, that constitutes a QBU within the meaning of section 989. C's functional currency is the U.S. dollar. Under Treas. Reg. § 1.985–1(b)(2)(ii)(A), B must also use the U.S. dollar as its functional currency which would otherwise be a nondollar local currency that is hyperinflationary within the meaning of Treas. Reg. § 1.985–1(b)(2)(ii)(D). On January 1, 2003, B purchases a parcel of undeveloped real property with units of local currency. On March 21, 2005, B transfers to C 100 units of B's local currency and the parcel of undeveloped real property.

Because B is a QBU whose functional currency otherwise would be a hyperinflationary currency, B must compute its income or loss in U.S. dollars using the DASTM method of accounting. Because the transfers from B to C affect B's balance sheet but do not affect its income, B must adjust its year-end balance sheet in accordance with the requirements of Treas. Reg. § 1.985–3(d)(3). If the 100 units of hyperinflationary currency had remained on B's year-end balance sheet, then that currency would have been translated at the exchange rate for the last translation period of the taxable year, as required by Treas. Reg. § 1.985–3(d)(5)(iv). If the real property had remained on B's year-end bal-

ance sheet, then B's basis in that property would have been translated at the exchange rate for the period in which the cost was incurred, as required by Treas. Reg. § 1.985–3(d)(5)(v).

In accordance with Section 3 of this notice, for purposes of the adjustments under Treas. Reg. § 1.985–3(d) B must translate the 100 units of hyperinflationary local currency transferred to C on March 21, 2005, using the exchange rate on that date and must translate the basis of the real property transferred to C on March 21, 2005, using the exchange rate for the period in which the cost of the property was incurred.

SECTION 5. EFFECTIVE DATE

The amendments to the regulation described in this notice will be effective for any transfer, dividend, or distribution that is a return of capital that is made after March 8, 2005, and that gives rise to an adjustment under § 1.985–3(d)(3).

SECTION 6. COMMENTS

Written comments on the issues addressed in this notice may be submitted to the Office of Associate Chief Counsel (International), Attention: Sheila Ramaswamy (Notice 2005–27), room 4566, CC:INTL:Br5, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to Notice 2005–27. *Comments@irscounsel.treas.gov*. Comments will be available for inspection and copying. Treasury and the IRS request comments by June 6, 2005.

The principal author of this notice is Sheila Ramaswamy of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Sheila Ramaswamy at (202) 622–3870 (not a toll-free call).

Project Nominations Under the Brownfields Demonstration Program for Qualified Green Building and Sustainable Design Projects

Notice 2005–28

This notice extends the deadline by which State and local governments may nominate projects for designation by the Secretary as qualified green building and sustainable design projects under § 142(l) of the Internal Revenue Code (the "Code").

Section 701 of the American Jobs Creation Act of 2004, Pub. L. No. 108–357 (the "Act"), enacted on October 22, 2004, added §§ 142(a)(14) and 142(l) to the Code. In general, §§ 142(a)(14) and 142(l) authorize up to $2,000,000,000 of tax-exempt private activity bonds to be issued by State or local governments for qualified green building and sustainable design projects. Section 142(l)(1) defines a "qualified green building and sustainable design project" as any project that is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and that meets certain other requirements.

Under § 142(l)(3), to be eligible for designation as a qualified green building and sustainable design project, a project must be nominated by a State or local government within 180 days of the enactment of the Act. In consultation with the Environmental Protection Agency, the Service is preparing guidance for State and local governments on the application procedures and requirements for designation of projects as qualified green building and sustainable design projects under § 142(l) of the Code and § 701 of the Act. Under the guidance, the deadline for State and local governments to nominate projects for designation by the Secretary as qualified green building and sustainable design projects will be 120 days after the date of publication of the guidance in the Internal Revenue Bulletin. The Service will treat a project as nominated within the statutorily prescribed time period if an application for the project that otherwise satisfies the applicable requirements is filed by the deadline set forth in the forthcoming guidance.

DRAFTING INFORMATION

The principal author of this notice is Zoran Stojanovic of the Office of Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact Zoran Stojanovic at (202) 622–3980 (not a toll-free call).

Transition Relief for Certain Partnerships and Other Pass-Thru Entities Under Section 470

Notice 2005–29

PURPOSE

This notice provides transition relief under § 470 of the Internal Revenue Code to partnerships and other pass-thru entities that are treated as holding tax-exempt use property as a result of the application of § 168(h)(6).

BACKGROUND

Section 848 of the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418, 1602 (the Act), which was enacted on October 22, 2004, creates new limitations on the deductibility of losses relating to tax-exempt use property through the enactment of § 470.

With limited exceptions, § 470(a) provides that a "tax-exempt use loss" for any taxable year is not allowed. Under § 470(c)(1), the term "tax exempt use loss" means, with respect to any taxable year, the amount (if any) by which the sum of the aggregate deductions (other than interest) directly allocable to tax-exempt use property, plus the aggregate deductions for interest properly allocable to the property, exceed the aggregate income from the property. Under § 470(b), any disallowed loss is treated as a deduction with respect to the property in the next taxable year.

Under § 470(c)(2), "tax-exempt use property" has the meaning provided under § 168(h) (with certain modifications). As a general rule, under § 168(h), property is treated as "tax-exempt use property" if it is leased to a "tax-exempt entity."

Under § 168(h)(2), "tax-exempt entity" includes organizations exempt from income tax under the Code and certain foreign persons and entities that are not subject to income tax under the Code with respect to the property.

Under § 168(h)(6), if any property that is not otherwise "tax-exempt use property" under § 168(h) is owned by a partnership that has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and any allocation to the tax-exempt entity of partnership items is not a qualified allocation, an amount equal to the tax-exempt entity's proportionate share of the property generally is treated as tax-exempt use property.

Under § 168(h)(6)(B), an allocation to a tax-exempt entity is a qualified allocation if the allocation (1) is consistent with the allocation to the entity of the same distributive share of each item of income, gain, loss, deduction, credit and basis throughout the entire period that the entity is a partner in the partnership and (2) has substantial economic effect within the meaning of § 704(b)(2).

Section 168(h)(6)(E) provides that rules similar to those applicable to partnerships in determining whether property is tax-exempt use property apply to other pass-thru entities.

Under § 470(c)(2), "tax-exempt use property" does not include property otherwise subject to § 168(h)(6) if any credit is allowable under § 42 or § 47 with respect to the property.

Section 470 generally applies to leases entered into after March 12, 2004.

It has come to the attention of the Internal Revenue Service and the Treasury Department that, with respect to partnerships and other pass-thru entities that are subject to § 470 because of § 168(h)(6), difficulties may exist in applying the provisions of § 470 with respect to taxable years beginning before January 1, 2005.

Section 470(g) provides that the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of § 470.

TRANSITION RELIEF

In the case of partnerships and pass-thru entities described in § 168(h)(6)(E), for taxable years that begin before January 1, 2005, the Service will not apply § 470 to disallow losses associated with property that is treated as tax-exempt use property solely as a result of the application of § 168(h)(6).

REQUEST FOR COMMENTS

The Service and the Treasury Department request comments with respect to the application of § 470 when a partnership or other pass-thru entity is treated as holding tax-exempt use property because of the application of § 168(h)(6). Specifically, comments are requested regarding (1) the extent to which property held by these entities should be aggregated in determining tax-exempt use losses under § 470(a), (2) the manner in which deductions and income are allocated to a specific "property" for purposes of determining tax-exempt use loss, (3) whether tax-exempt use losses arising from property held by these entities are determined at the entity level or at the owner level, and (4) what types of entities other than partnerships should be considered pass-thru entities subject to § 470.

Comments should be submitted in writing on or before May 2, 2005, and should include a reference to Notice 2005–29. Comments may be submitted to CC:PA:LPD:PR (Notice 2005–29), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, comments may be submitted electronically via the following e-mail address: *Notice.Comments@irscounsel.treas.gov*. Please include "Notice 2005–29" in the subject line of any electronic communications.

Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2005–29), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. All comments are available for public inspection and copying.

DRAFTING INFORMATION

For further information regarding this notice, contact John Aramburu of the Office of Associate Chief Counsel (Income Tax & Accounting) at (202) 622–4960 (not a toll-free call).

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26 CFR 601.204: Changes in accounting periods and in methods of accounting.
(Also Part 1, §§ 162, 263, 446, 461, 481; 1.167(a)–3(b), 1.263(a)–4, 1.263(a)–5, 1.446–1, 1.461–4, 1.461–5, 1.481–1.)

Rev. Proc. 2005–17

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2005–9, 2005–2 I.R.B. 303, which provides procedures under which certain taxpayers may obtain automatic consent to change to a method of accounting provided in §§ 1.263(a)–4, 1.263(a)–5, and 1.167(a)–3(b) of the Income Tax Regulations (the "final regulations") for the taxpayer's second taxable year ending on or after December 31, 2003. The modifications provided by this revenue procedure provide a waiver of the 5-year prior change scope limitation contained in section 4.02(6) of Rev. Proc. 2002–9, 2002–1 C.B. 327, as modified and clarified by Announcement 2002–17, 2002–1 C.B. 561, modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, and amplified, clarified, and modified by Rev. Proc. 2002–54, 2002–2 C.B. 432.

SECTION 2. BACKGROUND

.01 On January 5, 2004, the Service and Treasury Department published final regulations in the Federal Register (T.D. 9107, 2004–7 I.R.B. 447 [69 FR 436]) relating to the capitalization of intangible assets under § 263(a) of the Internal Revenue Code. Section 1.263(a)–4 prescribes the extent to which taxpayers must capitalize amounts paid or incurred to acquire or create (or to facilitate the acquisition or creation of) intangibles. Section 1.263(a)–5 prescribes the extent to which taxpayers must capitalize amounts paid or incurred to facilitate an acquisition of a trade or business, a change in the capital structure of a business entity, and certain other transactions. Section 1.167(a)–3(b) provides a safe harbor useful life for certain intangible assets. The final regulations under §§ 1.263(a)–4 and 1.263(a)–5 are effective for amounts paid or incurred on or after December 31, 2003. The final regulations under § 1.167(a)–3(b) are effective for intangible assets created on or after December 31, 2003.

.02 Sections 1.263(a)–4(p) and 1.263(a)–5(n) provide that a taxpayer seeking to change to a method of accounting provided in the final regulations must secure the consent of the Commissioner in accordance with the requirements of § 1.446–1(e). In addition, §§ 1.263(a)–4(p) and 1.263(a)–5(n) provide that, for the taxpayer's first taxable year ending on or after December 31, 2003, the taxpayer is granted the consent of the Commissioner to change to a method of accounting provided in the final regulations, provided the taxpayer follows the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9).

.03 Rev. Proc. 2004–23, 2004–16 I.R.B. 785, provides the exclusive administrative procedures under which a taxpayer may obtain automatic consent for the taxpayer's first taxable year ending on or after December 31, 2003, to change to a method of accounting provided in the final regulations.

.04 Rev. Proc. 2005–9 provides procedures similar to those contained in Rev. Proc. 2004–23 under which a taxpayer may obtain automatic consent for the taxpayer's second taxable year ending on or after December 31, 2003. Unlike Rev. Proc. 2004–23, Rev. Proc. 2005–9 does not waive the scope limitations contained in Rev. Proc. 2002–9, including the 5-year prior change scope limitation contained in section 4.02(6) of Rev. Proc. 2002–9.

.05 Section 4.02(6) of Rev. Proc. 2002–9 provides, in part, that the automatic consent procedures of Rev. Proc. 2002–9 do not apply if the taxpayer, within the last five years (including the year of change), (a) has made a change in the same method of accounting (with or without obtaining the Commissioner's consent), or (b) has applied to change the same method of accounting without effecting the change (whether, for example, the application to change was withdrawn, not perfected, not granted, or denied).

.06 Because Rev. Proc. 2005–9 does not waive the scope limitations contained in Rev. Proc. 2002–9, some taxpayers are ineligible to obtain automatic consent to make a change under Rev. Proc. 2005–9 for the second taxable year ending on or after December 31, 2003, because, for example, the taxpayer withdrew a previous application to change within the preceding 5 years or because the taxpayer's previous application was denied.

SECTION 3. CHANGES TO REV. PROC. 2005–9

.01 Section 3.02 of Rev. Proc. 2005–9 is modified to read as follows:

".02 Rev. Proc. 2004–23 waives the scope limitations in section 4.02 of Rev. Proc. 2002–9. However, this revenue procedure waives only the 5-year prior change scope limitation contained in section 4.02(6) of Rev. Proc. 2002–9. See section 5.04 of this revenue procedure."

.02 Section 3.03 of Rev. Proc. 2005–9 is modified to read as follows:

".03 Rev. Proc. 2004–23 does not require taxpayers to complete many of the lines in Part II of Form 3115. Because this revenue procedure does not waive all of the scope limitations of Rev. Proc. 2002–9, this revenue procedure requires taxpayers to complete more of the lines in Part II of Form 3115. See section 5.02(2)(d) of this revenue procedure."

.03 Section 5.04 of Rev. Proc. 2005–9 is modified to read as follows:

".04 *Prior Change*.

For purposes of this revenue procedure, the 5-year prior change scope limitation contained in section 4.02(6) of Rev. Proc. 2002–9 does not apply. Therefore, for example, a taxpayer that, within the last five years (including the year of change), applied for a change in method of accounting and withdrew its request or had its request denied is not prohibited from obtaining automatic consent for the change under this revenue procedure, provided all other requirements of this revenue procedure are met."

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2005–9 is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for a taxpayer's second taxable year ending on or after December 31, 2003.

SECTION 6. CONTACT INFORMATION

For further information regarding this revenue procedure, call Grace Matuszeski of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622–7900 (not a toll-free call).

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26 USC § 6603: Deposits Made to Suspend the Running of Interest on Potential Underpayments. (Also: Part I, §§ 6201, 6402, 6601, 6611, 6622, 301.6213–1, 31.6402–1, 301.6601–1, 301.6611–1, 301.6622–1, 601.105.)

Rev. Proc. 2005–18

SECTION 1. PURPOSE

The purpose of this revenue procedure is to provide procedures for taxpayers to make, withdraw, or identify deposits to suspend the running of interest on potential underpayments under new section 6603 of the Internal Revenue Code. This revenue procedure supersedes Rev. Proc. 84–58, 1984–2 C.B. 501, which provides procedures for taxpayers to make remittances to suspend the running of interest on deficiencies. This revenue procedure also invites comments from the public regarding rules and standards relating to new section 6603.

SECTION 2. BACKGROUND

.01 The American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418 (the "Act"), enacted on October 22, 2004, added new section 6603 to the Code to permit a taxpayer to make a deposit with the Internal Revenue Service to suspend the running of interest under section 6601 on a potential underpayment of tax. A deposit may be made with respect to certain underpayments of tax that have not been assessed at the time of the deposit.

.02 Section 6603(a) provides that a taxpayer may make a deposit with the Service that may be used by the Secretary to pay any income, gift, estate, or generation-skipping taxes imposed on the taxpayer under the Code, or certain excise taxes imposed on the taxpayer under the Code. Section 6603(b) provides that, to the extent that a deposit is used by the Service to pay tax, the tax shall be treated as

paid on the date the deposit is made for purposes of computing interest on underpayments under section 6601.

.03 Section 6603(c) provides that the Service will return to the taxpayer any amount of a deposit that the taxpayer requests in writing be returned unless the amount has previously been used to pay tax or the Service determines that collection of tax is in jeopardy. Section 6603(d) authorizes the payment of interest on a deposit that is returned to the taxpayer to the extent (and only to the extent) that the deposit is attributable to a disputable tax. Section 6603(d)(4) provides that the rate of interest is the Federal short-term rate determined under section 6621(b), compounded daily.

.04 Section 6603(d)(2) defines a "disputable tax" as the amount of tax specified at the time of deposit as the taxpayer's reasonable estimate of the maximum amount of tax attributable to disputable items. Section 6603(d)(3)(A) defines a "disputable item" as any item of income, gain, loss, deduction or credit if the taxpayer has a reasonable basis for its treatment of such item and reasonably believes that the Service also has a reasonable basis for disallowing the taxpayer's treatment of such item. If a taxpayer has been issued a 30-day letter, the amount of disputable tax is, at a minimum, the amount of the proposed deficiency specified in the letter.

.05 Interest allowable under section 6603(d) on a deposit returned to the taxpayer will not establish a period for which interest was allowable at the applicable Federal short-term rate for purposes of establishing a net zero interest rate for the same period under section 6621(d). *See* H.R. Conf. Rep. No. 755, 108th Cong, 2d Sess. 649 (2004).

.06 Rev. Proc. 84–58 provides procedures for taxpayers to make remittances, or "deposits in the nature of a cash bond," to suspend the running of interest on deficiencies. Under Rev. Proc. 84–58, a deposit in the nature of a cash bond is not a payment of tax, is not subject to a claim for credit or refund, and, if returned to the taxpayer, does not bear interest. Section 842(c)(2) of the Act provides that, in the case of an amount held by the Service as a deposit in the nature of a cash bond pursuant to Rev. Proc. 84–58 on the date of enactment (October 22, 2004), the date the taxpayer identifies the amount as a deposit made pursuant to section 6603 shall be treated as the date the amount is deposited for purposes of section 6603(d).

.07 The legislative history for section 6603 provides that the Secretary may issue rules relating to the making, use, and return of the deposits. *See* H.R. Conf. Rep. No. 755, 108th Cong, 2d Sess. 647 (2004). The following procedures implement the requirements of section 6603.

SECTION 3. SCOPE

This revenue procedure applies to remittances made to stop the running of interest on deficiencies, including remittances treated as deposits under section 6603.

SECTION 4. PROCEDURES FOR MAKING DEPOSITS UNDER SECTION 6603; TREATMENT OF OTHER REMITTANCES

.01 *In General.*

(1) A taxpayer may make a deposit under section 6603 by remitting to the Internal Revenue Service Center at which the taxpayer is required to file its return, or to the appropriate office at which the taxpayer's return is under examination, a check or a money order accompanied by a written statement designating the remittance as a deposit. The written statement also must include:

(a) The type(s) of tax;

(b) The tax year(s); and

(c) The statement described in section 7.02 identifying the amount of and basis for the disputable tax.

(2) Except as provided in sections 4.04(1) and 4.05(3), a remittance that is not designated as a deposit (an "undesignated remittance") will be treated as a payment and applied by the Service against any outstanding liability for taxes, penalties or interest. Undesignated remittances treated as payments will be applied to the earliest taxable year for which there is a liability, and will be applied first to tax, then penalties and finally to interest. An undesignated remittance treated as a payment of tax will be posted to the taxpayer's account as a payment upon receipt, or as soon as possible thereafter, and may be assessed, provided that assessment will not imperil a criminal investigation or prosecution. The amount of an undesignated remittance treated as a payment will be taken into account by the Service in determining the existence of a deficiency and whether a notice of deficiency is required to be issued.

.02 *Treatment of deposits made during an examination upon the completion of such examination by the Service.*

(1) Upon completion of an examination, if a taxpayer who has made a deposit executes a waiver of restrictions on assessment and collection of the deficiency or otherwise agrees to the full amount of the deficiency, an assessment will be made and any deposit will be applied against the assessed liability as a payment of tax as of the date the assessment was made. Interest on an underpayment for which a deposit is applied as a payment will be determined as provided under section 8. If the deposit satisfies the assessed liability, no notice of deficiency will be mailed and the taxpayer will not have the right to petition the Tax Court for a redetermination of the deficiency.

(2) Upon completion of an examination, if a taxpayer who has made a deposit does not execute a waiver of restrictions on assessment and collection or otherwise agree to the full amount of the deficiency, the Service will mail a notice of deficiency and the taxpayer will have the right to petition the Tax Court. The portion of the deposit that is not greater than the determined deficiency plus any interest that has accrued on that deficiency will be posted to the taxpayer's account as a payment of tax upon the expiration of the 90 or 150-day period during which assessment is stayed, unless the taxpayer files a petition with the Tax Court and requests in writing before the expiration of that period that the deposit continue to be treated as a deposit during the applicable Tax Court proceeding. If a petition is filed, but no written request is submitted to continue the treatment as a deposit before the expiration of the 90 or 150-day period, the tax will be assessed subject to the restrictions imposed by section 6213 and the deposit will be applied as payment of the tax upon the expiration of the 90 or 150-day period. Interest on an underpayment for which a deposit is applied as a payment will be determined as provided under section 8.

(3) A taxpayer may elect to have a deposit that exceeds the amount of tax ultimately determined to be due applied

against another assessed or unassessed liability. For example, a taxpayer under examination for several different years may request that a deposit made for one type of tax in one year be applied to another type of tax in another year. The request must be in writing and must be directed to the same office where the original deposit was made.

.03 *Treatment of an undesignated remittance in the full amount of a proposed liability*.

If an undesignated remittance is made in the full amount of a proposed liability, such as an amount proposed in a revenue agent's or examiner's report, the undesignated remittance will be treated as a payment of tax, a notice of deficiency will not be mailed and the taxpayer will not have the right to petition the Tax Court for a redetermination of the deficiency.

.04 *Treatment of remittances that are made during an examination, but prior to the time the Service proposes a liability*.

(1) Any undesignated remittance that is made while the taxpayer is under examination, but before a liability is proposed to the taxpayer in writing (*e.g.*, before the issuance of a revenue agent's or examiner's report), will be treated by the Service as a deposit if the taxpayer has no outstanding liabilities. The taxpayer will be notified concerning the status of the remittance as a deposit, and may elect to have the deposit returned prior to the issuance of a revenue agent's or examiner's report.

(2) If the taxpayer leaves an undesignated remittance on deposit until completion of the examination, the Service will follow the procedures described in section 4.02.

.05 *Post statutory notice remittances*.

(1) An undesignated remittance made after the mailing of a notice of deficiency in complete or partial satisfaction of the deficiency will be considered a payment of tax, will be posted to the taxpayer's account as soon as possible, and will not deprive the Tax Court of jurisdiction over the deficiency.

(2) A remittance that is made before the decision of the Tax Court is final and specifically designated by the taxpayer in writing as a deposit, is not a substitute for a bond to stay assessment and collection described in section 7485.

(3) If the taxpayer has no other outstanding liabilities, an undesignated remittance made by the taxpayer after the date that the Tax Court files its decision in an amount that is greater than the amount of the deficiency determined by the Tax Court, plus any interest that has accrued on that amount at the remittance date, will be treated as a deposit, but only to the extent the amount of the remittance exceeds the amount of the deficiency determined by the Tax Court, plus interest. This excess amount will be treated as a deposit until sufficient information is obtained by the Service to apply the remittance to an outstanding liability or to determine that the amount of the remittance should be returned to the taxpayer. The amount that is less than or equal to the amount of the deficiency plus interest will be applied as a payment.

SECTION 5. DESIGNATING A DEPOSIT MADE UNDER REV. PROC. 84–58 AS A DEPOSIT UNDER SECTION 6603

.01 Any portion of a deposit in the nature of a cash bond previously made pursuant to Rev. Proc. 84–58 will not earn interest under section 6603(d), unless the Service receives the written statement described in section 5.02 identifying the amount as a deposit under section 6603. Except as provided in section 10, the date that the Service receives the written statement will be treated as the date on which the amount is deposited for purposes of section 6603(d).

.02 Taxpayers that desire to identify a deposit in the nature of a cash bond as a deposit eligible for interest under section 6603(d) must submit a written statement requesting this identification to the Internal Revenue Service Center or examining office to which the original deposit was remitted. The written statement also must include:

(1) The date(s) and amount(s) of the original deposit(s) in the nature of a cash bond;

(2) The type(s) of tax to which the deposit in the nature of a cash bond was applied;

(3) The tax year(s) to which the deposit in the nature of a cash bond was applied; and

(4) The statement described in section 7.02 identifying the amount of and basis for the disputable tax.

SECTION 6. REQUEST FOR RETURN OF A DEPOSIT MADE PURSUANT TO SECTION 6603

.01 A deposit made pursuant to section 6603 is not subject to a claim for credit or refund as an overpayment until the deposit is applied by the Service as payment of an assessed tax of the taxpayer. A taxpayer may request the return of all or part of a deposit at any time before the Service has used the deposit for payment of a tax.

.02 Taxpayers that desire the Service to return a deposit must submit a written statement to the Internal Revenue Service Center or examining office to which the original deposit was remitted requesting that the deposit be returned. The written statement also must include:

(1) The date(s) and amount(s) of the original deposit(s);

(2) The type(s) of tax to which the deposit was intended to be applied; and

(3) The tax year(s) to which the deposit was intended to be applied.

.03 The deposit will be returned to the taxpayer and, to the extent the deposit is attributable to a disputable tax, interest determined using the Federal short-term rate provided under section 6621(b), compounded daily, for the period from the date of deposit to a date not more than 30 days preceding the date of the check paying the return of the deposit will be included.

SECTION 7. STATEMENT OF DISPUTABLE TAX

.01 Interest on a deposit under section 6603(d) will be allowed only to the extent that the deposit is attributable to a disputable tax. The amount and nature of the disputable tax must be identified at the time the amount is remitted to the Service pursuant to section 4 or identified as a deposit under section 6603 pursuant to section 5.

.02 Until further guidance is issued, taxpayers are permitted to use any reasonable method for calculating the amount of disputable tax for purposes of section 6603(d)(2). To the extent that a taxpayer's calculation of a disputable tax exceeds the amount proposed as a deficiency in a 30-day letter issued to the taxpayer, or the taxpayer desires to remit a deposit prior to receiving a 30-day letter, the taxpayer must provide a written statement to the

Service identifying and describing the amount of the disputable tax at the time the deposit is remitted. The written statement also must include:

(1) The taxpayer's calculation of the amount of disputable tax;

(2) A description of any item of income, gain, loss, deduction or credit for which the taxpayer has a reasonable basis for the treatment of the item on its return, and for which the taxpayer reasonably believes that the Service also has a reasonable basis for disallowing the taxpayer's treatment of the item; and

(3) The basis for the taxpayer's belief that it has a reasonable basis for the treatment of any item described in section 7.02(2) on its return and that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

.03 Taxpayers choosing to rely on the amount of a deficiency proposed in a 30-day letter as the amount of the disputable tax under section 6603(d)(2)(B) may, in lieu of the written statement described in section 7.02, provide a copy of the 30-day letter issued to the taxpayer.

.04 If a taxpayer fails to identify the amount and nature of the disputable tax in writing or provide a copy of the 30-day letter at the time of the deposit, the payment of interest will not be allowed if the deposit is later withdrawn by the taxpayer unless the taxpayer subsequently provides the Service a written statement identifying and describing the amount of the disputable tax. In such case, interest will be allowed on the deposit under section 6603 as of the date on which the amount and nature of the disputable tax is identified.

SECTION 8. DETERMINATION OF UNDERPAYMENT INTEREST

The running of interest on an assessed tax liability satisfied by application of a remittance (whether the remittance initially was treated as a payment of tax or a deposit) will be suspended on the date the remittance is received by the Service, regardless of when the liability is assessed or the remittance is actually applied against the taxpayer's account. If a remittance that is held as a deposit is returned at the taxpayer's written request, with or without interest, and a deficiency is later assessed for that period and type of tax, the running of interest will not be suspended during the period for which the remittance was held as a deposit.

SECTION 9. EFFECT ON REV. PROC. 84–58

Rev. Proc. 84–58 is superseded, effective with respect to remittances made on or after March 28, 2005.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective as of March 28, 2005. This revenue procedure applies to deposits made after October 22, 2004. In the case of a deposit that is made after October 22, 2004, and before March 28, 2005, the deposit will be treated as made on the date remitted for purposes of section 6603(d) if the taxpayer provides the written statement designating the amount as a deposit made pursuant to section 6603 as provided under section 4.01 before May 27, 2005. In the case of an amount that was held as a deposit in the nature of a cash bond pursuant to Rev. Proc. 84–58 on October 22, 2004, the deposit will be treated as made on October 23, 2004, for purposes of section 6603(d) if the taxpayer provides the written statement identifying the amount as a deposit made pursuant to section 6603 as provided under section 5 before May 27, 2005.

SECTION 11. REQUEST FOR COMMENTS

The Service and Treasury invite interested persons to submit comments regarding rules and standards under section 6603. Comments may be submitted to CC:PA:LPD:PR (RP–163586–04), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (RP–163586–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC. Alternatively, taxpayers may submit electronic comments directly to the IRS e-mail address: *Notice.Comments@irscounsel.treas.gov*.

SECTION 12. DRAFTING INFORMATION

The principal author of this revenue procedure is William M. Kostak of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this revenue procedure, contact William M. Kostak at (202) 622–4910 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Collection After Assessment

REG–148701–03

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the collection of tax liabilities after assessment. The proposed regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998. These regulations would affect persons determining how long the Internal Revenue Service has to collect taxes that have been properly assessed.

DATE: Written or electronically generated comments and requests for a public hearing must be received by June 2, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148701–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–148701–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–148701–03).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Debra A. Kohn, (202) 622–7985; concerning submissions of comments or requests for a hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6502 of the Internal Revenue Code (Code). The regulations reflect the amendment of the Code by section 3461 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998) (Public Law 105–206, 112 Stat. 685, 764).

Collection of Tax Liabilities after Assessment under Section 6502

Pursuant to section 6502 of the Code, the IRS generally has 10 years from the date of assessment to collect a timely assessed tax liability. Prior to January 1, 2000, the effective date of section 3461 of RRA 1998, section 6502 permitted the IRS to enter into agreements with the taxpayer to extend the period of limitations on collection at any time prior to the expiration of the period provided in section 6502. Prior to the enactment of RRA 1998, the IRS used these collection extension agreements, or waivers, in various circumstances to protect its ability to collect a tax liability beyond the original 10-year period of limitations on collection. For example, the IRS historically conditioned consideration of an offer in compromise upon the execution of a collection extension agreement or waiver.

In addition, the Code contains several provisions that operate to toll the period of limitations on collection upon the occurrence of certain events. For example, section 6331(k) operates in part to suspend the period of limitations on collection for the period of time during which an offer in compromise is pending, for 30 days after rejection, and while a timely filed appeal is pending. Similarly, section 6503(h) operates to suspend the period of limitations on collection for the period of time during which the IRS is prohibited from collecting a tax due to a bankruptcy proceeding, and for 6 months thereafter. These statutory suspension provisions toll the period of limitations on collection even if the period of limitations on collection previously has been extended pursuant to an executed collection extension agreement. See *Klingshirn v. United States (In re Klingshirn)*, 147 F.3d 526 (6th Cir. 1998).

Section 3461 of RRA 1998 amended section 6502 of the Code to limit the ability of the IRS to enter into agreements extending the period of limitations on collection. Section 3461 of RRA 1998 also included an off-Code provision governing the continued effect of collection extension agreements executed on or before December 31, 1999.

Explanation of Provisions

The proposed regulations incorporate the amendments made by section 3461 of RRA 1998. The proposed regulations provide that the IRS may enter into an agreement to extend the period of limitations on collection if an extension agreement is executed: (1) at the time an installment agreement is entered into; or (2) prior to release of a levy pursuant to section 6343, if the release occurs after the expiration of the original period of limitations on collection.

The proposed regulations also incorporate the off-Code provision in section 3461(c) of RRA 1998 governing the continued effectiveness of extension agreements executed on or before December 31, 1999. The proposed regulations provide that if the extension agreement was executed in connection with an installment agreement on or before December 31, 1999, the extension agreement expires on the 90th day after the date agreed upon in the extension agreement. The proposed regulations provide that any other extension agreement executed on or before December 31, 1999, expires on the later of: (1) December 31, 2002, or if earlier, the date on which the extension agreement expired by its terms; or (2) the end of the original 10-year statutory period.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do 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 notice

of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests 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 electronically generated comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

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

Drafting Information

The principal author of these regulations is Aaron D. Gregory of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6502–1 is revised to read as follows:

§301.6502–1 Collection after assessment.

(a) *General rule*. In any case in which a tax has been assessed within the applicable statutory period of limitations on assessment, a proceeding in court to collect the tax may be commenced, or a levy to collect the tax may be made, within 10 years after the date of assessment.

(b) *Agreement to extend the period of limitations on collection*. The Secretary may enter into an agreement with a taxpayer to extend the period of limitations on collection in the following circumstances:

(1) *Extension agreement entered into in connection with an installment agreement*. If the Secretary and the taxpayer enter into an installment agreement for the tax liability prior to the expiration of the period of limitations on collection, the Secretary and the taxpayer, at the time the installment agreement is entered into, may enter into a written agreement to extend the period of limitations on collection to a date certain. A written extension agreement entered into under this paragraph shall extend the period of limitations on collection until the 89th day after the date agreed upon in the written agreement.

(2) *Extension agreement entered into in connection with the release of a levy under section 6343*. If the Secretary has levied on any part of the taxpayer's property prior to the expiration of the period of limitations on collection and the levy is subsequently released pursuant to section 6343 after the expiration of the period of limitations on collection, the Secretary and the taxpayer, prior to the release of the levy, may enter into a written agreement to extend the period of limitations on collection to a date certain. A written extension agreement entered into under this paragraph shall extend the period of limitations on collection until the date agreed upon in the extension agreement.

(c) *Continued effectiveness of agreements to extend the period of limitations on collection entered into on or before December 31, 1999*—(1) *In general*. Except as provided in paragraph (c)(2) of this section, if, on or before December 31, 1999, the Secretary and the taxpayer entered into a written agreement to extend the period of limitations on collection for a tax liability to a date after December 31, 2002, then, unless the written agreement expires by its terms prior to December 31, 2002, the period of limitations on collection expires on the later of—

(i) The last day of the original 10-year statutory period; or

(ii) December 31, 2002.

(2) *Written agreements entered into in connection with installment agreements*. If, on or before December 31, 1999, the Secretary and the taxpayer, in connection with an installment agreement, entered into a written agreement to extend the period of limitations on collection for a tax liability, the written agreement extends the period of limitations on collection until the 90th day after the date agreed upon in the written agreement.

(d) *Proceeding in court for the collection of the tax*. If a proceeding in court for the collection of a tax is begun within the period provided in paragraph (a) of this section (or within any extended period as provided in paragraphs (b) and (c) of this section), the period during which the tax may be collected by levy is extended until the liability for the tax or a judgment against the taxpayer arising from the liability is satisfied or becomes unenforceable.

(e) *Effect of statutory suspensions of the period of limitations on collection if executed collection extension agreement is in effect*—(1) Any statutory suspension of the period of limitations on collection tolls the running of the period of limitations on collection, as extended pursuant to an executed extension agreement under paragraph (b) or (c) of this section, for the amount of time set forth in the relevant statute.

(2) The following example illustrates the principle set forth in this paragraph (e):

Example. In June of 2003, the Internal Revenue Service (IRS) enters into an installment agreement with the taxpayer to provide for periodic payments of the taxpayer's timely assessed tax liabilities. At the time the installment agreement is entered into, the taxpayer and the IRS execute a written agreement to extend the period of limitations on collection. The extension agreement executed in connection with the installment agreement operates to extend the period of limitations on collection to the date agreed upon in the extension agreement, plus 89 days. Subsequently, and prior to the expiration of the extended period of limitations on collection, the taxpayer files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge from bankruptcy a few months later. Section 6503(h) of the Internal Revenue Code operates to suspend the running of the previously extended period of limitations on collection for the period of time the IRS is prohibited from collecting due to the bankruptcy proceeding, and for 6 months thereafter. The new expiration date for the IRS to collect the tax is the date agreed upon in the previously executed extension agreement, plus 89 days, plus the period during which the IRS is prohibited from collecting due to the bankruptcy proceeding, plus 6 months.

(f) *Date when levy is considered made*. The date on which a levy on property or rights to property is considered made is the date on which the notice of seizure required under section 6335(a) is given.

(g) *Effective date*. This section is applicable on the date final regulations are published in the **Federal Register**.

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

(Filed by the Office of the Federal Register on March 3, 2005, 8:45 a.m., and published in the issue of the Federal Register for March 4, 2005, 70 F.R. 10572)

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Qualified Amended Returns

REG–122847–04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9186) relating to the definition of qualified amended returns. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by May 31, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–122847–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–122847–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *www.irs.gov/regs* or via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–122847–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Nancy M. Galib, (202) 622–4940; concerning submissions of comments and requests for a public hearing, Sonya Cruse of the Regulations Unit at (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) regarding rules relating to qualified amended returns. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do 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 Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Nancy M. Galib of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. In §1.6664–1, paragraph (b)(3) is added to read as follows:

§1.6664–1 Accuracy-related and fraud penalties; definitions and special rules.

* * * * *

[The text of proposed §1.6664–1(b)(3) is the same as the text of §1.6664–1T(b)(3) published elsewhere in this issue of the Bulletin].

Par. 3. In §1.6664–2, paragraph (c) is revised to read as follows:

§1.6664–2 Underpayment.

* * * * *

[The text of proposed §1.6664–2(c) is the same as the text of §1.6664–2T(c) published elsewhere in this issue of the Bulletin].

* * * * *

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

(Filed by the Office of the Federal Register on March 1, 2005, 8:45 a.m., and published in the issue of the Federal Register for March 2, 2005, 70 F.R. 10062)

Notice of Proposed Rulemaking

Designated Roth Contributions to Cash or Deferred Arrangements Under Section 401(k)

REG–152354–04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations under section 401(k) and (m) of the Internal Revenue Code. These proposed regulations would provide guidance concerning the requirements for designated Roth contributions to qualified cash or deferred arrangements under section 401(k). These proposed regulations would affect section 401(k) plans that provide for designated Roth contributions and participants eligible to make elective contributions under these plans.

DATES: Written or electronic comments and requests for a public hearing must be received by May 31, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–152354–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–152354–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *www.irs.gov/regs* or the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–152354–04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad or Cathy A. Vohs, 202–622–6060; concerning submissions and requests for a public hearing, contact Treena Garrett, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP; Washington, DC 20224. Comments on the collection of information should be received by May 2, 2005. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information (see below);

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

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

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

The collection of information in this proposed regulation is in 26 CFR §1.401(k)–1(f)(1) & (2). This information is required to comply with the separate accounting and recordkeeping requirements of section 402A. This information will be used by the IRS and employers maintaining section 401(k) plans to insure compliance with the requirements of section 402A. The collection of information is required to obtain a benefit. The likely recordkeepers are state or local governments, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Estimated total annual recordkeeping burden: *157,500* hours.

Estimated average annual burden hours per recordkeeper: *1* hour.

Estimated number of respondents recordkeepers: *157,500*.

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

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

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 401(k) and (m) of the Internal Revenue Code of 1986 (Code). The amendments would provide guidance on designated Roth contributions under section 402A of the Code, added by section 617(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16, 115 Stat. 38) (EGTRRA).

Section 401(k) provides that a profit-sharing, stock bonus, pre-ERISA money purchase or rural cooperative plan will not fail to qualify under section 401(a) merely because it contains a cash or deferred arrangement. Contributions made at the election of an employee under a qualified cash or deferred arrangement are known as elective contributions. Generally, such elective contributions are not includible in income at the time contributed and are sometimes referred to as pre-tax elective contributions.

Under section 402A, beginning in 2006, a plan may permit an employee who makes elective contributions under a qualified cash or deferred arrangement to designate some or all of those contributions as Roth contributions. Although designated Roth contributions are elective contributions under a qualified cash or deferred arrangement, unlike pre-tax elective contributions, they are currently includible in gross income. However, a qualified distribution of designated Roth

contributions is excludable from gross income.

On December 29, 2004, final regulations under section 401(k) were issued (T.D. 9169, 2005–5 I.R.B. 381 [69 FR 78144]). Those regulations apply to plan years beginning on or after January 1, 2006. Under those final regulations, §1.401(k)–1(f) was reserved for special rules for designated Roth contributions. These proposed regulations would amend those final regulations to fill in that reserved paragraph and provide additional rules applicable to designated Roth contributions.

Explanation of Provisions

Rules Relating to Designated Roth Contributions

The proposed regulations provide special rules relating to designated Roth contributions under a section 401(k) plan. The proposed regulations would amend §1.401(k)–1(f) to provide a definition of designated Roth contributions and special rules with respect to such contributions. Under these proposed regulations, designated Roth contributions are defined as elective contributions under a qualified cash or deferred arrangement that are: (1) designated irrevocably by the employee at the time of the cash or deferred election as designated Roth contributions; (2) treated by the employer as includible in the employee's income at the time the employee would have received the contribution amounts in cash if the employee had not made the cash or deferred election (*e.g.*, by treating the contributions as wages subject to applicable withholding requirements); and (3) maintained by the plan in a separate account. The proposed regulations provide that contributions may only be treated as designated Roth contributions to the extent permitted under the plan.

The proposed regulations provide that, under the separate accounting requirement, contributions and withdrawals of designated Roth contributions must be credited and debited to a designated Roth contribution account maintained for the employee who made the designation and the plan must maintain a record of the employee's investment in the contract (*i.e.*, designated Roth contributions that have not been distributed) with respect to the employee's designated Roth contribution account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth contribution account and other accounts under the plan. However, forfeitures may not be allocated to the designated Roth contribution account. The separate accounting requirement applies at the time the designated Roth contribution is contributed to the plan and must continue to apply until the designated Roth contribution account is completely distributed.

Other Rules

A designated Roth contribution must satisfy the requirements applicable to elective contributions made under a qualified cash or deferred arrangement. Thus, designated Roth contributions are subject to the nonforfeitability and distribution restrictions applicable to elective contributions and are taken into account under the ADP test of section 401(k) in the same manner as pre-tax elective contributions. Similarly, designated Roth contributions are subject to the rules of section 401(a)(9)(A) and (B) in the same manner as pre-tax elective contributions.

Section 1.401(k)–2 of the final section 401(k) regulations contains correction methods that a plan may use if it fails to satisfy the ADP test for a year. The proposed regulations would amend the rules relating to these correction methods to permit an HCE with elective contributions for a year that includes both pre-tax elective contributions and designated Roth contributions to elect whether excess contributions are to be attributed to pre-tax elective contributions or designated Roth contributions.

The proposed regulations provide that a distribution of excess contributions is not includible in income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution of excess contributions that are designated Roth contributions is includible in gross income in the same manner as income allocable to a corrective distribution of excess contributions that are pre-tax elective contributions. The proposed regulations also provide a similar rule under the correction methods that a plan may use if it fails to satisfy the ACP test in §1.401(m)–2.

Additional Required Plan Terms

In addition to the rules relating to section 401(k) and (m) discussed above, there are other aspects of designated Roth contributions that must be reflected in plan terms and are not addressed in these proposed regulations. For example, while a plan is permitted to allow an employee to elect the character of a distribution (*i.e.*, whether the distribution will be made from the designated Roth contribution account or other accounts), the extent to which a plan so permits must be set forth in the terms of the plan. In addition, the plan must provide that, for purposes of section 401(a)(31), designated Roth contributions may be rolled over only to another plan maintaining a designated Roth contribution account or to a Roth IRA.

Certain Issues not Addressed

These proposed regulations do not provide guidance with respect to the taxation of the distribution of designated Roth contributions. For example, the proposed regulations do not provide guidance with respect to the recovery of an employee's investment in the contract associated with his or her designated Roth contributions. The IRS and Treasury request comments on the issues on which guidance is needed with respect to the taxation of such distributions. Comments are also requested on any other issues arising under section 402A on which guidance is needed.

Effective Date

Section 402A is effective for taxable years beginning after December 31, 2005. These regulations are proposed to apply to plan years beginning on or after January 1, 2006.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial

number of small entities. This certification is based on the fact that most small entities that maintain a section 401(k) plan use a third party provider to administer the plan. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury 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 public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are R. Lisa Mojiri-Azad and Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.401(k)–0 is amended by:

1. The entry for §1.401(k)–1(f) is amended by removing "[Reserved]" and adding entries for §1.401(k)–1(f)(1), (2) and (3).

2. Adding an entry for §1.401(k)–2(b)(2)(vi)(C).

The additions read as follows:

§1.401(k)–0 Table of contents.

* * * * *

§1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) * * *

(1) In general.

(2) Separate accounting required.

(3) Designated Roth contributions must satisfy rules applicable to elective contributions.

* * * * *

§1.401(k)–2 ADP test.

* * * * *

(b) * * *

(2) * * *

(vi) * * *

(C) Corrective distributions attributable to designated Roth contributions.

* * * * *

Par. 3. Section 1.401(k)–1(f) is revised as follows:

§1.401(k)–1 Certain cash or deferred arrangements.

* * * * *

(f) *Special rules for designated Roth contributions*—(1) *In general*. The term *designated Roth contribution* means an elective contribution under a qualified cash or deferred arrangement that, to the extent permitted under the plan, is—

(i) Designated irrevocably by the employee at the time of the cash or deferred election as a designated Roth contribution;

(ii) Treated by the employer as includible in the employee's income at the time the employee would have received the amount in cash if the employee had not made the cash or deferred election (*e.g.*, by treating the contributions as wages subject to applicable withholding requirements); and

(iii) Maintained by the plan in a separate account (in accordance with paragraph (f)(2) of this section).

(2) *Separate accounting required*. Under the separate accounting requirement of this paragraph (f)(2), contributions and withdrawals of designated Roth contributions must be credited and debited to a designated Roth contribution account maintained for the employee who made the designation and the plan must maintain a record of the employee's investment in the contract (*i.e.*, designated Roth contributions that have not been distributed) with respect to the employee's designated Roth contribution account. In addition, gains, losses, and other credits or charges must be separately allocated on a reasonable and consistent basis to the designated Roth contribution account and other accounts under the plan. However, forfeitures may not be allocated to the designated Roth contribution account. The separate accounting requirement applies at the time the designated Roth contribution is contributed to the plan and must continue to apply until the designated Roth contribution account is completely distributed.

(3) *Designated Roth contributions must satisfy rules applicable to elective contributions*. A designated Roth contribution must satisfy the requirements applicable to elective contributions made under a qualified cash or deferred arrangement. Thus, for example, a designated Roth contribution must satisfy the requirements of paragraphs (c) and (d) of this section and is treated as an employer contribution for purposes of sections 401(a), 401(k), 402, 404, 409, 411, 412, 415, 416 and 417. In addition, the designated Roth contributions are treated as elective contributions for purposes of the ADP test. Similarly, the designated Roth contribution account is subject to the rules of section 401(a)(9)(A) and (B) in the same manner as an account that contains pre-tax elective contributions.

* * * * *

Par. 4. Section 1.401(k)–2 is amended as follows:

1. A new sentence is added after the second sentence in paragraph (b)(1)(ii).

2. The last sentence in paragraph (b)(2)(vi)(B) is amended by removing the period and adding a clause at the end.

3. Paragraph (b)(2)(vi)(C) is added.

The additions read as follows:

§1.401(k)–2 ADP test.

* * * * *

(b) * * *

(1) * * *

(ii) * * * Similarly, a plan may permit an HCE with elective contributions for a year that includes both pre-tax elective contributions and designated Roth contributions to elect whether the excess contributions are to be attributed to pre-tax elective contributions or designated Roth contributions. * * *

* * * * *

(2) * * *

(vi) * * *

(B) * * * , except to the extent provided in paragraph (b)(2)(vi)(C) of this section.

(C) *Corrective distributions attributable to designated Roth contributions*. Notwithstanding paragraphs (b)(2)(vi)(A) and (B) of this section, a distribution of excess contributions is not includible in gross income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution of excess contributions that are designated Roth contributions is included in gross income in accordance with paragraph (b)(2)(vi)(A) or (B) of this section (*i.e.*, in the same manner as income allocable to a corrective distribution of excess contributions that are pre-tax elective contributions).

* * * * *

Par. 5. Section 1.401(k)–6 is amended as follows:

1. A new definition is added after the definition of *Current year testing method*.

2. A new definition is added after the definition of *Pre-ERISA money purchase pension plan*.

The additions read as follows:

§1.401(k)–6 Definitions.

* * * * *

Designated Roth contributions. *Designated Roth contributions* means designated Roth contributions as defined in §1.401(k)–1(f)(1).

* * * * *

Pre-tax elective contributions. *Pre-tax elective contributions* means elective contributions under a qualified cash or deferred arrangement that are not designated Roth contributions.

* * * * *

Par. 6. Section 1.401(m)–0 amended by adding an entry for §1.401(m)–2(b)(2)(vi)(C) to read as follows:

§1.401(m)–0 Table of contents.

* * * * *

§1.401(m)–2 ACP test.

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(C) Corrective distributions attributable to designated Roth contributions.

* * * * *

Par. 7. Section 1.401(m)–2 is revised as follows:

1. The last sentence in paragraph (b)(2)(vi)(B) is amended by removing the period and adding a clause.

2. Paragraph (b)(2)(vi)(C) is added.

The additions read as follows:

§1.401(m)–2 ACP test.

* * * * *

(b) * * *

(2) * * *

(vi) * * *

(B) * * * or as provided in paragraph (b)(2)(vi)(C) of this section.

(C) *Corrective distributions attributable to designated Roth contributions*. Notwithstanding paragraphs (b)(2)(vi)(A) and (B) of this section, a distribution of excess aggregate contributions is not includible in gross income to the extent it represents a distribution of designated Roth contributions. However, the income allocable to a corrective distribution of excess aggregate contributions that are designated Roth contributions is taxed in accordance with paragraph (b)(2)(vi)(A) or (B) of this section (*i.e.*, in the same manner as income allocable to a corrective distribution of excess aggregate contributions that are not designated Roth contributions).

* * * * *

Par. 8. Section 1.401(m)–5 is amended by adding a new definition after the definition of *Current year testing method* to read as follows:

The addition reads as follows:

§1.401(m)–5 Definitions.

* * * * *

Designated Roth contributions. *Designated Roth contributions* means designated Roth contributions as defined in §1.401(k)–1(f)(1).

* * * * *

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

(Filed by the Office of the Federal Register on March 1, 2005, 8:45 a.m., and published in the issue of the Federal Register for March 2, 2005, 70 F.R. 10062)

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2005-15

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Consent Disbarments From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to disbarment from such practice. The Director, Office of Professional Responsibility, in his discretion, may disbar an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent disbarment from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Disbarment
O'Connell, Anthony G.	Revere, MA	CPA	Indefinite from January 5, 2005

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
McCarthy III, William P.	Sacramento, CA	Enrolled Agent	September 12, 2004 to March 10, 2006
Deen, Mae T.	Salinas, CA	Enrolled Agent	October 18, 2004 to April 16, 2006
Adams Jr., Joseph T.	Philadelphia, PA	Enrolled Agent	December 1, 2004 to May 29, 2006

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Cornelius, Gerald K.	Ventura, CA	Enrolled Agent	Indefinite from September 15, 2004
Janus, Stephen E.	Michigan City, IN	CPA	Indefinite from October 25, 2004
Arotsky, Marvin A.	New Haven, CT	CPA	Indefinite from December 1, 2004
Penta, Richard	Hamilton, MA	CPA	Indefinite from January 1, 2005

Name	Address	Designation	Date of Suspension
Bedell, Michael F.	Ridge, NY	CPA	Indefinite from January 7, 2005
Nussbaum, Jerrold	Annapolis, MD	Attorney	Indefinite from April 15, 2005

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Whitworth, Douglas D.	Houston, TX	CPA	Indefinite from October 28, 2004
Lindberg, William D.	Costa Mesa, CA	CPA	Indefinite from November 4, 2004
Tompkins, Thomas M.	Chickasaw, AL	Attorney	Indefinite from November 4, 2004
Peterson Jr., Theodore E	Charlotte, NC	CPA	Indefinite from November 4, 2004
Gassiott, William E.	Cypress, TX	CPA	Indefinite from November 4, 2004
Wagar Jr., John E.	Lafayette, LA	Attorney	Indefinite from November 9, 2004
Fiore, Owen G.	Kooskia, ID	Attorney	Indefinite from November 30, 2004
O'Keefe, Michael H.	Beaumont, TX	Attorney	Indefinite from November 30, 2004
Ivker, Richard N.	Waltham, MA	Attorney	Indefinite from November 30, 2004

Name	Address	Designation	Date of Suspension
Jones, Edwin A.	Robards, KY	Attorney	Indefinite from November 30, 2004
Landis, John C.	Drexel Hill, PA	Attorney	Indefinite from November 30, 2004
Cushman, Christopher A.	Kansas City, MO	Attorney	Indefinite from November 30, 2004
Weiner, Alan S.	Rockville, MD	Attorney	Indefinite from November 30, 2004
Virdone, Peter P.	Kailua, HI	CPA	Indefinite from November 30, 2004
Doherty, Paul M.	N. Billerica, MA	Attorney	Indefinite from December 3, 2004
Carney, Kevin F.	Woburn, MA	Attorney	Indefinite from December 3, 2004
Greiner, Thomas	Cleveland, OH	Attorney	Indefinite from December 8, 2004
Wertis, Richard L.	Garden City, NY	Attorney	Indefinite from December 10, 2004
Southerland, Harry L.	Raeford, NC	Attorney	Indefinite from December 10, 2004
Chestnutt, A. Johnson	Fayetteville, NC	CPA	Indefinite from December 13, 2004
Heald, Arthur A.	Saint Albans, VT	Attorney	Indefinite from December 10, 2004
Culliton, James M.	Santa Clarita, CA	Attorney	Indefinite from December 15, 2004
Juarez, Michael G.	Douglas, AZ	Attorney	Indefinite from December 15, 2004
Clark, Carroll A.	Mesa, AZ	Attorney	Indefinite from December 15, 2004

Name	Address	Designation	Date of Suspension
Creque, George A	Willow Springs, CA	Attorney	Indefinite from December 15, 2004
Younts, Roger W.	Lexington, NC	CPA	Indefinite from December 15, 2004
Kluge, David R.	Sheridan, OR	Attorney	Indefinite from December 15, 2004
Fanaras, Andrew R.	Haverhill, MA	Attorney	Indefinite from December 15, 2004
Murphy, Patrick B.	Alhambra, CA	Attorney	Indefinite from December 20, 2004
Mills, Stuart B.	Pender, NE	Attorney	Indefinite from December 20, 2004
North, Gerald D.W.	Chicago, IL	Attorney	Indefinite from December 20, 2004
Nickel, Warren J.	Tinley Park, IL	Attorney	Indefinite from December 20, 2004
Gray, Douglas C.	Dover, NH	Attorney	Indefinite from December 20, 2004
Emmons, Kyle D.	Columbia, MO	Attorney	Indefinite from December 20, 2004
Velella, Guy J.	Bronx, NY	Attorney	Indefinite from December 30, 2004
Ginn, Jeffrey S.	Lexington, KY	CPA	Indefinite from January 25, 2005
Grenrood Jr., Bernard	West Monroe, LA	Attorney	Indefinite from January 25, 2005
Tehin Jr., Nikolai	San Francisco, CA	Attorney	Indefinite from January 25, 2005
Kemper, Morris B.	Alameda, CA	Attorney	Indefinite from January 25, 2005
Harrison, John S.	Oakland, CA	Attorney	Indefinite from January 25, 2005

Name	Address	Designation	Date of Suspension
Mangurten, Irvin B.	Buffalo Grove, IL	CPA	Indefinite from January 27, 2005
Zivin, Mitchell W.	Long Grove, IL	Attorney	Indefinite from February 7, 2005
Zdon, John N.	Chicago, IL	Attorney	Indefinite from February 7, 2005
Lokietz, David S.	Mount Dora, FL	CPA	Indefinite from February 7, 2005
Heldrich Jr., Gerard C.	Lincolnshire, IL	Attorney	Indefinite from February 7, 2005
Whitaker, Paul M.	Albany, NY	Attorney	Indefinite from February 18, 2005
Blake, Linda D.	Bellvale, NY	Attorney	Indefinite from February 18, 2005
Smith, H. Paul	San Antonio, TX	Attorney	Indefinite from February 18, 2005
Atwood, Adina A.	Ardmore, OK	Attorney	Indefinite from February 18, 2005
Sablone Jr., Francis R.	Old Lyme, CT	Attorney	Indefinite from February 18, 2005
Phelps, S. Don	Olympia, WA	Attorney	Indefinite from February 18, 2005
Davidson, Frazier	Bronx, NY	Attorney	Indefinite from February 18, 2005

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Dorris, Virginia A.	Bradenton, FL	Enrolled Agent	December 14, 2004
Mackey, Glen N.	Roanoke, VA	Attorney	December 21, 2004

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.
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Key to Abbreviations:

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

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