

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.

SPECIAL ANNOUNCEMENT

Announcement 2006-22, page 779.

This document contains the annual report to the public concerning Advance Pricing Agreements (APAs) and the experience of the APA program during calendar year 2005. This document does not provide guidance regarding the application of the arm's length standard. Instead, it reports on the structure and activities of the APA program.

INCOME TAX

Notice 2006-38, page 777.

This notice provides relief for persons who have rehabilitation credit property in areas affected by Hurricanes Katrina, Rita, or Wilma. First, the notice provides a safe harbor period of three years for repair of rehabilitation credit property placed in service prior to the hurricanes and damaged by the hurricanes during which time the property is not subject to rehabilitation credit recapture under Code section 50(a)(1) provided that repairs to the property are actively ongoing. Second, for property on which the rehabilitation had begun but has not yet been placed in service on the date that the President declared a major disaster in the area in which the property is located, the running of the 24-month or 60-month period is tolled for a period of 12 months.

EMPLOYEE PLANS

T.D. 9256, page 770.

Final regulations under section 417 of the Code concern content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans.

EXEMPT ORGANIZATIONS

Announcement 2006-24, page 820.

Consumer Guidance Corp., of Sun Valley, CA, and Next Step Foundation, Inc., of Little Rock, AR, no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

Announcements of Disbarments and Suspensions begin on page 810.
Finding Lists begin on page ii.



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 47.—Rehabilitation Credit

A notice advises taxpayers of certain relief provided by the Secretary to taxpayers having rehabilitation credit property located within the Gulf Opportunity Zone (GO Zone), the Rita GO Zone, or the Wilma GO Zone affected by Hurricanes Katrina, Rita, or Wilma in 2005. See Notice 2006-38, page 777.

Section 417.—Definitions and Special Rules for Purposes of Minimum Survivor Annuity Requirements

26 CFR 1.417(a)(3)-1: Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.

T.D. 9256

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Revised Regulations Concerning Disclosure of Relative Values of Optional Forms of Benefit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 417(a)(3) of the Internal Revenue Code concerning content requirements applicable to explanations of qualified joint and survivor annuities and qualified preretirement survivor annuities payable under certain retirement plans. These regulations affect sponsors, administrators, participants, and beneficiaries of certain retirement plans.

DATES: *Effective Date:* These regulations are effective March 24, 2006.

Applicability Dates: The changes to §1.401(a)-20, A-36, and §1.417(a)(3)-1 apply as if they had been included in T.D. 9099, 2004-1 C.B. 255 [68 FR 70141].

The change to §1.401(a)-20, Q&A-16, applies as if it had been included in T.D. 8219, 1988-2 C.B. 48 [53 FR 31837].

FOR FURTHER INFORMATION CONTACT: Bruce Perlin or Linda Marshall at (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been previously 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 1545-0928.

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

Section 417(a) provides rules under which a participant (with spousal consent) may elect to receive benefits in a form other than a qualified joint and survivor annuity (QJSA), including rules relating to required distributions. Specifically, section 417(a)(3) provides that a plan must provide to each participant, within a reasonable period before the annuity starting date, a written explanation that includes the following information: (1) the terms and conditions of the QJSA; (2) the participant's right to make an election to waive the QJSA form of benefit; (3) the effect of such an election; (4) the rights of the participant's spouse; and (5) the right to revoke an election to waive the QJSA form of benefit.

Section 205 of the Employee Retirement Income Security Act of 1974

(ERISA), Public Law 93-406 (88 Stat. 829), as subsequently amended, provides rules that are parallel to the rules of sections 401(a)(11) and 417 of the Internal Revenue Code (Code). In particular, section 205(c)(3) of ERISA provides a rule parallel to the rule of section 417(a)(3) of the Code.

Section 1.401(a)-20, which provides rules governing the requirements for a waiver of the QJSA, was published in the **Federal Register** on August 19, 1988 (T.D. 8219) (53 FR 31837), effective August 22, 1988. Section 1.401(a)-20, Q&A-36, as published in 1988, set forth requirements for the explanation that must be provided under section 417(a)(3) as a prerequisite to waiver of a QJSA. Under those requirements, such a written explanation must contain a general description of the eligibility conditions and other material features of the optional forms of benefit and sufficient additional information to explain the relative values of the optional forms of benefit available under the plan (e.g., the extent to which optional forms are subsidized relative to the normal form of benefit or the interest rates used to calculate the optional forms). In addition, §1.401(a)-20, Q&A-36, as published in 1988, provided that the written explanation must comply with the requirements set forth in §1.401(a)-11(c)(3). Section 1.401(a)-11(c)(3), which was issued prior to the enactment of section 417, provides rules relating to written explanations that were required prior to a participant's election of a preretirement survivor annuity or election to waive a joint and survivor annuity. Section 1.401(a)-11(c)(3)(i)(C) provides that such a written explanation must contain a general explanation of the relative financial effect of these elections on a participant's annuity.

For a married participant, the QJSA must be at least as valuable as any other optional form of benefit payable under the plan at the same time. See §1.401(a)-20, Q&A-16. Further, the anti-forfeiture rules of section 411(a) prohibit a participant's benefit under a defined benefit plan from being satisfied through payment of a form of benefit that is actuarially less valuable than the value of the participant's accrued

benefit expressed in the form of an annual benefit commencing at normal retirement age. These determinations must be made using reasonable actuarial assumptions. However, see section 417(e)(3) and §1.417(e)-1(d) for actuarial assumptions required for use in certain present value calculations.

Final regulations under section 417(a)(3) regarding disclosure of the relative value and financial effect of optional forms of benefit as part of QJSA explanations provided to participants receiving qualified retirement plan distributions were published in the **Federal Register** on December 17, 2003. See §1.417(a)(3)-1 (68 FR 70141). The 2003 regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after October 1, 2004.

The 2003 regulations were issued in response to concerns that, in certain cases, the information provided to participants under section 417(a)(3) regarding available distribution forms pursuant to §1.401(a)-20, Q&A-36, did not adequately enable them to compare those distribution forms without professional advice. In particular, participants who were eligible for early retirement benefits in the form of both subsidized annuity distributions and unsubsidized single-sum distributions may have been receiving explanations that do not adequately disclose the value of the subsidy that is foregone if the single-sum distribution is elected. In such a case, merely disclosing the amount of the single-sum distribution and the amount of the annuity payments would not adequately enable a participant to make an informed comparison of the relative values of those distribution forms. The 2003 regulations addressed this problem, as well as the problem of disclosure in other cases where there are significant differences in value among optional forms, and also clarified the rules regarding the disclosure of the financial effect of benefit payments.

A number of commentators requested that the effective date of the 2003 reg-

ulations be postponed. Among the reasons cited was the need in some plans for sponsors to complete an extensive review and analysis of optional forms of benefit in order to prepare proper comparisons of the relative values of those optional forms to the QJSA. After consideration of these comments, the IRS issued Announcement 2004-58, 2004-2 C.B. 66, which postponed the effective date of the 2003 regulations under §1.417(a)(3)-1 for certain QJSA explanations.

Consistent with Announcement 2004-58, proposed regulations (REG-152914-04, 2005-9 I.R.B. 650 [70 FR 4058]) were published in the **Federal Register** on January 28, 2005, to provide that the 2003 regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after February 1, 2006. On August 24, 2005, the IRS held a public hearing on the proposed regulations. Written comments responding to the notice of proposed rulemaking were also received. After consideration of all the comments, the proposed regulations are adopted, as amended by this Treasury decision. The revisions are discussed below.

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over ERISA provisions that are parallel to the Code provisions addressed in these regulations. Therefore, these regulations apply for purposes of the parallel rules in section 205(c)(3) of ERISA, as well as for section 417(a)(3) of the Code.

Explanation of Provisions

As provided in the 2005 proposed regulations, these final regulations provide that the 2003 regulations are generally effective for QJSA explanations provided with respect to annuity starting dates beginning on or after February 1, 2006. However, these regulations retain the effective date for §1.417(a)(3)-1 under the 2003 regulations for explanations with respect to any optional form of benefit that is subject to the requirements of section 417(e)(3) if

the actuarial present value of that optional form is less than the actuarial present value (as determined under section 417(e)(3)) of the QJSA. Thus, for example, a QJSA explanation provided with respect to an annuity starting date on or after October 1, 2004, must comply with §1.417(a)(3)-1 to the extent that the plan provides for payment to that participant in the form of a single-sum distribution that does not reflect an early retirement subsidy available under the QJSA. If the October 1, 2004, effective date applies to an optional form of benefit, the plan must disclose the relative value of the optional form of benefit compared to the value of the QJSA for the participant even if the plan provides a disclosure of relative values that is not tailored to the participant's marital status. Accordingly, if a plan provides a relative value disclosure based on the single life annuity (the QJSA for a single participant) to a married participant, the plan must also include a comparison of the value of the QJSA to the value of the single life annuity.

To illustrate the application of the modified effective date of §1.417(a)(3)-1, the 2005 proposed regulations contained a list of examples of optional forms of benefit that are subject to the minimum present value requirements of section 417(e)(3), and included a social security level income option in that list.¹ A social security level income option is the payment of a participant's benefit in the form of an annuity with larger payments in earlier years before an assumed social security commencement age to provide the participant with approximately level retirement income when the assumed social security payments are taken into account. Several commentators expressed disagreement with the inclusion of social security level income options in the list of benefits that are subject to the minimum present value requirements of section 417(e)(3), based on their view that a social security level income option is not subject to those requirements. Commentators requested that this interpretation be withdrawn or, alternatively, that it be the subject of a separate rulemaking process

¹ Section 1.417(e)-1(d)(6) provides that the minimum present value requirements of section 417(e)(3) do not apply to the amount of a distribution paid in the form of an annual benefit that does not decrease during the life of the participant, or that decreases during the life of the participant merely because of the death of the survivor annuitant or the cessation or reduction of social security supplements or qualified disability benefits. A social security supplement is defined in §1.411(a)-7(c)(4) as a benefit for plan participants that commences before the age and terminates at the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act, and does not exceed such old-age insurance benefit. Under section 411(a)(9) and §1.411(a)-7(c)(4), a plan's early retirement benefit (and, therefore, a plan's normal retirement benefit) is determined without regard to a social security supplement.

to allow adequate notice and comment. In addition, commentators objected to the placement of these examples in the effective date provisions of the relative value regulations rather than in the regulations regarding the minimum present value requirements of section 417(e)(3).

These final regulations do not include a list of examples of optional forms of benefit that are subject to the minimum present value requirements of section 417(e)(3) in the provisions regarding the effective date of these regulations. The omission of this list reflects agreement with commentators that this is not the appropriate placement for guidance regarding the minimum present value requirements of section 417(e)(3). Section 1.417(e)-1(d)(6) identifies the types of payments that are not subject to the minimum present value requirements of section 417(e)(3). Under §1.417(e)-1(d)(6)(ii)(B), the minimum present value requirements of section 417(e)(3) do not apply to the amount of a distribution paid in the form of an annual benefit that decreases during the life of the participant merely because of the cessation or reduction of social security supplements. However, no such exemption applies to social security level income options.

As under the 2005 proposed regulations, these final regulations include a special rule that enables a plan to use the delayed effective date rule even if there are minor differences between the value of an optional form and the value of the QJSA for a married participant that are caused by the calculation of the amount of the optional form of benefit based on the life annuity rather than on the QJSA. Under this special rule, solely for purposes of the effective date provisions, the actuarial present value of an optional form is treated as not being less than the actuarial present value of the QJSA if the following two conditions are met. First, using the applicable interest rate and applicable mortality table under §1.417(e)-1(d)(2) and (3), the actuarial present value of that optional form is not less than the actuarial present value of the QJSA for an unmarried participant. Second, using reasonable actuarial assumptions, the actuarial present value of the QJSA for an unmarried participant is not less than the actuarial present value of the QJSA for a married participant.

Like the 2005 proposed regulations, these final regulations modify the 2003 regulations in two other respects. First, for purposes of disclosing the normal form of benefit as part of a disclosure made in the form of generally applicable information, reasonable estimates of the type permitted to be used to disclose participant-specific information may be used to determine the normal form of benefit, but only if the plan follows the requirements applicable to reasonable estimates used in disclosing participant-specific information (such as offering a more precise calculation upon request and revising previously offered information consistent with the more precise information). Second, a QJSA explanation does not fail to satisfy the requirements for QJSA explanations made in the form of disclosures of generally applicable information merely because the QJSA explanation contains an item of participant-specific information in place of the corresponding generally applicable information.

In response to the 2005 proposed regulations, commentators requested a number of other modifications to the 2003 regulations that were not addressed in the 2005 proposed regulations. These regulations adopt a number of these suggestions.

To address questions raised by commentators, these regulations clarify which optional forms of benefit that are available with retroactive annuity starting dates are required to be covered in a QJSA explanation. Under these regulations, a QJSA explanation must provide the required information with respect to each of the optional forms of benefit presently available to the participant (*i.e.*, optional forms of benefit for which the QJSA explanation applies that have an annuity starting date after the providing of the QJSA explanation and optional forms of benefit with retroactive annuity starting dates that are available with payments commencing at that same time). In addition, these regulations clarify that the disclosure of the financial effect of an optional form of benefit (including a benefit available with a retroactive annuity starting date) must describe the amounts and timing of payments to the participant under the form of benefit during the participant's lifetime, and the amounts and timing of payments after the death of the participant.

Some commentators expressed concerns over the fact that the regulations permit any optional form of benefit that is at least 95% as valuable as the QJSA for a married participant to be described as approximately equal in value to the QJSA, even if that optional form of benefit is substantially more valuable than the QJSA. These commentators expressed concerns regarding compliance with the standards of professional conduct for actuaries and recommended that the regulations prohibit employers from providing information to participants that is misleading. Commentators also objected to the difference between this rule and the rule for disclosures of relative values in comparison to the single life annuity, under which optional forms of benefit can be disclosed as approximately equal in value to the single life annuity only if all optional forms are within a range of 95% to 102.5% of the value of the single life annuity.

To address these concerns, these regulations provide that the relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA and no greater than 105% of the actuarial present value of the QJSA is permitted to be described by stating that these optional forms of benefit are approximately equal in value to the QJSA, or that all of these forms of benefit and the QJSA are approximately equal in value. Thus, optional forms of benefit that have greater differences in present value may not be described as having approximately the same value. Moreover, this rule applies regardless of whether the comparison is made to the QJSA for married participants or the QJSA for unmarried participants. To give employers sufficient time to perform the additional calculations that may be required to implement this rule, a special effective date applies so that this change to the regulations need not be applied for disclosures made before 2007.

Some commentators requested clarification regarding the reasonable actuarial assumptions that can be used to compare the value of an optional form of benefit to the value of the QJSA if that optional form of benefit is not subject to the minimum present value requirements of section 417(e)(3). In response, these regulations clarify that, for this purpose, the reasonableness of interest and mortality as-

assumptions is determined without regard to the circumstances of the individual participant. In addition, the applicable mortality table and the applicable interest rate as defined in §1.417(e)-1(d)(2) and (3) are considered reasonable actuarial assumptions for this purpose and thus are permitted (but not required) to be used.

Commentators requested that simplified disclosures of financial effect and relative value be permitted under certain circumstances to enable employers to make that information more useful for participants in certain cases in which the plan would otherwise be required to provide a confusing array of information to a participant. To address these concerns, these regulations permit simplified presentations of financial effect and relative value for a plan that offers a significant number of substantially similar optional forms of benefit, and also permit simplified presentations of relative value and financial effect for a plan that permits the participant to make separate benefit elections with respect to parts of a benefit.

If a plan offers a significant number of substantially similar optional forms of benefit and disclosing the financial effect and relative value of each such optional form of benefit would provide a level of detail that could be overwhelming rather than helpful to participants, then the financial effect and relative value of those optional forms of benefit can be disclosed by explaining the relative value and financial effect of a representative range of examples of those optional forms of benefit. For purposes of this rule, optional forms of benefit are substantially similar if those optional forms of benefit are identical except for a particular feature or features (with associated adjustment factors) and the feature or features vary linearly. For example, if a plan offers joint and survivor annuity options with survivor payments available in all whole number percentages between 50% and 100%, those joint and survivor annuity options are substantially similar. Similarly, if a participant is entitled under the plan to receive a particular form of benefit with an annuity starting date that is the first day of any month beginning three years before commencement of a distribution and ending on the date of commencement of the distribution, those forms of benefit are substantially similar.

A range of examples with respect to substantially similar optional forms of benefit as permitted under this rule is representative only if it includes examples illustrating the relative value and financial effect of the optional forms of benefit that reflect each varying feature at both extremes of its linear range, plus at least one example illustrating the relative value and financial effect of the optional forms of benefit that reflects each varying feature at an intermediate point. However, if one intermediate example is insufficient to illustrate a pattern of variation in relative value with respect to a varying feature, examples that are sufficient to illustrate the pattern must be provided. Thus, for example, if a plan offers joint and survivor annuity options with survivor payments available in all whole number percentages between 50% and 100%, and if all such optional forms of benefit would be permitted to be described as approximately equal in value, the plan could satisfy the requirement to disclose the relative value and financial effect of a representative range of examples of those optional forms of benefit by disclosing the relative value and financial effect with respect to the joint and 50% survivor annuity, the joint and 75% survivor annuity, and the joint and 100% survivor annuity.

If the plan permits a participant to make separate benefit elections with respect to two or more portions of the participant's benefit, the description of the financial effect and relative values of optional forms of benefit can be made separately for each such portion of the benefit, rather than for each optional form of benefit (*i.e.*, each combination of possible elections).

As under the 2005 proposed regulations, these regulations include a change to §1.401(a)-20, Q&A-16, to clarify the interaction of the rule prohibiting a plan from providing an option to a married individual that is worth more than the QJSA with the requirement that certain optional forms of benefit be calculated using specified actuarial assumptions. Under that clarification, a plan would not fail to satisfy the requirements of §1.401(a)-20, Q&A-16, merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of section 417(e)(3) is calculated using actuarial assumptions set forth in section 417(e)(3) (*i.e.*, the appli-

cable interest rate and, for periods that are required, the applicable mortality table).

Dates of Applicability

As discussed above under the heading *Explanation of Provisions*, these regulations retain the effective date for §1.417(a)(3)-1 under the 2003 regulations (*i.e.*, QJSA explanations with respect to annuity starting dates on or after October 1, 2004) for explanations with respect to any optional form of benefit that is subject to the requirements of section 417(e)(3) if the actuarial present value of that optional form is less than the actuarial present value (as determined under section 417(e)(3)) of the QJSA. See §1.417(a)(3)-1(f)(2). Thus, for example, a QJSA explanation provided with respect to an annuity starting date on or after October 1, 2004, must comply with §1.417(a)(3)-1 to the extent that the plan provides for payment to that participant in the form of a single-sum distribution that does not reflect an early retirement subsidy available under the QJSA.

As under the 2005 proposed regulations, these final regulations defer the effective date of the 2003 regulations with respect to all other QJSA explanations. Under these final regulations, the 2003 regulations (as amended by these regulations) generally apply to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after February 1, 2006. However, the change to §1.417(a)(3)-1(c)(2)(iii)(C) (relating to disclosures of optional forms of benefit that are approximately equal in value to the QJSA) is not required to be applied to QJSA explanations provided before January 1, 2007.

A reasonable, good faith effort to comply with these regulations will be deemed to satisfy the requirements of these regulations for QJSA explanations provided before January 1, 2007 (except with respect to any portion of a QJSA explanation that is subject to the earlier effective date rule of §1.417(a)(3)-1(f)(2)). For this purpose, a reasonable, good faith effort to comply with these regulations includes substantial compliance with the 2003 regulations.

These regulations do not change the effective date of the 2003 regulations with respect to QPSA explanations. Thus, the 2003 regulations continue to apply to any

QPSA explanation provided on or after July 1, 2004.

The change to §1.401(a)-20, Q&A-16 (clarifying that a plan does not fail to satisfy the requirements of Q&A-16 as a result of complying with the minimum present value requirements of section 417(e)(3)), applies as if it had been included in the 1988 regulations (T.D. 8219, 53 FR 31837).

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 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 upon the fact that qualified retirement plans of small businesses typically commence distribution of benefits to few, if any, plan participants in any given year and, similarly, only offer elections to waive a QPSA to few, if any, participants in any given year. Thus, the collection of information in these regulations will only have a minimal economic impact on most small entities. 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, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Bruce Perlin and Linda S.F. Marshall 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 their development.

* * * * *

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 1.401(a)-20 is amended by:

1. Adding a sentence to the end of Q&A-16.

2. Adding a sentence to the end of Q&A-36.

The additions read as follows:

§1.401(a)-20 Requirements of qualified joint and survivor annuity and qualified preretirement survivor annuity.

* * * * *

A-16 * * * A plan does not fail to satisfy the requirements of this Q&A-16 merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of section 417(e)(3) is calculated using the applicable interest rate (and, for periods when required, the applicable mortality table) under section 417(e)(3).

* * * * *

A-36 * * * However, the rules of §1.401(a)-20, Q&A-36, as it appeared in 26 CFR Part 1 revised April 1, 2003, apply to the explanation of a QJSA under section 417(a)(3) for an annuity starting date prior to February 1, 2006.

* * * * *

Par. 3. Section 1.417(a)(3)-1 is amended by:

1. Revising the parenthetical in paragraph (c)(1).

2. Revising the parenthetical in paragraph (c)(1)(iii).

3. Removing the language “paragraph (c)(3)(iii) of” from paragraph (c)(2)(ii)(A).

4. Revising paragraph (c)(2)(iii)(C).

5. Adding two sentences to the end of paragraph (c)(2)(iv)(B).

6. Adding paragraph (c)(5).

7. Adding a sentence to the end of paragraph (d)(2)(ii).

8. Adding paragraph (d)(5).

9. Revising paragraph (ii) of *Example (4)* in paragraph (e) by removing the language “paragraph (c)(2)(ii) of this section” and adding “paragraph (c)(2)(iii) of this section” in its place.

10. Revising paragraph (f).

The additions and revisions read as follows:

§1.417(a)(3)-1 Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.

* * * * *

(c) *Participant-specific information required to be provided—(1) In general.* * * * (i.e., optional forms of benefit for which the QJSA explanation applies that have an annuity starting date after the providing of the QJSA explanation and optional forms of benefit with retroactive annuity starting dates that are available with payments commencing at that same time) * * *

* * * * *

(iii) * * * (i.e., the amounts and timing of payments to the participant under the form of benefit during the participant’s lifetime, and the amounts and timing of payments after the death of the participant) * * *

(2) * * *

(iii) * * *

(C) *Special rule for optional forms of benefit that are close in value to the QJSA.* The relative value of all optional forms of benefit that have an actuarial present value that is at least 95% of the actuarial present value of the QJSA and no greater than 105% of the actuarial present value of the QJSA is permitted to be described by stating that those optional forms of benefit are approximately equal in value to the QJSA, or that all of those forms of benefit and the QJSA are approximately equal in value.

* * * * *

(iv) * * *

(B) * * * For this purpose, the reasonableness of interest and mortality assumptions is determined without regard to the circumstances of the individual participant. In addition, the applicable mortality table and the applicable interest rate as defined in §1.417(e)-1(d)(2) and (3) are considered reasonable actuarial assumptions for this purpose and thus are permitted (but not required) to be used.

* * * * *

(5) *Simplified presentations of financial effect and relative value to enhance clarity for participants—(i) In general.* This paragraph (c)(5) permits certain simplified presentations of financial effect and relative value of optional forms of benefit to permit more useful presentations of informa-

tion to be provided to participants in certain cases in which a plan offers a range of optional forms of benefit. Paragraph (c)(5)(ii) of this section permits simplified presentations of financial effect and relative value for a plan that offers a significant number of substantially similar optional forms of benefit. Paragraph (c)(5)(iii) of this section permits simplified presentations of financial effect and relative value for a plan that permits the participant to make separate benefit elections with respect to parts of a benefit.

(ii) *Disclosure for plans offering a significant number of substantially similar optional forms of benefit*—(A) *In general.* If a plan offers a significant number of substantially similar optional forms of benefit within the meaning of paragraph (c)(5)(ii)(B) of this section and disclosing the financial effect and relative value of each such optional form of benefit would provide a level of detail that could be overwhelming rather than helpful to participants, then the financial effect and relative value of those optional forms of benefit can be disclosed by disclosing the relative value and financial effect of a representative range of examples of those optional forms of benefit as described in paragraph (c)(5)(ii)(C) of this section if the requirements of paragraph (c)(5)(ii)(D) of this section (relating to additional information available upon request) are satisfied.

(B) *Substantially similar optional forms of benefit.* For purposes of this paragraph (c)(5)(ii), optional forms of benefit are substantially similar if those optional forms of benefit are identical except for a particular feature or features (with associated adjustment factors) and the feature or features vary linearly. For example, if a plan offers joint and survivor annuity options with survivor payments available in every whole number percentage between 50% and 100%, those joint and survivor annuity options are substantially similar optional forms of benefit. Similarly, if a participant is entitled under the plan to receive a particular form of benefit with an annuity starting date that is the first day of any month beginning three years before commencement of a distribution and ending on the date of commencement of the distribution, those forms of benefit are substantially similar optional forms of benefit.

(C) *Representative range of examples.* A range of examples with respect to substantially similar optional forms of benefit as permitted under this paragraph (c)(5) is representative only if it includes examples illustrating the financial effect and relative value of the optional forms of benefit that reflect each varying feature at both extremes of its linear range, plus at least one example illustrating the financial effect and relative value of the optional forms of benefit that reflects each varying feature at an intermediate point. However, if one intermediate example is insufficient to illustrate the pattern of variation in relative value with respect to a varying feature, examples sufficient to illustrate such pattern must be provided. Thus, for example, if a plan offers joint and survivor annuity options with survivor payments available in every whole number percentage between 50% and 100%, and if all such optional forms of benefit would be permitted to be disclosed as approximately equal in value as described in paragraph (c)(5)(ii)(B) of this section, the plan could satisfy the requirement to disclose the financial effect and relative value of a representative range of examples of those optional forms of benefit by disclosing the financial effect and relative value with respect to the joint and 50% survivor annuity, the joint and 75% survivor annuity, and the joint and 100% survivor annuity.

(D) *Requirement to provide information with respect to other optional forms of benefit upon request.* If a QJSA explanation discloses the financial effect and relative value of substantially similar optional forms of benefit by disclosing the financial effect and relative value of a representative range of examples in accordance with this paragraph (c)(5)(ii), the QJSA explanation must explain that the plan will, upon the request of the participant, disclose the financial effect and relative value of any particular optional form of benefit from among the substantially similar optional forms of benefit and the plan must provide the participant with the financial effect and relative value of any such optional form of benefit if the participant so requests.

(iii) *Separate presentations permitted for elections that apply to parts of a benefit.* If the plan permits the participant to make separate benefit elections with respect to two or more portions of the participant's benefit, the description of the finan-

cial effect and relative values of optional forms of benefit can be made separately for each such portion of the benefit, rather than for each optional form of benefit (*i.e.*, each combination of possible elections).

(d) * * *

(2) * * *

(ii) *Actual benefit must be disclosed.* * * * Reasonable estimates of the type described in paragraph (c)(3)(i) of this section may be used to determine the amount payable to the participant under the normal form of benefit for purposes of this paragraph (d)(2)(ii) if the requirements of paragraphs (c)(3)(ii) and (iii) of this section are satisfied with respect to those estimates.

* * * * *

(5) *Use of participant-specific information in generalized notice.* A QJSA explanation does not fail to satisfy the requirements of this paragraph (d) merely because it contains an item of participant-specific information in place of the corresponding generally applicable information.

* * * * *

(f) *Effective date*—(1) *General effective date for QJSA explanations*—(i) *In general.* Except as otherwise provided in this paragraph (f), this section applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after February 1, 2006.

(ii) *Reasonable, good faith transition rule.* Except with respect to any portion of a QJSA explanation that is subject to the earlier effective date rule of paragraph (f)(2) of this section, a reasonable, good faith effort to comply with these regulations will be deemed to satisfy the requirements of these regulations for QJSA explanations provided before January 1, 2007, with respect to distributions with annuity starting dates that are on or after February 1, 2006. For this purpose, a reasonable, good faith effort to comply with these regulations includes substantial compliance with §1.417(a)(3)–1 as it appeared in 26 CFR Part 1 revised April 1, 2004.

(2) *Special effective date for certain QJSA explanations*—(i) *Application to QJSA explanations with respect to certain optional forms that are less valuable than the QJSA.* This section also applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and before February 1, 2006, if the actu-

arial present value of any optional form of benefit that is subject to the requirements of section 417(e)(3) is less than the actuarial present value (as determined under §1.417(e)-1(d)) of the QJSA. For purposes of this paragraph (f)(2)(i), the actuarial present value of an optional form is treated as not less than the actuarial present value of the QJSA if—

(A) Using the applicable interest rate and applicable mortality table under §1.417(e)-1(d)(2) and (3), the actuarial present value of that optional form is not less than the actuarial present value of the QJSA for an unmarried participant; and

(B) Using reasonable actuarial assumptions, the actuarial present value of the QJSA for an unmarried participant is not less than the actuarial present value of the QJSA for a married participant.

(ii) *Requirement to disclose differences in value for certain optional forms.* A QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and before February 1, 2006, is only required to be provided under this section with respect to—

(A) An optional form of benefit that is subject to the requirements of section 417(e)(3) and that has an actuarial present value that is less than the actuarial present value of the QJSA (as described in paragraph (f)(2)(i) of this section); and

(B) The QJSA (determined without application of paragraph (c)(2)(ii) of this section).

(iii) *Application to QJSA explanations with respect to optional forms that are approximately equal in value to the QJSA.* Paragraph (c)(2)(iii)(C) of this section, relating to disclosures of optional forms of benefit that are permitted to be described as approximately equal in value to the QJSA, is not applicable to a QJSA explanation provided before January 1, 2007. However, §1.417(a)(3)-1(c)(2)(iii)(C), as it appeared in 26 CFR part 1 revised April 1, 2004, applies to a QJSA explanation with respect to any distribution with an annuity starting date that is on or after October 1, 2004, and that is provided before January 1, 2007.

(3) *Annuity starting date.* For purposes of paragraphs (f)(1) and (2) of this section, in the case of a retroactive annuity starting

date under section 417(a)(7), as described in §1.417(e)-1(b)(3)(vi), the date of commencement of the actual payments based on the retroactive annuity starting date is substituted for the annuity starting date.

(4) *Effective date for QPSA explanations.* This section applies to any QPSA explanation provided on or after July 1, 2004.

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

Approved March 15, 2006.

Eric Solomon,
*Acting Deputy Assistant
Secretary of the Treasury.*

(Filed by the Office of the Federal Register on March 23, 2006, 8:45 a.m., and published in the issue of the Federal Register for March 24, 2006, 71 F.R. 14798)

Part III. Administrative, Procedural, and Miscellaneous

Rehabilitation Projects Located in Areas Affected by 2005 Gulf Hurricanes

Notice 2006-38

I. PURPOSE

This notice is to advise taxpayers of certain relief provided by the Secretary to taxpayers having rehabilitation credit property located within the Gulf Opportunity Zone (GO Zone), the Rita GO Zone, or the Wilma GO Zone affected by Hurricanes Katrina, Rita, or Wilma in 2005.

II. BACKGROUND

Section 38(b) of the Internal Revenue Code provides a credit against income taxes for certain business credits, including the investment credit determined under § 46.

Section 46 provides that, for purposes of § 38, the amount of the investment credit includes the rehabilitation credit.

Section 47(a)(1) provides that the rehabilitation credit for any taxable year includes an amount equal to 10 percent of the qualified rehabilitation expenditures with respect to any qualified building other than a certified historic structure. Section 1400N(h)(1), added by section 101 of the Gulf Opportunity Zone Act of 2005, Pub. L. No. 109-135, 119 Stat. 2577, increases the credit percentage to 13 percent for qualified rehabilitation expenditures paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2008, with respect to any qualified rehabilitated building located in the Gulf Opportunity Zone.

Section 47(a)(2) provides that the rehabilitation credit for any taxable year includes an amount equal to 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure. Section 1400N(h)(2) increases the credit percentage to 26 percent for qualified rehabilitation expenditures paid or incurred during the period beginning on August 28, 2005, and ending on December 31, 2008, with respect to any certified historic structure located in the Gulf Opportunity Zone.

Section 47(b) provides that qualified rehabilitation expenditures with respect to

any qualified rehabilitated building shall be taken into account for the taxable year in which the qualified rehabilitated building is placed in service.

Under § 47(c)(1) a qualified rehabilitated building must be a building that has been substantially rehabilitated. Under § 47(c)(1)(C), the term substantially rehabilitated means that the qualified rehabilitation expenditures during the 24-month period selected by the taxpayer must exceed the greater of the taxpayer's adjusted basis in the building or \$5,000. For certain rehabilitations to be completed in phases, the taxpayer may use a 60-month period rather than a 24-month period if the taxpayer completes architectural plans and specifications for the phases of the project before the rehabilitation begins.

Section 50 provides generally that, if investment credit property (including a qualified rehabilitated building) is disposed of or otherwise ceases to be investment credit property with respect to the taxpayer before the close of the recapture period, a percentage of the credit allowed under § 38 must be recaptured. Casualty losses are dispositions under the recapture provisions.

Section 1.48-1(a) of the Income Tax regulations generally requires "section 38 property" to be property for which depreciation is allowable to the taxpayer. Generally, under § 1.48-1(b), depreciation is allowable to the taxpayer if the property is of a character subject to the allowance for depreciation under § 167.

Section 167 provides generally that depreciation is allowed for property used in a trade or business or held for the production of income. Section 1.167(a)-10(b) provides that the period for depreciation of an asset begins when the asset is placed in service and ends when the asset is retired from service.

Depreciation is not allowed for property that is permanently retired either from service in a trade or business or from being held for the production of income, whether retired because of casualty or otherwise. § 1.167(a)-8(a). Depreciation, however, continues to be allowed for property which has been damaged and is not currently in actual use in a trade or business (or in the production of income) but is not perma-

nently retired from the trade or business (or being held for the production of income) for a reasonable period during which the property is being repaired or restored to service. See § 1.167(a)-8(a). If a qualified rehabilitated building is permanently retired less than five full years after it was placed in service, the § 47 credit taken by the taxpayer with respect to that property is subject to recapture as provided in § 50. The § 47 credit taken by a taxpayer on a property that is damaged and not currently in actual use does not cease to be section 38 property because of the lack of actual use during a reasonable period in which the property is being repaired or restored.

III. AFFECTED AREAS

This notice applies to rehabilitation projects located in the GO Zone, the Rita GO Zone, and the Wilma GO Zone, as defined below.

Section 1400M(1) defines the GO Zone as that portion of the Hurricane Katrina disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster and Emergency Assistance Act (the Stafford Act) by reason of Hurricane Katrina. Section 1400M(2) defines the Hurricane Katrina disaster area as an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Stafford Act by reason of Hurricane Katrina.

Section 1400M(3) defines the Rita GO Zone as that portion of the Hurricane Rita disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Stafford Act by reason of Hurricane Rita. Section 1400M(4) defines the Hurricane Rita disaster area as an area with respect to which a major disaster has been declared by the President before October 6, 2005, under section 401 of the Stafford Act by reason of Hurricane Rita.

Section 1400M(5) defines the Wilma GO Zone as that portion of the Hurricane Wilma disaster area determined by the President to warrant individual or individual and public assistance from the Federal Government under the Stafford Act

by reason of Hurricane Wilma. Section 1400M(6) defines the Hurricane Wilma disaster area as an area with respect to which a major disaster has been declared by the President before November 14, 2005, under section 401 of the Stafford Act by reason of Hurricane Wilma.

IV. RELIEF PROVIDED

A. QUALIFIED REHABILITATED BUILDINGS PLACED IN SERVICE BEFORE HURRICANES KATRINA, RITA, AND WILMA, AND DAMAGED BY THOSE HURRICANES

Taxpayers generally have a reasonable period to repair and restore qualified rehabilitated buildings and to return those buildings to actual service without those buildings being considered permanently retired from service. For qualified rehabilitated buildings located in the GO Zone, the Rita GO Zone, or the Wilma GO Zone that were placed in service prior to the date on which the President declared a major disaster in the area in which the property is located, the Service will deem up to 36 months to be a reasonable period. The period begins on the date that the President

declared a major disaster in the area in which the building is located. In order to qualify for this period, the taxpayer must be engaged in the repair or restoration of the qualified rehabilitated building beginning 120 days after the date this notice is published. The term “engaged in the repair or restoration of the qualified rehabilitated building” means, with respect to the building, ongoing physical repairs; having entered into binding, written contracts for the repair or restoration to be completed within this 36-month period; or, for the period before January 1, 2007, active negotiation of contracts for the repair or restoration.

B. PROPERTIES UNDERGOING REHABILITATION AT THE TIME OF HURRICANES KATRINA, RITA, AND WILMA

In order for buildings to be qualified rehabilitated buildings, they must be substantially rehabilitated. This means that the qualified rehabilitation expenditures during the 24-month or 60-month period selected by the taxpayer must exceed the greater of the taxpayer’s adjusted basis in the building or \$5,000. For buildings

located in the GO Zone, the Rita GO Zone, or the Wilma GO Zone on which the rehabilitation began, but had not been completed and the building placed in service before the date on which the President declared a major disaster in the area in which the building is located, the running of the 24-month or 60-month period is tolled for a period of 12 months. The period of tolling begins on the date the President declared a major disaster in the area in which the property is located. Qualified rehabilitation expenditures made during the period of tolling are treated as having been made during the relevant 24-month or 60-month period for purposes of determining whether the property is substantially rehabilitated within the meaning of § 47(c)(1)(C).

V. DRAFTING INFORMATION

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

Part IV. Items of General Interest

Announcement and Report Concerning Advance Pricing Agreements

Announcement 2006–22

March 31, 2006

This Announcement is issued pursuant to § 521(b) of Pub. L. 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, which requires the Secretary of the Treasury to report annually to the public concerning Advance Pricing Agreements (APAs) and the APA Program. The first report covered calendar years 1991 through 1999. Subsequent reports covered calendar years 2000, 2001, 2002, 2003 and 2004. This seventh report describes the experience, structure and activities of the APA Program during calendar year 2005. It does not provide guidance regarding the application of the arm's length standard.

Matthew W. Frank
Director, Advance Pricing Agreement Program

Background

Internal Revenue Code (IRC) § 482 provides that the Secretary may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among two or more commonly controlled businesses if necessary to reflect clearly the income of such businesses. Under the § 482 regulations, the standard to be applied in determining the true taxable income of a controlled business is that of a business dealing at arm's length with an unrelated business. The arm's length standard has also been adopted by the international community and is incorporated into the transfer pricing guidelines issued by the Organization for Economic Cooperation and Development (OECD). OECD, TRANSFER PRICING GUIDELINES FOR MULTINATIONAL ENTERPRISES AND TAX ADMINISTRATORS (1995). Transfer pricing issues by their nature are highly factual and have traditionally been one of the largest issues identified by the IRS in its audits of multinational corporations. The APA Program is designed to resolve actual or potential transfer pricing disputes in a principled, cooperative manner, as an alternative to the traditional examination process. An APA is a binding contract between the IRS and a taxpayer by which the IRS agrees not to seek a transfer pricing adjustment under IRC § 482 for a Covered Transaction if the taxpayer files its tax return for a covered year consistent with the agreed transfer pricing method (TPM). In 2005, the IRS and taxpayers executed 53 APAs and amended 1 APA.

Since 1991, with the issuance of Rev. Proc. 91–22, 1991–1 C.B. 526, the IRS has offered taxpayers, through the APA Program, the opportunity to reach an agreement in advance of filing a tax return on the appropriate TPM to be applied to related party transactions. In 1996, the IRS issued internal procedures for processing APA requests. Chief Counsel Directives Manual (CCDM), ¶¶ 42.10.10 — 42.10.16 (November 15, 1996). Also in 1996, the IRS updated Rev. Proc. 91–22 with the release of Rev. Proc. 96–53, 1996–2 C.B. 375. In 1998, the IRS published Notice 98–65, 1998–2 C.B. 803, which set forth streamlined APA procedures for Small Business Taxpayers. Then on July 1, 2004, the IRS updated and superseded both Rev. Proc. 96–53 and Notice 98–65 by issuing Rev. Proc. 2004–40, 2004–2 C.B. 50 (July 19, 2004), effective for all APA requests filed on or after August 19, 2004.

On December 19, 2005, the IRS again updated the procedural rules for processing and administering APAs with the release of Rev. Proc. 2006–9, 2006–2 I.R.B. 278 (Jan. 9, 2006). Rev. Proc. 2006–9 supersedes Rev. Proc. 2004–40 and is effective for all APA requests filed on or after February 1, 2006.

Also in 2005, the Office of Chief Counsel held two days of public hearings to solicit comments on the state of, and ideas for improving, the APA Program. These hearings were announced in IRS Announcement 2004–98, 2004–2 C.B. 983 (December 13, 2004), and were held on February 1 and February 22, 2005. Twenty-three persons representing corporations, taxpayer groups, and professional firms spoke. Written comments from these and other persons are available on the IRS website at <http://www.irs.gov/businesses/corporations/article/0,,id=134735,00.html>.

Following these hearings, a number of steps were announced in May 2005 to strengthen APA Program operations. These steps include (i) new case management procedures designed to minimize delays in case processing; (ii) the formation of industry/issue coordination teams within the APA Office to promote efficiency, quality, and consistency; (iii) enhancement of APA Office resources; and (iv) improving the APA Program's ability to monitor compliance by requiring disclosure of standardized summary information as part of the annual report process. These steps have been implemented or are being implemented currently.

Advance Pricing Agreements

An APA generally combines an agreement between a taxpayer and the IRS on an appropriate TPM for the transactions at issue (Covered Transactions) with an agreement between the U.S. and one or more foreign tax authorities (under the authority of the mutual agreement process of our income tax treaties) that the TPM is correct. With such a “bilateral” APA, the taxpayer ordinarily is assured that the income associated with the Covered Transactions will not be subject to double taxation by the IRS and the foreign tax authority. It is the policy of the United States, as reflected in §§ 2.08 and 7 of Rev. Proc. 2006–9, to encourage taxpayers that enter the APA Program to seek bilateral or multilateral APAs when competent authority procedures are available with respect to the foreign country or countries involved. However, the IRS may execute an APA with a taxpayer without reaching a competent authority agreement (a “unilateral” APA).

A unilateral APA is an agreement between a taxpayer and the IRS establishing an approved TPM for U.S. tax purposes. A unilateral APA binds the taxpayer and the IRS, but does not prevent foreign tax administrations from taking different positions on the appropriate TPM for a transaction. As stated in § 7.07 of Rev. Proc. 2006–9, should a transaction covered by a unilateral APA be subject to double taxation as the result of an adjustment by a foreign tax administration, the taxpayer may seek relief by requesting that the U.S. Competent Authority consider initiating a mutual agreement proceeding, provided there is an applicable income tax treaty in force with the other country.

When a unilateral APA involves taxpayers operating in a country that is a treaty partner, information relevant to the APA (including a copy of the APA and APA annual reports) may be provided to the treaty partner under normal rules and principles governing the exchange of information under income tax treaties.

The APA Program

An IRS team headed by an APA team leader is responsible for the consideration of each APA. As of December 31, 2005, the APA Program had 17 team leaders. The team leader is responsible for organizing the IRS APA team. The IRS APA team leader arranges meetings with the taxpayer, secures whatever information is necessary from the taxpayer to analyze the taxpayer’s related party transactions and the available facts under the arm’s length standard of IRC § 482 and the regulations thereunder (Treas. Reg.), and leads the discussions with the taxpayer.

The APA team generally includes an economist, an international examiner, LMSB field counsel, and, in a bilateral case, a U.S. Competent Authority analyst who leads the discussions with the treaty partner. The economist may be from the APA Program or the IRS field organization. As of December 31, 2005, the APA Program had five economists. The APA team may also include an LMSB International Technical Advisor, other LMSB exam personnel, and an Appeals Officer.

The APA Process

The APA process is voluntary. Taxpayers submit an application for an APA, together with a user fee as set forth in Rev. Proc. 2006–9, § 4.12. The APA process can be broken into five phases: (1) application; (2) due diligence; (3) analysis; (4) discussion and agreement; and (5) drafting, review, and execution.

(1) Application

In many APA cases, the taxpayer’s application is preceded by a pre-file conference with the APA staff in which the taxpayer can solicit the informal views of the APA Program. Pre-file conferences can occur on an anonymous basis, although a taxpayer must disclose its identity when it applies for an APA. Taxpayers must file the appropriate user fee on or before the due date of the tax return for the first taxable year that the taxpayer proposes to be covered by the APA. Many taxpayers file a user fee first and then follow up with a full application later. The procedures for pre-file conferences, user fees, and applications can be found in §§ 3 and 4 of Rev. Proc. 2006–9.

The APA application can be a relatively modest document for small businesses. Section 9 of Rev. Proc. 2006–9 describes the special APA procedures for Small Business Taxpayers. For most taxpayers, however, the APA application is a substantial document filling several binders. The APA Program makes every effort to reach an agreement on the basis of the information provided in the taxpayer’s application.

The application is assigned to an APA team leader who is responsible for the case. The APA team leader's first responsibility is to organize the APA team. This involves contacting the appropriate LMSB International Territory Manager to secure the assignment of an international examiner to the APA case and the LMSB Counsel's office to secure a field counsel lawyer. In a bilateral case, the U.S. Competent Authority will assign a U.S. Competent Authority analyst to the team. In a large APA case, the international examiner may invite his or her manager and other LMSB personnel familiar with the taxpayer to join the team. When the APA may affect taxable years in Appeals, the appropriate appellate conferee will be invited to join the team. In all cases, the APA team leader contacts the Manager, LMSB International Technical Advisors, to determine whether to include a technical advisor on the team. The IRS APA team will generally include a technical advisor if the APA request concerns cost sharing, intangibles, or services. The APA team leader then distributes copies of the APA application to all team members and sets up an opening conference with the taxpayer. The APA office strives to hold this opening conference within 45 days of the assignment of the case to a team leader. At the opening conference, the APA team leader proposes a case plan designed, if feasible, to complete a unilateral APA or, in the case of a bilateral APA, the recommended U.S. negotiating position within 12 months from the date the full application is filed. The actual median and average times for completing unilateral APAs, recommended negotiating positions for bilateral APAs, and APAs for Small Business Taxpayers are shown below in Tables 2, 5, and 10, respectively.

(2) Due Diligence

The APA team must satisfy itself that the relevant facts submitted by the taxpayer are complete and accurate. This due diligence aspect of the APA is vital to the process. It is because of this due diligence that the IRS can reach advance agreements with taxpayers in the highly factual setting of transfer pricing. Due diligence can proceed in a number of ways. Typically, the taxpayer and the APA team will agree to dates for future meetings during the opening conference. In advance of the opening conference, the APA team leader will submit a list of questions to the taxpayer for discussion. The opening conference may result in a second set of questions. These questions are developed by the APA team and provided to the taxpayer through the APA team leader. It is important to note that this due diligence is not an audit and is focused on the transfer pricing issues associated with the transactions in the taxpayer's application, or such other transactions that the taxpayer and the IRS may agree to add.

(3) Analysis

A significant part of the analytical work associated with an APA is done typically by the APA economist and/or an IRS field economist assigned to the case. The analysis may result in the need for additional information. Once the IRS APA team has completed its due diligence and analysis, it begins discussions with the taxpayer over the various aspects of the APA including the selection of comparable transactions, asset intensity and other adjustments, the TPM, which transactions to cover, the appropriate critical assumptions, the APA term, and other key issues. The APA team leader will discuss particularly difficult issues with his or her managers, but generally the APA team leader is empowered to negotiate the APA.

(4) Discussion and Agreement

The discussion and agreement phase differs for bilateral and unilateral cases. In a bilateral case, the discussions proceed in two parts and involve two IRS offices — the APA Program and the U.S. Competent Authority. In the first part, the APA team will attempt to reach a consensus with the taxpayer regarding the recommended position that the U.S. Competent Authority should take in negotiations with its treaty partner. This recommended U.S. negotiating position is a paper drafted by the APA team leader and signed by the APA Director that provides the APA Program's view of the best TPM for the Covered Transaction, taking into account IRC § 482 and the regulations thereunder, the relevant tax treaty, and the U.S. Competent Authority's experience with the treaty partner.

The experience of the APA office and the U.S. Competent Authority is that APA negotiations are likely to proceed more rapidly with a foreign competent authority if the U.S. negotiating position is fully supported by the taxpayer. Consequently, the APA office works together with the taxpayer in developing the recommended U.S. negotiating position. On occasion, the APA team will agree to disagree with a taxpayer. In these cases, the APA office will send a recommended U.S. negotiating position to the U.S. Competent Authority that includes elements with which the taxpayer does not agree. This disagreement is noted in the paper. The APA team leader also solicits the views of the field members of the APA team, and, in the vast majority of APA cases, the international examiner, LMSB field counsel, and other IRS field team members concur in the position prepared by the APA team leader.

Once the APA Program completes the recommended U.S. negotiating position, the APA process shifts from the APA Program to the U.S. Competent Authority. The U.S. Competent Authority analyst assigned to the APA takes the recommended U.S. negotiating position and prepares the final U.S. negotiating position, which is then transmitted to the foreign competent authority. The negotiations with the foreign competent authority are conducted by the U.S. Competent Authority analyst, most often in face-to-face negotiating sessions conducted periodically throughout the year. At the request of the U.S. Competent Authority analyst, the APA team leader may continue to assist the negotiations.

In unilateral APA cases, the discussions proceed solely between the APA Program and the taxpayer. In a unilateral case, the taxpayer and the APA Program must reach agreement to conclude an APA. Like the bilateral cases, the APA team leader almost always will achieve a consensus with the IRS field personnel assigned to the APA team regarding the final APA. The APA Program has a procedure in which the IRS field personnel are solicited formally for their concurrence in the final APA. This concurrence, or any item in disagreement, is noted in a cover memorandum prepared by the APA team leader that accompanies the final APA sent forward for review and execution.

(5) Drafting, Review, and Execution

Once the IRS and the taxpayer reach agreement, the drafting of the final APA generally takes little time because the APA Program has developed standard language that is incorporated into every APA. The current, recently revised version of this language is found in Attachment A. APAs are reviewed by the Branch Chief and the APA Director. In addition, the team leader prepares a summary memorandum for the Associate Chief Counsel (International) (ACC(I)). On March 1, 2001, the ACC(I) delegated to the APA Director the authority to execute APAs on behalf of the IRS. See Chief Counsel Notice CC-2001-016. The APA is executed for the taxpayer by an appropriate corporate officer.

Model APA at Attachment A
[§ 521(b)(2)(B)]

Attachment A contains the current version of the model APA language. As part of its continuing effort to improve its work product, the APA Program recently revised the model language to reflect the program’s collective experience with substantive and drafting issues. The most significant revisions are designed primarily to clarify how TPMs typically employed in APAs, and adjustments that may be necessary to conform to such TPMs, are to be applied and reflected in the taxpayer’s tax returns. Other significant revisions include those intended (a) to clarify that the common parent of a US consolidated return group is the appropriate signatory for APAs covering members of the group, (b) to establish more clearly the taxpayer’s obligation to file returns, or otherwise report results, consistent with the APA, particularly for APA years that close before or near the APA execution date; (c) to provide fixed, identified dates for filing annual reports, and (d) to reflect the new procedure requiring disclosure of standardized summary information as part of the annual report process.

The Current APA Office Structure, Composition, and Operation

In 2005, the APA office consisted of four branches with Branches 1 and 3 staffed with APA team leaders and Branch 2 staffed with economists and a paralegal. Branch 4, the APA West Coast branch, is headquartered in Laguna Niguel, California, with an additional office in San Francisco, and is presently staffed with both team leaders and economists.

Overall, the APA staff increased by one, to 33 from 32, from the end of 2004 to the end of 2005. A second Special Counsel was added to the Program, while the number of APA team leaders stayed constant at 17, and the number of APA economists stayed constant at five.

As of December 31, 2005, the APA staff was as follows:

| | | | |
|---|--|--|---|
| <p><i>Director’s Office</i> 1 Director 2 Special Counsels to the Director 1 Secretary to the Director</p> | | | |
| <p><i>Branch 1</i> 1 Branch Chief 1 Secretary 6 Team Leaders</p> | <p><i>Branch 2</i> 1 Branch Chief 1 Paralegal 3 Economists</p> | <p><i>Branch 3</i> 1 Acting Branch Chief (also Special Counsel) 1 Secretary 8 Team Leaders</p> | <p><i>Branch 4</i> 1 Branch Chief 1 Secretary 3 Team Leaders 2 Economists</p> |

APA Training

In 2005, the APA office continued to emphasize training. Training sessions addressed APA-related current developments, new APA office practices and procedures, and international tax law issues. The APA New Hire Training materials were updated, as necessary, throughout the year. The updated materials are available to the public through the APA internet site at <http://www.irs.gov/businesses/corporations/article/0,,id=96221,00.html>. These materials do not constitute guidance on the application of the arm’s length standard.

APA Program Statistical Data

[§ 521(b)(2)(C) and (E)]

The statistical information required under § 521(b)(2)(C) is contained in Tables 1 and 9 below; the information required under § 521(b)(2)(E) is contained in Tables 2 and 3 below:

TABLE 1: APA APPLICATIONS, EXECUTED APAs, AND PENDING APAs

| | Unilateral | Bilateral | Multilateral | Year Total | Cumulative Total |
|---|-------------------|------------------|---------------------|-------------------|-------------------------|
| APA applications filed during year 2005 | 21 | 61 | | 82 | 928 |
| APAs executed | | | | | |
| Year 2005 | 28 | 25 | | 53 | 610 |
| 1991–2004 | 254 | 295 | 8 | 557 | |
| APA renewals executed during year 2005 | 7 | 9 | | 16 | 145 |
| Revised or Amended APAs executed during year 2005 | 1 | 0 | | 1 | 30 |
| Pending requests for APAs | 45 | 195 | | 240 | |
| Pending requests for new APAs | 25 | 133 | | 158 | |
| Pending requests for renewal APAs | 20 | 62 | | 82 | |
| APAs canceled or revoked | 0 | 0 | | 0 | 5 |
| APAs withdrawn | 6 | 5 | | 11 | 105 |

TABLE 2: MONTHS TO COMPLETE APAs

| Months to Complete Advance Pricing Agreements in Year 2005 | | | | | |
|---|------|--|------|--|------|
| All New | | All Renewals | | All Combined | |
| Average | 35.0 | Average | 33.3 | Average | 34.3 |
| Median | 34.1 | Median | 28.7 | Median | 27.2 |
| | | | | | |
| Unilateral New | | Unilateral Renewals | | Unilateral Combined | |
| Average | 17.9 | Average | 24.3 | Average | 20.6 |
| Median | 17.9 | Median | 18.3 | Median | 18.1 |
| | | | | | |
| Bilateral/Multilateral New | | Bilateral/Multilateral Renewals | | Bilateral/Multilateral Combined | |
| Average | 51.0 | Average | 42.3 | Average | 47.4 |
| Median | 49.3 | Median | 39.2 | Median | 45.1 |

TABLE 3: APA COMPLETION TIME – MONTHS PER APA

| Months | Number of APAs | Months | Number of APAs | Months | Number of APAs | Months | Number of APAs |
|--------|----------------|--------|----------------|--------|----------------|--------|----------------|
| 1 | | 22 | 2 | 43 | | 64 | 1 |
| 2 | | 23 | 4 | 44 | 1 | 65 | |
| 3 | | 24 | 2 | 45 | 2 | 66 | |
| 4 | | 25 | 1 | 46 | | 67 | |
| 5 | 1 | 26 | 1 | 47 | 1 | 68 | |
| 6 | | 27 | 1 | 48 | | 69 | |
| 7 | 1 | 28 | 2 | 49 | | 70 | |
| 8 | | 29 | 2 | 50 | | 71 | |
| 9 | | 30 | | 51 | | 72 | |
| 10 | 2 | 31 | | 52 | | 73 | |
| 11 | 2 | 32 | | 53 | | 74 | |
| 12 | | 33 | 1 | 54 | 1 | 75 | |
| 13 | | 34 | | 55 | 2 | 76 | 1 |
| 14 | 2 | 35 | | 56 | 1 | 77 | 2 |
| 15 | 1 | 36 | | 57 | | 78 | |
| 16 | 2 | 37 | | 58 | 1 | 79 | |
| 17 | 2 | 38 | 2 | 59 | 1 | 80 | |
| 18 | 2 | 39 | 2 | 60 | 1 | 81 | 1 |
| 19 | | 40 | | 61 | | 82 | |
| 20 | | 41 | | 62 | | 83 | 1 |
| 21 | 1 | 42 | | 63 | | 84 | |

TABLE 4: RECOMMENDED NEGOTIATING POSITIONS

| | |
|--|----|
| Recommended Negotiating Positions Completed in Year 2005 | 47 |
|--|----|

TABLE 5: MONTHS TO COMPLETE RECOMMENDED NEGOTIATING POSITIONS

| New | | Renewal | | Combined | |
|---------|------|---------|------|----------|------|
| Average | 21.9 | Average | 20.0 | Average | 21.0 |
| Median | 19.5 | Median | 19.1 | Median | 19.2 |

TABLE 6: RECOMMENDED NEGOTIATING POSITIONS COMPLETION TIME – MONTHS PER APA

| Months | Number | Months | Number | Months | Number | Months | Number |
|--------|--------|--------|--------|--------|--------|--------|--------|
| 1 | 1 | 16 | 1 | 31 | 1 | 46 | |
| 2 | | 17 | 3 | 32 | 1 | 47 | |
| 3 | | 18 | 2 | 33 | | 48 | |
| 4 | | 19 | 2 | 34 | | 49 | |
| 5 | | 20 | 2 | 35 | | 50 | |
| 6 | 2 | 21 | 2 | 36 | | 51 | |
| 7 | 1 | 22 | 2 | 37 | 1 | 52 | |
| 8 | 2 | 23 | 1 | 38 | | 53 | |
| 9 | 1 | 24 | 2 | 39 | | 54 | 1 |
| 10 | | 25 | | 40 | 1 | 55 | |
| 11 | 1 | 26 | | 41 | | 56 | |
| 12 | | 27 | 3 | 42 | | 57 | |
| 13 | 2 | 28 | | 43 | 2 | 58 | |
| 14 | 3 | 29 | 2 | 44 | | 59 | |
| 15 | 3 | 30 | 2 | 45 | | 60 | |

Tables 7 and 8 below show how long each APA request pending at the end of 2005 has been in the system as measured from the filing date of the APA submission. We believe that reporting the age of both completed cases and pending cases reflects more accurately the APA Program's success or failure in moving cases and improves the public's ability to evaluate the current timeliness of the APA process. (The numbers in Tables 7 and 8 for pending unilateral and bilateral cases differ from the numbers in Table 1 because whereas Table 1 includes any case for which a user fee has been paid, Tables 7 and 8 reflect only cases for which submissions have been received.)

TABLE 7: UNILATERAL APAs – TIME IN INVENTORY – MONTHS PER APA

| Months | Number of APAs | Months | Number of APAs | Months | Number of APAs | Months | Number of APAs |
|--------|----------------|--------|----------------|--------|----------------|--------|----------------|
| 1 | 3 | 16 | 2 | 31 | | 46 | |
| 2 | | 17 | 2 | 32 | | 47 | |
| 3 | 1 | 18 | 3 | 33 | | 48 | |
| 4 | 3 | 19 | | 34 | 1 | 49 | |
| 5 | 1 | 20 | 1 | 35 | | 50 | |
| 6 | 2 | 21 | | 36 | | 51 | |
| 7 | 1 | 22 | 1 | 37 | | 52 | |
| 8 | 1 | 23 | | 38 | | 53 | 1 |
| 9 | 2 | 24 | 2 | 39 | | 54 | |
| 10 | 2 | 25 | 1 | 40 | | 55 | |
| 11 | 2 | 26 | | 41 | | 56 | |

| Months | Number of APAs | Months | Number of APAs | Months | Number of APAs | Months | Number of APAs |
|--------|----------------|--------|----------------|--------|----------------|--------|----------------|
| 12 | 5 | 27 | | 42 | | 57 | |
| 13 | | 28 | 2 | 43 | | 58 | |
| 14 | 2 | 29 | | 44 | | 59 | |
| 15 | | 30 | | 45 | | 60 | |

TABLE 8: BILATERAL APAs – TIME IN INVENTORY – MONTHS PER APA

| Months | Number of APAs | Months | Number of APAs | Months | Number of APAs | Months | Number of APAs |
|--------|----------------|--------|----------------|--------|----------------|--------|----------------|
| 1 | | 29 | | 57 | 1 | 85 | |
| 2 | 1 | 30 | 1 | 58 | 1 | 86 | |
| 3 | 2 | 31 | 2 | 59 | | 87 | |
| 4 | 2 | 32 | 5 | 60 | 1 | 88 | |
| 5 | 2 | 33 | 5 | 61 | | 89 | |
| 6 | 6 | 34 | 4 | 62 | | 90 | |
| 7 | 5 | 35 | 2 | 63 | | 91 | |
| 8 | 2 | 36 | 1 | 64 | 2 | 92 | |
| 9 | 10 | 37 | 2 | 65 | | 93 | |
| 10 | 4 | 38 | 2 | 66 | | 94 | |
| 11 | 3 | 39 | 6 | 67 | | 95 | 1 |
| 12 | 2 | 40 | 2 | 68 | 1 | 96 | |
| 13 | 1 | 41 | 1 | 69 | | 97 | |
| 14 | 5 | 42 | 2 | 70 | | 98 | |
| 15 | 8 | 43 | 2 | 71 | | 99 | |
| 16 | 7 | 44 | 3 | 72 | | 100 | |
| 17 | 4 | 45 | 3 | 73 | | 101 | |
| 18 | 4 | 46 | 2 | 74 | 1 | 102 | |
| 19 | 5 | 47 | 1 | 75 | | 103 | |
| 20 | 2 | 48 | | 76 | | 104 | |
| 21 | 4 | 49 | 2 | 77 | | 105 | |
| 22 | 6 | 50 | 2 | 78 | | 106 | |
| 23 | 7 | 51 | | 79 | | 107 | |
| 24 | 3 | 52 | 2 | 80 | | 108 | |
| 25 | | 53 | | 81 | | 109 | |
| 26 | 4 | 54 | 3 | 82 | 3 | 110 | |
| 27 | 5 | 55 | 1 | 83 | | 111 | 1 |
| 28 | 8 | 56 | 1 | 84 | | 112 | |

TABLE 9: SMALL BUSINESS TAXPAYER APAs

| | |
|--|-----------|
| Small Business Taxpayer APAs Completed in Year 2005 | 10 |
| New | 4 |
| Renewals | 6 |
| Unilateral | 9 |
| Bilateral | 1 |

TABLE 10: MONTHS TO COMPLETE SMALL BUSINESS TAXPAYER APAs

| Months to Complete Small Business Taxpayer APAs in Year 2005 | | | | | |
|---|------|----------------|------|-----------------|------|
| New | | Renewal | | Combined | |
| Average | 18.5 | Average | 16.7 | Average | 17.4 |
| Median | 21.5 | Median | 15.6 | Median | 16.2 |

TABLE 11: INDUSTRIES COVERED¹

| Industry Involved – NAICS Codes | Number |
|---|---------------|
| Computer and electronic product manufacturing – 334 | 7–9 |
| Electronic equipment, appliance and component manufacturing – 335 | 7–9 |
| Food manufacturing – 311 | 4–6 |
| Securities, commodity contracts and other intermediary and related activities – 523 | 4–6 |
| Wholesale trade, durable goods – 421 | 1–3 |
| Transportation equipment manufacturing – 336 | 1–3 |
| Wholesale trade, nondurable goods – 422 | 1–3 |
| Chemical manufacturing – 325 | 1–3 |
| Information service and data processing services – 514 | 1–3 |
| Motor vehicle and parts dealers – 441 | 1–3 |
| Miscellaneous manufacturing – 339 | 1–3 |
| Beverage and tobacco manufacturing – 312 | 1–3 |
| Fabricated metal manufacturing – 332 | 1–3 |
| Sporting goods, hobby, book and music stores – 451 | 1–3 |
| Food and beverage stores – 445 | 1–3 |
| Apparel manufacturing – 315 | 1–3 |
| Air transportation – 481 | 1–3 |
| Clothing and clothing accessories stores – 448 | 1–3 |
| Pipeline transportation – 486 | 1–3 |

¹ The categories in this table are drawn from the North American Industry Classification System (NAICS), which has replaced the U.S. Standard Industrial Classification (SIC) system. NAICS was developed jointly by the U.S., Canada, and Mexico to provide new comparability in statistics about business activity across North America.

Trades or Businesses

[§ 521(b)(2)(D)(i)]

The nature of the relationships between the related organizations, trades, or businesses covered by APAs executed in 2005 is set forth in Table 12 below:

TABLE 12: NATURE OF RELATIONSHIPS BETWEEN RELATED ENTITIES

| Relationship | Number of APAs |
|---|----------------|
| Foreign Parent – U.S. Subsidiary (-ies) | 34 |
| U.S. Parent – Foreign Subsidiary (-ies) | 16 |
| Foreign Company and U.S. Branch(es) | 3 |

Covered Transactions

[§ 521(b)(2)(D)(ii)]

The controlled transactions covered by APAs executed in 2005 are set forth in Table 13 and Table 14 below:

TABLE 13: TYPES OF COVERED TRANSACTIONS

| Transaction Type | Number |
|---|--------|
| Sale of tangible property into the U.S. | 28 |
| Performance of services by U.S. entity | 17 |
| Use of intangible property by Non-U.S. entity | 15 |
| Performance of services by Non-U.S. entity | 8 |
| Sale of tangible property from the U.S. | 8 |
| Use of intangible property by U.S. entity | ≤ 3 |
| Financial products - Non-U.S. parent | ≤ 3 |
| Financial products - U.S. branch of foreign company | ≤ 3 |
| R&D cost sharing | ≤ 3 |
| Other | 4 |

TABLE 14: TYPES OF SERVICES INCLUDED IN COVERED TRANSACTIONS

| Intercompany Services Involved in the Covered Transactions | Number |
|--|--------|
| Marketing | 13 |
| Research and development | 13 |
| Administrative | 10 |
| Sales support | 9 |
| Technical support services | 9 |
| Distribution | 7 |
| Product support | 7 |

| Intercompany Services Involved in the Covered Transactions — Continued | Number |
|---|---------------|
| Accounting | 6 |
| Headquarters costs | 6 |
| Management | 5 |
| Logistical support | 5 |
| Legal | 4 |
| License administration services | 4 |
| Billing services | ≤ 3 |
| Communication service | ≤ 3 |
| Assembly | ≤ 3 |
| Contract research & development | ≤ 3 |
| Purchasing | ≤ 3 |
| Warranty services | ≤ 3 |
| “Destination services” - hotel & reservations | ≤ 3 |
| Testing and installation services | ≤ 3 |
| Loan guarantees | ≤ 3 |

Business Functions Performed and Risks Assumed
[§ 521(b)(2)(D)(ii)]

The general descriptions of the business functions performed and risks assumed by the organizations, trades, or businesses whose results are tested in the Covered Transactions in the APAs executed in 2005 are set forth in Tables 15 and 16 below:

TABLE 15: FUNCTIONS PERFORMED BY THE TESTED PARTY

| Functions Performed | Number |
|--|---------------|
| Distribution functions | 42 |
| Marketing functions | 26 |
| Manufacturing | 19 |
| Research and development | 19 |
| Managerial, legal, accounting, finance, personnel, and other support services | 18 |
| Purchasing and materials management | 13 |
| Product assembly and/or packaging | 12 |
| Transportation and warehousing | 11 |
| Product design and engineering | 10 |
| Licensing of intangibles | 10 |
| Product testing and quality control | 9 |
| Technical training and tech support for sales staff (including sub-distributors) | 8 |
| Product service (repairs, etc.) | 5 |
| Trading and risk management of financial products | 4 |
| Consulting services | 4 |
| Process engineering | 4 |

| Functions Performed — Continued | Number |
|---|---------------|
| Telecom services | ≤ 3 |
| Engineering and construction related services | ≤ 3 |

TABLE 16: RISKS ASSUMED BY THE TESTED PARTY

| Risks Assumed | Number |
|---|---------------|
| Market risks, including fluctuations in costs, demand, pricing, & inventory | 62 |
| General business risks (<i>e.g.</i> , related to ownership of PP&E) | 57 |
| Credit and collection risks | 54 |
| Financial risks, including interest rates & currency | 32 |
| Product liability risks | 23 |
| R&D risks | 13 |

Discussion

The vast majority of APAs have Covered Transactions that involve numerous business functions and risks. For instance, with respect to functions, companies that manufacture products have typically conducted research and development, engaged in product design and engineering, manufactured the product, marketed and distributed the product, and performed support functions such as legal, finance, and human resources services. Regarding risks, companies have been subject to market risks, R&D risks, financial risks, credit and collection risks, product liability risks, and general business risks. In the APA evaluation process, a significant amount of time and effort is devoted to understanding how the functions and risks are allocated among the controlled group of companies that are party to the Covered Transactions.

In its APA submission, the taxpayer must provide a functional analysis. The functional analysis identifies the economic activities performed, the assets employed, the economic costs incurred, and the risks assumed by each of the controlled parties. The importance of the functional analysis derives from the fact that economic theory posits that there is a positive relationship between risk and expected return and that different functions provide different value and have different opportunity costs associated with them. It is important that the functional analysis go beyond simply categorizing the tested party as, say, a distributor. It should provide more specific information because, in the example of distributors, not all distributors undertake similar functions and risks.

Thus, the functional analysis is critical in determining the TPM (including the selection of comparables). Although functional comparability is an essential factor in evaluating the reliability of the TPM (including the selection of comparables), the APA evaluation process also involves consideration of economic conditions such as the economic condition of the particular industry.

In evaluating the functional analysis, the APA Program considers contractual terms between the controlled parties and the consistency of the conduct of the parties with respect to the allocation of risk. In accordance with the section 482 regulations, the APA Program also gives consideration to the ability of controlled parties to fund losses that might be expected to occur as a result of the assumption of risk. Another relevant factor considered in evaluating the functional analysis is the extent to which a controlled party exercises managerial or operational control over the business activities that directly influence the amount of income or loss realized. The section 482 regulations posit that parties at arm's length will ordinarily bear a greater share of those risks over which they have relatively more control.

Related Organizations, Trades, or Businesses Whose Prices or Results are Tested to Determine Compliance with APA Transfer Pricing Methods

[§ 521(b)(2)(D)(iii)]

The related organizations, trades, or businesses whose prices or results are tested to determine compliance with TPMs prescribed in APAs executed in 2005 are set forth in Table 17 below:

**TABLE 17: RELATED ORGANIZATIONS, TRADES,
OR BUSINESSES WHOSE PRICES OR RESULTS ARE TESTED²**

| Type of Organization | Number |
|--|--------|
| U.S. distributor | 27 |
| Multiple tested parties | 15 |
| U.S. provider of services | 15 |
| U.S. manufacturer | 11 |
| Non-U.S. distributor | 8 |
| Non-U.S. provider of services | 6 |
| Non-U.S. dealer in financial products | ≤ 3 |
| U.S. dealer in financial products | ≤ 3 |
| U.S. licensee of intangible property | ≤ 3 |
| U.S. licensor of intangible property | ≤ 3 |
| U.S. participant in cost sharing agreement | ≤ 3 |
| Non-U.S. manufacturer | ≤ 3 |
| Non-U.S. licensor of intangible property | ≤ 3 |
| Other | ≤ 3 |

Transfer Pricing Methods and the Circumstances Leading to the Use of Those Methods
[§ 521(b)(2)(D)(iv)]

The TPMs used in APAs executed in 2005 are set forth in Tables 18–20 below:

**TABLE 18: TRANSFER PRICING METHODS USED FOR TRANSFERS OF
TANGIBLE AND INTANGIBLE PROPERTY³**

| TPM Used | Number |
|--|--------|
| CPM: PLI is operating margin | 16 |
| CPM: PLI is Berry ratio | 6 |
| Residual profit split | 6 |
| CUT (intangibles only) | 6 |
| CPM: PLI is gross margin | 5 |
| Resale Price Method (tangibles only) | 5 |
| CPM: PLI is markup on total costs | 4 |
| Other profit split | ≤ 3 |
| CPM: PLI is other PLI | ≤ 3 |
| CPM: PLI is return on assets or capital employed | ≤ 3 |

² "Multiple tested parties" includes covered transactions that utilize profit splits, CUPs, and CUTs.

³ Profit Level Indicators (PLIs) used with the Comparable Profit Method of Treas. Reg. § 1.482-5, and as used in these TPM tables, are as follows: (1) operating margin (ratio of operating profit to sales); (2) Berry ratio (gross profit to operating expenses); (3) gross margin (ratio of gross profit to sales); (4) markup on total costs (percentage markup on total costs); and (5) rate of return on assets or capital employed (ratio of operating profit to operating assets).

| TPM Used — Continued | Number |
|-------------------------|--------|
| Comparable profit split | ≤ 3 |
| Unspecified method | ≤ 3 |
| Other | ≤ 3 |

TABLE 19: TRANSFER PRICING METHODS USED FOR SERVICES

| TPM Used | Number |
|-----------------------------------|--------|
| Cost plus a markup | 8 |
| Cost with no markup | 8 |
| CPM: PLI is markup on total costs | 7 |
| CPM: PLI is operating margin | 4 |
| CPM: PLI is Berry ratio | ≤ 3 |
| Other | ≤ 3 |

TABLE 20: TRANSFER PRICING METHODS USED FOR FINANCIAL PRODUCTS

| TPM Used | Number |
|--|--------|
| Profit split | ≤ 3 |
| Interbranch allocation (using indirect evidence of CUPs) | ≤ 3 |

Discussion

The TPMs used in APAs completed during 2005 were based on the section 482 regulations. Under Treas. Reg. § 1.482–3, the arm’s length amount for controlled transfers of tangible property may be determined using the Comparable Uncontrolled Price (CUP) method, the Resale Price Method, the Cost Plus Method, the Comparable Profits Method (CPM), or the Profit Split Method. Under Treas. Reg. § 1.482–4, the arm’s length amount for controlled transfers of intangible property may be determined using the Comparable Uncontrolled Transaction (CUT) method, CPM, or the Profit Split Method. An “Unspecified Method” may be used for both tangible and intangible property if it provides a more reliable result than the enumerated methods under the best method rule of Treas. Reg. § 1.482–1(c). For transfers involving the provision of services, Treas. Reg. § 1.482–2(b) provides that services performed for the benefit of another member of a controlled group should bear an arm’s length charge, either deemed to be equal to the cost of providing the services (when non-integral, see Treas. Reg. § 1.482–2(b)(3)) or which should be an amount that would have been charged between independent parties.

In addition, Treas. Reg. § 1.482–2(a) provides rules concerning the proper treatment of loans or advances, and Treas. Reg. § 1.482–7 provides rules for qualified cost sharing arrangements under which the parties agree to share the costs of development of intangibles in proportion to their shares of reasonably anticipated benefits. APAs involving cost sharing arrangements generally address both the method of allocating costs among the parties as well as determining the appropriate amount of the “buy-in” payment due for the transfer of pre-existing intangibles to the controlled participants.

In reviewing the TPMs applicable to transfers of tangible and intangible property reflected in Table 18, the majority of the APAs followed the specified methods. However, several points should be made. The § 482 regulations note that for transfers of tangible property, the Comparable Uncontrolled Price (CUP) method will generally be the most direct and reliable measure of an arm’s length price for the Controlled Transaction if sufficiently reliable comparable transactions can be identified. Treas. Reg. § 1.482–3(b)(2)(ii)(A). It was the experience of the APA Program in 2005, that in the cases that came into the APA Program, sufficiently reliable CUP transactions were difficult to find. In APAs executed in 2005, no Covered Transaction used the CUP method.

Similar to the CUP method, for transfers of intangible property, the CUT method will generally provide the most reliable measure of an arm's length result if sufficiently reliable comparables may be found. Treas. Reg. § 1.482-4(c)(2)(ii). It has generally been difficult to identify external comparables, and APAs using the CUT method tend to rely on internal transactions between the taxpayer and unrelated parties. In 2005, six Covered Transactions utilized the CUT TPM.

The Cost Plus Method (tangibles only) and Resale Price Method were applied in 2005 in zero and five APAs, respectively. See Treas. Reg. § 1.482-3(c), (d).

The CPM is frequently applied in APAs. This is because reliable public data on comparable business activities of independent companies may be more readily available than potential CUP data, and comparability of resources employed, functions, risks, and other relevant considerations are more likely to exist than comparability of product. The CPM also tends to be less sensitive than other methods to differences in accounting practices between the tested party and comparable companies, e.g., classification of expenses as cost of goods sold or operating expenses. Treas. Reg. § 1.482-3(c)(3)(iii)(B), and -3(d)(3)(iii)(B). In addition, the degree of functional comparability required to obtain a reliable result under the CPM is generally less than required under the Resale Price or Cost Plus methods, because differences in functions performed often are reflected in operating expenses, and thus taxpayers performing different functions may have very different gross profit margins but earn similar levels of operating profit. Treas. Reg. § 1.482-5(c)(2).

Table 18 reflects more than 32 uses of the CPM (with varying PLIs) in Covered Transactions involving tangible or intangible property. In some APAs, the CPM was also used concurrently with other methods.

The CPM has proven to be versatile in part because of the various PLIs that can be used in connection with the method. Reaching agreement on the appropriate PLI has been the subject of much discussion in many of the cases, and it depends heavily on the facts and circumstances. Some APAs have called for different PLIs to apply to different parts of the Covered Transactions or with one PLI used as a check against the primary PLI.

The CPM was also used regularly with services as the Covered Transactions in APAs executed in 2005. There were at least 12 services Covered Transactions using the CPM method with various PLIs according to the specific facts of the taxpayers involved. Table 19 reflects the methods used to determine the arm's length results for APAs involving services transactions.

In 2005, six APAs involving tangible or intangible property used the Residual Profit Split Method, Treas. Reg. § 1.482-6(c)(3). In residual profit split cases, routine contributions by the controlled parties are allocated routine market returns, and the residual income is allocated among the controlled taxpayers based upon the relative value of their contributions of non-routine intangible property to the relevant business activity.

Profit splits have also been used in a number of financial product APAs in which the primary income-producing functions are performed in more than one jurisdiction. Three or fewer financial product APAs executed in 2005 applied a profit split method.

Critical Assumptions

[§ 521(b)(2)(D)(v)]

Critical Assumptions used in APAs executed in 2005 are described in Table 21 below:

TABLE 21: CRITICAL ASSUMPTIONS

| Critical Assumptions involving the following: | Number of APAs |
|---|----------------|
| Material changes to the business | 53 |
| Material changes to tax and/or financial accounting practices | 53 |
| Assets will remain substantially same | 5 |
| Use of Mark-to-Market method | ≤ 3 |
| Minimum sales volume | ≤ 3 |
| New import/export non-tariff barriers | ≤ 3 |
| Sales projections or expectations | ≤ 3 |
| Currency fluctuations | ≤ 3 |
| Ratio of SG&A to sales | ≤ 3 |

| Critical Assumptions involving the following: — Continued | Number of APAs |
|--|-----------------------|
| Other financial ratio | ≤ 3 |
| Other | 12 |

Discussion

APAs include critical assumptions upon which their respective TPMs depend. A critical assumption is any fact (whether or not within the control of the taxpayer) related to the taxpayer, a third party, an industry, or business and economic conditions, the continued existence of which is material to the taxpayer's proposed TPM. Critical assumptions might include, for example, a particular mode of conducting business operations, a particular corporate or business structure, or a range of expected business volume. Rev. Proc. 2006-9, § 4.05. Failure to meet a critical assumption may render an APA inappropriate or unworkable.

A critical assumption may change (and/or fail to materialize) due to uncontrollable changes in economic circumstances, such as a fundamental and dramatic change in the economic conditions of a particular industry. In addition, a critical assumption may change (and/or fail to materialize) due to a taxpayer's actions that are initiated for good faith business reasons, such as a change in business strategy, mode of conducting operations, or the cessation or transfer of a business segment or entity covered by the APA.

If a critical assumption has not been met, the APA may be revised by agreement of the parties. If such an agreement cannot be achieved, the APA may be canceled. If a critical assumption has not been met, it requires taxpayer's notice to and discussion with the Service, and, in the case of a bilateral APA, competent authority consideration. Rev. Proc. 2006-9, § 11.05.

Sources of Comparables, Selection Criteria, and the Nature of Adjustments to Comparables and Tested Parties
[§ 521(b)(2)(D)(v), (vi), and (vii)]

The sources of comparables, selection criteria, and rationale used in determining the selection criteria for APAs executed in 2005 are described in Tables 22 through 24 below. Various formulas for making adjustments to comparables are included as Attachment B.

TABLE 22: SOURCES OF COMPARABLES

| Comparable Sources | Number of Times This Source Used |
|---------------------------------------|---|
| Compustat | 46 |
| Disclosure | 17 |
| Worldscope | 12 |
| Moody's | 8 |
| Taxpayer's information on competition | ≤ 3 |
| Amadeus | ≤ 3 |
| Japan Company Handbook | ≤ 3 |
| Mergent FIS | ≤ 3 |
| Other | 4 |

TABLE 23: COMPARABLE SELECTION CRITERIA

| Selection Criteria Considered | Number of Times This Criterion Used |
|--------------------------------------|--|
| Comparable functions | 60 |
| Comparable risks | 48 |
| Comparable industry | 44 |
| Comparable products | 37 |
| Comparable intangibles | 36 |
| Comparable terms | 9 |

TABLE 24: ADJUSTMENTS TO COMPARABLES OR TESTED PARTIES

| Adjustment | Number of Times Used |
|--|-----------------------------|
| Balance sheet adjustments | |
| Inventory | 36 |
| Payables | 34 |
| Receivables | 33 |
| Property, plant, equipment | 5 |
| Accounting adjustments | |
| LIFO to FIFO inventory accounting | 13 |
| Accounting reclassifications (<i>e.g.</i> , from COGS to operating expenses) | ≤ 3 |
| Other | ≤ 3 |
| Profit level indicator adjustments (used to “back into” one PLI from another) | |
| Operating expense | 4 |
| Miscellaneous adjustments | |
| Research & development | ≤ 3 |
| Goodwill value or amortization | ≤ 3 |
| Other | ≤ 3 |

Discussion

At the core of most APAs are comparables. The APA Program works closely with taxpayers to find the best and most reliable comparables for each Covered Transaction. In some cases, CUPs or CUTs can be identified. In other cases, comparable business activities of independent companies are utilized in applying the CPM or a profit split method. Generally, in the APA Program’s experience since 1991, CUPs and CUTs have been most often derived from the internal transactions of the taxpayer.

For profit-based methods in which comparable business activities or functions of independent companies are sought, the APA Program typically has applied a three-part process. First, a pool of potential comparables has been identified through broad searches. From this pool, companies having transactions that are clearly not comparable to those of the tested party have been eliminated through the use of quantitative and qualitative analyses, *i.e.*, quantitative screens and business descriptions. Then, based on a review of available descriptive and financial data, a set of comparable transactions or business activities of independent companies has been finalized. The comparability of the finalized set has then been enhanced through the application of adjustments.

Sources of Comparables

Comparables used in APAs can be U.S. or foreign, depending on the relevant market, the type of transaction being evaluated, and the results of the functional and risk analyses. In general, comparables have been located by searching a variety of databases that provide data on U.S. publicly traded companies and on a combination of public and private non-U.S. companies. Table 22 shows the various databases and other sources used in selecting comparables for the APAs executed in 2005.

Although comparables were most often identified from the databases cited in Table 22, in some cases comparables were found from other sources, such as comparables derived internally from taxpayer transactions with third parties.

Selecting Comparables

Initial pools of potential comparables generally are derived from the databases using a combination of industry and keyword identifiers. Then, the pool is refined using a variety of selection criteria specific to the transaction or business activity being tested and the TPM being used.

The listed databases allow for searches by industrial classification, by keywords, or by both. These searches can yield a number of companies whose business activities may or may not be comparable to those of the entity being tested. Therefore, comparables based solely on industry classification or keyword searches are rarely used in APAs. Instead, the pool of comparables is examined closely, and companies are selected based on a combination of screens, business descriptions, and other information found in the companies' Annual Reports to shareholders and filings with the U.S. Securities and Exchange Commission (SEC).

Business activities are required to meet certain basic comparability criteria to be considered comparables. Functions, risks, economic conditions, and the property (product or intangible) and services associated with the transaction must be comparable. Determining comparability can be difficult — the goal has been to use comparability criteria restrictive enough to eliminate business activities that are not comparable, but yet not so restrictive as to have no comparables remaining. The APA Program normally has begun with relatively strict comparability criteria and then has relaxed them slightly if necessary to derive a pool of reliable comparables. A determination on the appropriate size of the comparables set, as well as the business activities that comprise the set, is highly fact specific and depends on the reliability of the results.

In addition, the APA Program, consistent with the section 482 regulations, generally has looked at the results of comparables over a multi-year period. Sometimes this has been a three-year period, but it has been more or less, depending on the circumstances of the controlled transaction. Using a shorter period might result in the inclusion of comparables in different stages of economic development or use of atypical years of a comparable due to cyclical fluctuations in business conditions.

Many Covered Transactions have been tested with comparables that have been chosen using additional criteria and/or screens. These include sales level criteria and tests for financial distress and product comparability. These common selection criteria and screens have been used to increase the overall comparability of a group of companies and as a basis for further research. The sales level screen, for example, has been used to remove companies that, due to their size, might face fundamentally different economic conditions from those of the transaction or business activities being tested. In addition, APA analyses have incorporated selection criteria related to removing companies experiencing "financial distress" due to concerns that companies in financial distress often have experienced unusual circumstances that render them not comparable to the business activity being tested. These criteria include an unfavorable auditor's opinion, bankruptcy, and, in certain circumstances, operating losses in a given number of years.

An additional important class of selection criteria is the development and ownership of intangible property. In some cases in which the business activity being tested is a manufacturer, several criteria have been used to ensure, for example, that if the controlled entity does not own significant manufacturing intangibles or conduct research and development (R&D), then neither will the comparables. These selection criteria have included determining the importance of patents to a company or screening for R&D expenditures as a percentage of sales. Again, quantitative screens related to identifying comparables with significant intangible property generally have been used in conjunction with an understanding of the comparable derived from publicly available business information.

Selection criteria relating to asset comparability and operating expense comparability have also been used at times. A screen of property, plant, and equipment (PP&E) as a percentage of sales or assets, combined with a reading of a company's SEC filings, has been used to help ensure that distributors (generally lower PP&E) were not compared with manufacturers (generally higher PP&E), regardless of their industry classification. Similarly, a test involving the ratio of operating expenses to sales has helped to determine whether a company undertakes a significant marketing and distribution function.

Table 25 shows the number of times various screens were used in APAs executed in 2005:

TABLE 25: COMPARABILITY SCREENS

| Comparability/Financial Distress Screen | Times Used |
|--|-------------------|
| Comparability screens used | |
| Sales | 30 |
| R&D/ sales | 21 |
| SG&A/ sales | 7 |
| Foreign sales/ total sales | ≤ 3 |
| PP&E/ total assets | ≤ 3 |
| Advertising expense/ sales | ≤ 3 |
| Non-startup or start-up | ≤ 3 |
| PP&E/ sales | ≤ 3 |
| Financial distress | |
| Bankruptcy | 31 |
| Losses in one or more years | 17 |
| Unfavorable auditor's opinion | 13 |
| Significant reorganization | 4 |

Adjusting Comparables

After the comparables have been selected, the regulations require that “[i]f there are material differences between the controlled and uncontrolled transactions, adjustments must be made if the effect of such differences on prices or profits can be ascertained with sufficient accuracy to improve the reliability of the results.” Treas. Reg. § 1.482-1(d)(2). In almost all cases involving income-statement-based PLIs, certain “asset intensity” or “balance sheet” adjustments for factors that have generally agreed-upon effects on profits are calculated. In addition, in specific cases, additional adjustments are performed to improve reliability.

The most common balance sheet adjustments used in APAs are adjustments for differences in accounts receivable, inventories, and accounts payable. The APA Program generally has required adjustments for receivables, inventory, and payables based on the principle that there is an opportunity cost for holding assets. For these assets, it is generally assumed that the cost is a short-term debt interest rate.

To compare the profits of two business activities with different relative levels of receivables, inventory, or payables, the APA Program estimates the carrying costs of each item and adjusts profits accordingly. Although different formulas have been used in specific APA cases, Attachment B presents one set of formulas used in many APAs. Underlying these formulas are the notions that (1) balance sheet items should be expressed as mid-year averages, (2) formulas should try to avoid using data items that are being tested by the TPM (for example, if sales are controlled, then the denominator of the balance sheet ratio should not be sales), (3) a short term interest rate should be used, and (4) an interest factor should recognize the average holding period of the relevant asset.

The APA Program also requires that data be compared on a consistent accounting basis. For example, although financial statements may be prepared on a first-in first-out (FIFO) basis, cross-company comparisons are less meaningful if one or more of the comparables use last-in first-out (LIFO) inventory accounting methods. This adjustment directly affects costs of goods sold and inventories, and therefore affects both profitability measures and inventory adjustments.

Still important in some cases is the adjustment for differences in relative levels of PP&E between a tested business activity and the comparables. Ideally, comparables and the business activity being tested will have fairly similar relative levels of PP&E, since major differences can be a sign of fundamentally different functions and risks. Typically, the PP&E adjustment is made using a medium term interest rate.

Additional adjustments used less frequently include those for differences in other balance sheet items, operating expenses, R&D, or currency risk. Accounting adjustments, such as reclassifying items from cost of goods sold to operating expenses, are also made when warranted to increase reliability. Often, data are not available for both the controlled and uncontrolled transactions in sufficient detail to allow for these types of adjustments.

The adjustments made to comparables or tested parties in APAs executed in 2005 are reflected in Table 24 above.

Nature of Ranges and Adjustment Mechanisms
[§ 521(b)(2)(D)(viii)-(ix)]

The types of ranges and adjustment mechanisms used in APAs executed in 2005 are described in Table 26 and 27 below.

TABLE 26: TYPES OF RANGES⁴

| Type of Range | Number |
|--|--------|
| Interquartile range | 52 |
| Specific point (royalty) | 11 |
| Floor (<i>i.e.</i> , result must be no less than x) | 4 |
| Specific point within CPM range (not floor or ceiling) | 4 |
| Full range | ≤ 3 |
| Financial products — statistical confidence interval to test against internal CUPs | ≤ 3 |
| Other | 6 |

TABLE 27: ADJUSTMENTS WHEN OUTSIDE OF THE RANGE

| Adjustment mechanism | Number |
|--|--------|
| Taxpayer makes an adjustment: to closest edge of single year | 30 |
| Taxpayer makes an adjustment: to closest edge of multi-year average | 14 |
| Taxpayer makes an adjustment: to specified point | 13 |
| Taxpayer makes an adjustment: to median of current year | 11 |
| Taxpayer makes an adjustment: to other | 7 |
| Taxpayer makes an adjustment: to median of multi-year average | ≤ 3 |
| Taxpayer makes an adjustment: to nearest edge of a single year range | ≤ 3 |
| Other | ≤ 3 |

Discussion

Treas. Reg. § 1.482-1(e)(1) states that sometimes a pricing method will yield “a single result that is the most reliable measure of an arm’s length result.” Sometimes, however, a method may yield “a range of reliable results,” called the “arm’s length range.” A taxpayer whose results fall within the arm’s length range will not be subject to adjustment.

⁴ The numbers do not include TPMs with cost or cost-plus methodologies.

Under Treas. Reg. § 1.482-1(e)(2)(i), such a range is normally derived by considering a set of more than one comparable uncontrolled transaction of similar comparability and reliability. If these comparables are of very high quality, as defined in the § 482 regulations, then under Treas. Reg. § 1.482-1(e)(2)(iii)(A), the arm's length range includes the results of all of the comparables (from the least to the greatest). However, the APA Program has only rarely identified cases meeting the requirements for the full range. If the comparables are of lesser quality, then under Treas. Reg. § 1.482-1(e)(2)(iii)(B), "the reliability of the analysis must be increased, when it is possible to do so, by adjusting the range through application of a valid statistical method to the results of all of the uncontrolled comparables." One such method, the "interquartile range," is ordinarily acceptable, although a different statistical method "may be applied if it provides a more reliable measure." The "interquartile range" is defined as, roughly, the range from the 25th to the 75th percentile of the comparables' results. See Treas. Reg. § 1.482-1(e)(2)(iii)(C). The interquartile range was used 52 times in 2005.

Nineteen Covered Transactions reflected on Table 26 specified a single, specific result. Four of these Covered Transactions involved a CPM in which the taxpayer agreed to a "point." Some APAs specify not a point or a range, but a "floor" or a "ceiling". When a floor is used, the tested party's result must be greater than or equal to some particular value. When a ceiling is used, the tested party's result must be less than or equal to some particular value. Four APAs executed in 2005 used a floor and none used a ceiling.

Some APAs look to a tested party's results over a period of years (multi-year averaging) to determine whether a taxpayer has complied with the APA. In 2005, rolling multi-year averaging was used for eleven Covered Transactions. Ten of those used three-year averages. Three or fewer Covered Transactions used a cumulative multi-year average, while eight Covered Transactions used term averages and three or fewer Covered Transactions used partial term averages.

Adjustments

Under Treas. Reg. § 1.482-1(e)(3), if a taxpayer's results fall outside the arm's length range, the Service may adjust the result "to any point within the arm's length range." Accordingly, an APA may permit or require a taxpayer and its related parties to make an adjustment after the year's end to put the year's results within the range, or at the point specified by the APA. Similarly, to enforce the terms of an APA, the Service may make such an adjustment. When the APA specifies a range, the adjustment is sometimes to the closest edge of the range, and sometimes to another point such as the median of the interquartile range. Depending on the facts of each case, automatic adjustments are not always permitted. APAs may specify that in such a case there will be a negotiation between the competent authorities involved to determine whether and to what extent an adjustment should be made. APAs may permit automatic adjustments unless the result is far outside the range specified in the APA. Thus, APAs provide flexibility and efficiency, permitting adjustments when normal business fluctuations and uncertainties push the result somewhat outside the range.

Where a taxpayer's actual transactions do not comply with the TPM, a taxpayer must nonetheless report its taxable income in an amount consistent with the TPM (an APA primary adjustment), as further discussed in § 11.02 of Rev. Proc. 2006-9.

APA Term and Rollback Lengths

[§ 521(b)(2)(D)(x)]

The various term lengths for APAs executed in 2005 are set forth in Table 28 below:

TABLE 28: TERMS OF APAs

| APA Term in Years | Number of APAs |
|--------------------------|-----------------------|
| 1 | 0 |
| 2 | 0 |
| 3 | 2 |
| 4 | 3 |
| 5 | 27 |
| 6 | 4 |
| 7 | 11 |
| 8 | 3 |

| APA Term in Years — Continued | Number of APAs |
|-------------------------------|----------------|
| 9 | 1 |
| 10 or more | 2 |

The number of rollback years to which an APA TPM was applied in 2005 is set forth in Table 29 below:

TABLE 29: NUMBER OF YEARS COVERED BY ROLLBACK OF APA TPM

| Number of Rollback Years | Number of APAs |
|--------------------------|----------------|
| 1 | 4 |
| 2 | 4 |
| 3 | 2 |
| 4 | 1 |
| 5 or more | 3 |

Nature of Documentation Required
[§ 521(b)(2)(D)(xi)]

APAs executed in 2005 required that taxpayers provide various documents with their annual reports. These documents are described in Table 30 below:

TABLE 30: NATURE OF DOCUMENTATION REQUIRED

| Documentation | Number of Times Required |
|---|--------------------------|
| Statement identifying all material differences between Taxpayer's business operations during APA Year and description of Taxpayer's business operations contained in Taxpayer's request for APA, or if there have been no such material differences, a statement to that effect | 53 |
| Description of any failure to meet Critical Assumptions or, if there have been none, a statement to that effect | 53 |
| Statement identifying all material changes in Taxpayer's accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer's request for APA, or if there have been none, statement to that effect | 53 |
| Description of, reason for, and financial analysis of, any Compensating Adjustments with respect to APA Year, including means by which any Compensating Adjustment has been or will be satisfied | 53 |
| Financial analysis demonstrating Taxpayer's compliance with TPM | 53 |
| Organizational chart | 52 |
| Financial statements as prepared in accordance with US GAAP | 48 |
| Certified public accountant's opinion that financial statements present fairly financial position of Taxpayer and the results of its operations, in accordance with US GAAP | 47 |
| Copy of the APA | 14 |
| Various work papers | 11 |
| Book to tax reconciliations | 8 |

| Documentation — Continued | Number of Times Required |
|--|---------------------------------|
| Change to entity classification | 8 |
| Schedule of costs and expenses (<i>e.g.</i> , intercompany allocations) | 7 |
| Financial statements as prepared in accordance with a foreign GAAP | 5 |
| Profit & Loss statement | 4 |
| Certified public accountant's opinion that financial statements present fairly financial position of Taxpayer and the results of its operations, in accordance with a foreign GAAP | ≤ 3 |
| United States income tax return | ≤ 3 |
| Pertinent intercompany agreements | ≤ 3 |
| List of entities | ≤ 3 |
| Cash Flow statement | ≤ 3 |
| Form 5471 or 5472 | ≤ 3 |
| Other | ≤ 3 |

Approaches for Sharing of Currency or Other Risks

[§ 521(b)(2)(D)(xii)]

During 2005, there were 32 tested parties that faced financial risks, including interest rate and currency risks. In appropriate cases, APAs may provide specific approaches for dealing with currency risk, such as adjustment mechanisms and/or critical assumptions.

Efforts to Ensure Compliance with APAs

[§ 521(b)(2)(F)]

As described in Rev. Proc. 2006–9, § 11.01, APA taxpayers are required to file annual reports to demonstrate compliance with the terms and conditions of the APA. The filing and review of annual reports is a critical part of the APA process. Through annual report review, the APA program monitors taxpayer compliance with the APA on a contemporaneous basis. Annual report review provides current information on the success or problems associated with the various TPMs adopted in the APA process.

All reports received by the APA office are tracked by one designated APA team leader who also has the primary responsibility for annual report review. Other APA team leaders and economists assist in this review, especially when the team leader who negotiated the case is available, since that person will already be familiar with the relevant facts and terms of the agreement. Once received by the APA office, the annual report is sent out to the district personnel with exam jurisdiction over the taxpayer.

The statistics for the review of APA annual reports are reflected in Table 31 below. As of December 31, 2005, there were 350 pending annual reports. In 2005, 146 reports were closed.

TABLE 31: STATISTICS OF ANNUAL REPORTS

| | |
|--|-----|
| Number of APA annual reports pending as of December 31, 2005 | 350 |
| Number of APA annual reports closed in Year 2005 | 146 |
| Number of APA annual reports requiring adjustment in Year 2005 | ≤ 3 |
| Number of taxpayers involved in adjustments | ≤ 3 |
| Number of APA annual report cases over one year old | 275 |

ATTACHMENT A
Model APA - Based on Revenue Procedure 2006-9

ADVANCE PRICING AGREEMENT
between
[Insert Taxpayer's Name]
and
THE INTERNAL REVENUE SERVICE

PARTIES

The Parties to this Advance Pricing Agreement (APA) are the Internal Revenue Service (IRS) and [Insert Taxpayer's Name], EIN _____.

RECITALS

[Insert Taxpayer Name] is the common parent of an affiliated group filing consolidated U.S. tax returns (collectively referred to as "Taxpayer"), and is entering into this APA on behalf of itself and other members of its consolidated group.

Taxpayer's principal place of business is [City, State]. [Insert general description of taxpayer and other relevant parties].

This APA contains the Parties' agreement on the best method for determining arm's-length prices of the Covered Transactions under I.R.C. section 482, any applicable tax treaties, and the Treasury Regulations.

{If renewal, add} [Taxpayer and IRS previously entered into an APA covering taxable years ending _____ to _____, executed on _____.]

AGREEMENT

The Parties agree as follows:

1. *Covered Transactions.* This APA applies to the Covered Transactions, as defined in Appendix A.
2. *Transfer Pricing Method.* Appendix A sets forth the Transfer Pricing Method (TPM) for the Covered Transactions.
3. *Term.* This APA applies to Taxpayer's taxable years ending _____ through _____ (APA Term).
4. *Operation.*
 - a. Revenue Procedure 2006-9 governs the interpretation, legal effect, and administration of this APA.
 - b. Nonfactual oral and written representations, within the meaning of sections 10.04 and 10.05 of Revenue Procedure 2006-9 (including any proposals to use particular TPMs), made in conjunction with the APA Request constitute statements made in compromise negotiations within the meaning of Rule 408 of the Federal Rules of Evidence.
5. *Compliance.*
 - a. Taxpayer must report its taxable income in an amount that is consistent with Appendix A and all other requirements of this APA on its timely filed U.S. Return. However, if Taxpayer's timely filed U.S. Return for an APA Year is filed prior to, or no later than 60 days after, the effective date of this APA, then Taxpayer must report its taxable income for that APA Year in an amount that is consistent with Appendix A and all other requirements of this APA either on the original U.S. Return or on an amended U.S. Return filed no later than 120 days after the effective date of this APA, or through such other means as may be specified herein.
 - b. {Insert when U.S. Group or Foreign Group contains more than one member.} [This APA addresses the arm's-length nature of prices charged or received in the aggregate between Taxpayer and Foreign Participants with respect to the Covered Transactions. Except as explicitly provided, this APA does not address and does not bind the IRS with respect to prices charged or received, or the relative amounts of income or loss realized, by particular legal entities that are members of U.S. Group or that are members of Foreign Group.]
 - c. For each taxable year covered by this APA (APA Year), if Taxpayer complies with the terms and conditions of this APA, then the IRS will not make or propose any allocation or adjustment under I.R.C. section 482 to the amounts charged in the aggregate between Taxpayer and Foreign Participant[s] with respect to the Covered Transactions.

d. If Taxpayer does not comply with the terms and conditions of this APA, then the IRS may:

- i. enforce the terms and conditions of this APA and make or propose allocations or adjustments under I.R.C. section 482 consistent with this APA;
- ii. cancel or revoke this APA under section 11.06 of Revenue Procedure 2006–9; or
- iii. revise this APA, if the Parties agree.

e. Taxpayer must timely file an Annual Report (an original and four copies) for each APA Year in accordance with Appendix C and section 11.01 of Revenue Procedure 2006–9. Taxpayer must file the Annual Report for all APA Years through the APA Year ending [insert year] by [insert date]. Taxpayer must file the Annual Report for each subsequent APA Year by [insert month and day] immediately following the close of that APA Year. (If any date falls on a weekend or holiday, the Annual Report shall be due on the next date that is not a weekend or holiday.) The IRS may request additional information reasonably necessary to clarify or complete the Annual Report. Taxpayer will provide such requested information within 30 days. Additional time may be allowed for good cause.

f. The IRS will determine whether Taxpayer has complied with this APA based on Taxpayer’s U.S. Returns, Financial Statements, and other APA Records, for the APA Term and any other year necessary to verify compliance. For Taxpayer to comply with this APA, an independent certified public accountant must *{use the following or an alternative}* render an opinion that Taxpayer’s Financial Statements present fairly, in all material respects, Taxpayer’s financial position under U.S. GAAP.

g. In accordance with section 11.04 of Revenue Procedure 2006–9, Taxpayer will (1) maintain its APA Records, and (2) make them available to the IRS in connection with an examination under section 11.03. Compliance with this subparagraph constitutes compliance with the record-maintenance provisions of I.R.C. sections 6038A and 6038C for the Covered Transactions for any taxable year during the APA Term.

h. The True Taxable Income within the meaning of Treasury Regulations sections 1.482–1(a)(1) and (i)(9) of a member of an affiliated group filing a U.S. consolidated return will be determined under the I.R.C. section 1502 Treasury Regulations.

i. *{Optional for US Parent Signatories}* To the extent that Taxpayer’s compliance with this APA depends on certain acts of Foreign Group members, Taxpayer will ensure that each Foreign Group member will perform such acts.

6. *Critical Assumptions.* This APA’s critical assumptions, within the meaning of Revenue Procedure 2006–9, section 4.05, appear in Appendix B. If any critical assumption has not been met, then Revenue Procedure 2006–9, section 11.06, governs.

7. *Disclosure.* This APA, and any background information related to this APA or the APA Request, are: (1) considered “return information” under I.R.C. section 6103(b)(2)(C); and (2) not subject to public inspection as a “written determination” under I.R.C. section 6110(b)(1). Section 521(b) of Pub. L. 106–170 provides that the Secretary of the Treasury must prepare a report for public disclosure that includes certain specifically designated information concerning all APAs, including this APA, in a form that does not reveal taxpayers’ identities, trade secrets, and proprietary or confidential business or financial information.

8. *Disputes.* If a dispute arises concerning the interpretation of this APA, the Parties will seek a resolution by the IRS Associate Chief Counsel (International) to the extent reasonably practicable, before seeking alternative remedies.

9. *Materiality.* In this APA the terms “material” and “materially” will be interpreted consistently with the definition of “material facts” in Revenue Procedure 2006–9, section 11.06(4).

10. *Section Captions.* This APA’s section captions, which appear in *italics*, are for convenience and reference only. The captions do not affect in any way the interpretation or application of this APA.

11. *Terms and Definitions.* Unless otherwise specified, terms in the plural include the singular and vice versa. Appendix D contains definitions for capitalized terms not elsewhere defined in this APA.

12. *Entire Agreement and Severability.* This APA is the complete statement of the Parties’ agreement. The Parties will sever, delete, or reform any invalid or unenforceable provision in this APA to approximate the Parties’ intent as nearly as possible.

13. *Successor in Interest.* This APA binds, and inures to the benefit of, any successor in interest to Taxpayer.

14. *Notice.* Any notices required by this APA or Revenue Procedure 2006–9 must be in writing. Taxpayer will send notices to the IRS at the address and in the manner set forth in Revenue Procedure 2006–9, section 4.11. The IRS will send notices to:

Taxpayer Corporation
Attn: Jane Doe, Sr. Vice President (Taxes)
1000 Any Road
Any City, USA 10000
(phone: _____)

15. *Effective Date and Counterparts.* This APA is effective starting on the date, or later date of the dates, upon which all Parties execute this APA. The Parties may execute this APA in counterparts, with each counterpart constituting an original.

WITNESS,

The Parties have executed this APA on the dates below.

[Taxpayer Name in all caps]

By: _____
Jane Doe
Sr. Vice President (Taxes)

Date: _____, 20 _____

IRS

By: _____
Matthew W. Frank
Director, Advance Pricing Agreement Program

Date: _____, 20 _____

APPENDIX A

COVERED TRANSACTIONS AND TRANSFER PRICING METHOD (TPM)

1. Covered Transactions.

[Define the Covered Transactions.]

2. TPM.

{Note: If appropriate, adapt language from the following examples.}

[The Tested Party is _____.]

• CUP Method

The TPM is the comparable uncontrolled price (CUP) method. The Arm's Length Range of the price charged for _____ is between _____ and _____ per unit.

• CUT Method

The TPM is the CUT Method. The Arm's Length Range of the royalty charged for the license of _____ is between _____% and _____% of [Taxpayer's, Foreign Participants', or other specified party's] Net Sales Revenue. [Insert definition of net sales revenue or other royalty base.]

• Resale Price Method (RPM)

The TPM is the resale price method (RPM). The Tested Party's Gross Margin for any APA Year is defined as follows: the Tested Party's gross profit divided by its sales revenue (as those terms are defined in Treasury Regulations sections 1.482-5(d)(1) and (2)) for that APA Year. The Arm's Length Range is between _____% and _____%, and the Median of the Arm's Length Range is _____%.

- **Cost Plus Method**

The TPM is the cost plus method. The Tested Party's Cost Plus Markup is defined as follows for any APA Year: the Tested Party's ratio of gross profit to production costs (as those terms are defined in Treasury Regulations sections 1.482-3(d)(1) and (2)) for that APA Year. The Arm's Length Range is between _____% and _____%, and the Median of the Arm's Length Range is _____%.

- **CPM with Berry Ratio PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is a Berry Ratio. The Tested Party's Berry Ratio is defined as follows for any APA Year: the Tested Party's gross profit divided by its operating expenses (as those terms are defined in Treasury Regulations sections 1.482-5(d)(2) and (3)) for that APA Year. The Arm's Length Range is between _____ and _____, and the Median of the Arm's Length Range is _____.

- **CPM using an Operating Margin PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Operating Margin is defined as follows for any APA Year: the Tested Party's operating profit divided by its sales revenue (as those terms are defined in Treasury Regulations section 1.482-5(d)(1) and (4)) for that APA Year. The Arm's Length Range is between _____% and _____%, and the Median of the Arm's Length Range is _____%.

- **CPM using a Three-year Rolling Average Operating Margin PLI**

The TPM is the comparable profits method (CPM). The profit level indicator is an operating margin. The Tested Party's Three-Year Rolling Average operating margin is defined as follows for any APA Year: the sum of the Tested Party's operating profit (within the meaning of Treasury Regulations section 1.482-5(d)(4) for that APA Year and the two preceding years, divided by the sum of its sales revenue (within the meaning of Treasury Regulations section 1.482-5(d)(1)) for that APA Year and the two preceding years. The Arm's Length Range is between _____% and _____%, and the Median of the Arm's Length Range is _____%.

- **Residual Profit Split Method**

The TPM is the residual profit split method. *[Insert description of routine profit level determinations and residual profit-split mechanism].*

[Insert additional provisions as needed.]

3. Application of TPM.

For any APA Year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate for the Covered Transactions] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] within the Arm's Length Range, then the amounts reported on Taxpayer's U.S. Return must clearly reflect such results.

For any APA year, if the results of Taxpayer's actual transactions produce a [price per unit, royalty rate] [or] [Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin for the Tested Party] outside the Arm's Length Range, then amounts reported on Taxpayer's U.S. Return must clearly reflect an adjustment that brings the [price per unit, royalty rate] [or] [Tested Party's Gross Margin, Cost Plus Markup, Berry Ratio, Operating Margin, Three-Year Rolling Average Operating Margin] to the Median.

For purposes of this Appendix A, the "results of Taxpayer's actual transactions" means the results reflected in Taxpayer's and Tested Party's books and records as computed under U.S. GAAP *[insert another relevant accounting standard if applicable]*, with the following adjustments:

- (a) [The fair value of stock-based compensation as disclosed in the Tested Party's audited financial statements shall be treated as an operating expense]; and
- (b) To the extent that the results in any prior APA Year are relevant (for example, to compute a multi-year average), such results shall be adjusted to reflect the amount of any adjustment made for that prior APA Year under this Appendix A.

4. APA Revenue Procedure Treatment.

If Taxpayer makes a primary adjustment under the terms of this Appendix A, Taxpayer may elect APA Revenue Procedure Treatment in accordance with section 11.02(3) of Revenue Procedure 2006-9.

[Insert additional provisions as needed.]

APPENDIX B
CRITICAL ASSUMPTIONS

This APA's critical assumptions are:

1. The business activities, functions performed, risks assumed, assets employed, and financial and tax accounting methods and classifications [and methods of estimation] of Taxpayer in relation to the Covered Transactions will remain materially the same as described or used in Taxpayer's APA Request. A mere change in business results will not be a material change.

[Insert additional provisions as needed.]

APPENDIX C
APA RECORDS AND ANNUAL REPORT

APA RECORDS

The APA Records will consist of:

1. All documents listed below for inclusion in the Annual Report, as well as all documents, notes, work papers, records, or other writings that support the information provided in such documents.

ANNUAL REPORT

The Annual Report will include two copies of a properly completed APA Annual Report Summary in the form of Exhibit E to this APA, one copy of the form bound with, and one copy bound separately from, the rest of the Annual Report. In addition, the Annual Report will include a table of contents and the information and exhibits identified below, organized as follows.

1. Statements that fully identify, describe, analyze, and explain:

a. All material differences between any of the U.S. Entities' business operations (including functions, risks assumed, markets, contractual terms, economic conditions, property, services, and assets employed) during the APA Year and the description of the business operations contained in the APA Request. If there have been no material differences, the Annual Report will include a statement to that effect.

b. All material changes in the U.S. Entities' accounting methods and classifications, and methods of estimation, from those described or used in Taxpayer's request for this APA. If any such change was made to conform to changes in U.S. GAAP (or other relevant accounting standards), Taxpayer will specifically identify such change. If there has been no material change in accounting methods and classifications or methods of estimation, the Annual Report will include a statement to that effect.

c. Any change to the Taxpayer notice information in section 14 of this APA.

d. Any failure to meet any critical assumption. If there has been no failure, the Annual Report will include a statement to that effect.

e. Any change to any entity classification for federal income tax purposes (including any change that causes an entity to be disregarded for federal income tax purposes) of any Worldwide Group member that is a party to the Covered Transactions or is otherwise relevant to the TPM.

f. The amount, reason for, and financial analysis of any compensating adjustments under paragraph 4 of Appendix A and Revenue Procedure 2006-9, section 11.02(3), for the APA Year, including but not limited to:

i. the amounts paid or received by each affected entity;

ii. the character (such as capital, ordinary, income, expense) and country source of the funds transferred, and the specific affected line item(s) of any affected U.S. Return; and

iii. the date(s) and means by which the payments are or will be made.

g. The amounts, description, reason for, and financial analysis of any book-tax difference relevant to the TPM for the APA Year, as reflected on Schedule M-1 or Schedule M-3 of the U.S. Return for the APA Year.

2. The Financial Statements, and any necessary account detail to show compliance with the TPM, with a copy of the independent certified public accountant's opinion required by paragraph 5(f) of this APA.

3. A financial analysis that reflects Taxpayer’s TPM calculations for the APA Year. The calculations must reconcile with and reference the Financial Statements in sufficient account detail to allow the IRS to determine whether Taxpayer has complied with the TPM.

4. An organizational chart for the Worldwide Group, revised annually to reflect all ownership or structural changes of entities that are parties to the Covered Transactions or are otherwise relevant to the TPM.

5. A copy of the APA.

**APPENDIX D
DEFINITIONS**

The following definitions control for all purposes of this APA. The definitions appear alphabetically below:

| Term | Definition |
|-------------------------------|--|
| Annual Report | A report within the meaning of Revenue Procedure 2006–9, section 11.01. |
| APA | This Advance Pricing Agreement, which is an “advance pricing agreement” within the meaning of Revenue Procedure 2006–9, section 2.04. |
| APA Records | The records specified in Appendix C. |
| APA Request | Taxpayer’s request for this APA dated _____, including any amendments or supplemental or additional information thereto. |
| Covered Transaction(s) | This term is defined in Appendix A. |
| Financial Statements | Financial statements prepared in accordance with U.S. GAAP and stated in U.S. dollars. |
| Foreign Group | Worldwide Group members that are not U.S. persons. |
| Foreign Participants | [name the foreign entities involved in Covered Transactions]. |
| I.R.C. | The Internal Revenue Code of 1986, 26 U.S.C., as amended. |
| Pub. L. 106–170 | The Ticket to Work and Work Incentives Improvement Act of 1999. |
| Revenue Procedure 2006–9 | Rev. Proc. 2006–9, 2006–2 I.R.B. 278. |
| Transfer Pricing Method (TPM) | A transfer pricing method within the meaning of Treasury Regulations section 1.482–1(b) and Revenue Procedure 2006–9, section 2.04. |
| U.S. GAAP | U.S. generally-accepted accounting principles. |
| U.S. Group | Worldwide Group members that are U.S. persons. |
| U.S. Return | For each taxable year, the “returns with respect to income taxes under subtitle A” that Taxpayer must “make” in accordance with I.R.C. section 6012. { <i>Or substitute for partnership: For each taxable year, the “return” that Taxpayer must “make” in accordance with I.R.C. section 6031.</i> } |
| Worldwide Group | Taxpayer and all organizations, trades, businesses, entities, or branches (whether or not incorporated, organized in the United States, or affiliated) owned or controlled directly or indirectly by the same interests. |

APPENDIX E

APA ANNUAL REPORT SUMMARY FORM

The APA Annual Report Summary on the next page is a required APA Record. The APA Team Leader has supplied some of the information requested on the form. Taxpayer is to supply the remaining information requested by the form and submit the form as part of its Annual Report.

| | | |
|--|---|---|
| <p align="center">APA Annual Report SUMMARY</p> | <p align="center">Department of the Treasury— Internal Revenue Service Office of Associate Chief Counsel (International) Advance Pricing Agreement Program</p> | <p>APA no. _____ Team Leader _____ Economist _____ Intl Examiner _____ CA Analyst _____</p> |
|--|---|---|

| | |
|-------------------------------|---|
| <p>APA Information</p> | <p>Taxpayer Name: _____ Taxpayer EIN: _____ NAICS: _____ APA Term: Taxable years ending _____ to _____ Original APA <input type="checkbox"/> Renewal APA <input type="checkbox"/> Annual Report due dates: _____, 200__ for all APA Years through APA Year ending in 200__; thereafter, on _____ [month and day] immediately following the close of the APA Year. Principal foreign country(ies) involved in covered transaction(s): _____ Type of APA: <input type="checkbox"/> unilateral <input type="checkbox"/> bilateral with _____ Tested party is <input type="checkbox"/> US <input type="checkbox"/> foreign <input type="checkbox"/> both Approximate dollar volume of covered transactions (on an annual basis) involving tangible goods and services: <input type="checkbox"/> N/A <input type="checkbox"/> <\$50 million <input type="checkbox"/> \$50–100 million <input type="checkbox"/> \$100–250 million <input type="checkbox"/> \$250–500 million <input type="checkbox"/> >\$500 million APA tests on (check all that apply): <input type="checkbox"/> annual basis <input type="checkbox"/> multi-year basis <input type="checkbox"/> term basis APA provides (check all that apply) a: <input type="checkbox"/> range <input type="checkbox"/> point <input type="checkbox"/> floor only <input type="checkbox"/> ceiling only <input type="checkbox"/> other _____ APA provides for adjustment (check all that apply) to: <input type="checkbox"/> nearest edge <input type="checkbox"/> median <input type="checkbox"/> other point</p> |
|-------------------------------|---|

APA Annual Report Information
(to be completed by the Taxpayer)

APA date executed: _____, 200__

This APA Annual Report Summary is for APA Year(s) ending in 200__ and was filed on _____, 200__

Check here if Annual Report was filed after original due date but in accordance with extension.

Has this APA been amended or changed? yes no Effective Date: _____

Has Taxpayer complied with all APA terms and conditions? yes no

Were all the critical assumptions met? yes no

Has a Primary Compensating Adjustment been made in any APA Year covered by this Annual Report?
 yes no If yes, which year(s): 200__

Have any necessary Secondary Compensating Adjustments been made? yes no

Did Taxpayer elect APA Revenue Procedure treatment? yes no

Any change to the entity classification of a party to the APA? yes no

Taxpayer notice information contained in the APA remains unchanged? yes no

Taxpayer's current US principal place of business: (City, State) _____

APA Annual Report Checklist of Key Contents
(to be completed by the Taxpayer)

Financial analysis reflecting TPM calculations yes no

Financial statements showing compliance with TPM(s) yes no

Schedule M-1 or M-3 book-tax differences yes no

Current organizational chart of relevant portion of world-wide group yes no

Attach copy of APA yes no

Other APA records and documents included:

[The information required in the following section should be tailored to the particular case]

_____ yes no

_____ yes no

_____ yes no

_____ yes no

_____ yes no

Contact Information

| Authorized Representative | Phone Number | Affiliation and Address |
|---------------------------|--------------|-------------------------|
| | | |

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

Announcement 2006-23

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 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 the 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 |
|----------------------|------------------------|----------------|-------------------------------------|
| Hoft, James D. | Nutley, NJ | CPA | Indefinite from August 10, 2005 |
| Salver, Isaac | Bay Harbor Islands, FL | CPA | September 19, 2005 to June 18, 2007 |
| Woods, Dalton C. | Carrollton, TX | Enrolled Agent | Indefinite from October 15, 2005 |
| Morrisette, Doris G. | Lowell, MA | Enrolled Agent | Indefinite from November 1, 2005 |
| Dale, Edward R. | Stockton, CA | CPA | Indefinite from November 1, 2005 |
| Grossman, Israel G. | New York, NY | Attorney | November 15, 2005 to May 14, 2007 |

| Name | Address | Designation | Date of Suspension |
|------------------------|-------------------|------------------|---|
| Edmonds, Joseph M. | Charlotte, NC | Enrolled Actuary | November 16, 2005 to March 15, 2006 |
| Rubin, Stuart L. | Coral Springs, FL | CPA | Indefinite from December 7, 2005 |
| Sanger, Brett D. | Oklahoma City, OK | Attorney | Indefinite from January 1, 2006 |
| Berkowitz, Ira T. | Simi Valley, CA | CPA | Indefinite from January 9, 2006 |
| Caylor, John D. | Long Lake, MN | CPA | Indefinite from January 12, 2006 |
| Saldana, Oscar M. | Laredo, TX | CPA | Indefinite from January 15, 2006 |
| Bruck, Lawrence S. | Newton, PA | CPA | Indefinite from January 16, 2006 |
| Sneathen, Lowell D. | Orange, CA | CPA | Indefinite from January 18, 2006 |
| Roberson, George | Leesburg, VA | CPA | Indefinite from January 17, 2006 |
| Dugan, Lawrence E. | Alta, IA | Attorney | Indefinite from February 1, 2006 |
| Frascella, Russell | Pound Ridge, NY | CPA | Indefinite from February 1, 2006 |
| Smith, David B. | Kettering, OH | Enrolled Agent | Indefinite from February 13, 2006 |
| Whiteside, Thomas L. | Atlanta, GA | Attorney | Indefinite from February 13, 2006 |
| Bednarz, Jr., Michael | Framingham, MA | Attorney | Indefinite from February 13, 2006 |
| Alexander, Herald J.A. | Atlanta, GA | Attorney | Indefinite from February 20, 2006 |

| Name | Address | Designation | Date of Suspension |
|------------------|--------------------|----------------|---|
| Bartels, Kyle | North Salem, NY | Enrolled Agent | Indefinite from February 21, 2006 |
| Baker, Jibade A. | Indianapolis, IN | CPA | March 13, 2006 to March 12, 2008 |
| Morris, R. Scott | Corpus Christi, TX | CPA | Indefinite from March 16, 2006 |
| Kenny, Stan M. | Wichita, KS | Attorney | Indefinite from May 1, 2006 |

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 |
|-----------------------|---------------------|-------------|--|
| Haugabrook, Earl | Upper Montclair, NJ | CPA | Indefinite from September 27, 2005 |
| Patterson, Kenneth R. | Plano, TX | CPA | Indefinite from October 19, 2005 |
| Blackburn, Randall D. | Laurinburg, NC | CPA | Indefinite from October 19, 2005 |
| Coe, Sean M. | Sahuarita, AZ | Attorney | Indefinite from October 12, 2005 |
| Lim, Ricarda L. | Sacramento, CA | Attorney | Indefinite from November 1, 2005 |
| Bridges, Lynden P. | Golden, CO | CPA | Indefinite from November 14, 2005 |
| Curcio, Gregory J. | New York, NY | Attorney | Indefinite from November 14, 2005 |

| Name | Address | Designation | Date of Suspension |
|------------------------|-----------------------|-------------|---|
| Silverton, Ronald R. | Pacific Palisades, CA | Attorney | Indefinite from November 14, 2005 |
| Hartigan, Seth P. | Minneapolis, MN | Attorney | Indefinite from November 14, 2005 |
| Carlson, Richard E. | Chappell, NE | Attorney | Indefinite from November 14, 2005 |
| Veres, Robert D. | Phoenix, AZ | CPA | Indefinite from November 14, 2005 |
| Noble, Gregory P. | Corvallis, OR | Attorney | Indefinite from December 2, 2005 |
| Parker, Oscie K. | Thomasville, NC | Attorney | Indefinite from December 15, 2005 |
| Connor, Jr. William J. | Kernersville, NC | Attorney | Indefinite from December 15, 2005 |
| Cassidy, Maureen E. | Murphy, ID | Attorney | Indefinite from December 15, 2005 |
| Harrison, Rodney L. | Urbana, IL | Attorney | Indefinite from December 15, 2005 |
| Cagle, Carol L. | Alton, IL | Attorney | Indefinite from December 15, 2005 |
| Knaff, Philip J. | Burr Ridge, IL | Attorney | Indefinite from December 15, 2005 |
| Pence, Thomas R. | Cedar Rapids, IA | Attorney | Indefinite from December 15, 2005 |
| Tunney, John A. | Freehold, NJ | Attorney | Indefinite from December 15, 2005 |
| Dasent, Carlton | Mattapoisett, MA | Attorney | Indefinite from December 15, 2005 |
| Robeznieks, John O. | Palatine, IL | Attorney | Indefinite from December 15, 2005 |

| Name | Address | Designation | Date of Suspension |
|------------------------|---------------------|-------------|---|
| Landman, Nathaniel M. | St. Peters, MO | Attorney | Indefinite from December 15, 2005 |
| Levin, Herbert M. | Bolingbrook, IL | Attorney | Indefinite from December 15, 2005 |
| Wade, Jeffrey L. | Louisville, KY | Attorney | Indefinite from December 15, 2005 |
| Cozzarelli, Frank J. | North Caldwell, NJ | Attorney | Indefinite from December 15, 2005 |
| Brooks, Jane E. | St. Paul, MN | Attorney | Indefinite from December 15, 2005 |
| Mulvahill, James P. | Plymouth, MN | Attorney | Indefinite from December 15, 2005 |
| Bernstein, Ralph | Chicago, IL | Attorney | Indefinite from December 15, 2005 |
| Tousey, Robert R. | Ellicott City, MD | Attorney | Indefinite from December 15, 2005 |
| Schatz, Allen E. | Shorewood, WI | Attorney | Indefinite from December 16, 2005 |
| Olson, David E. | New Port Richey, FL | Attorney | Indefinite from December 16, 2005 |
| Shagory, Edward J. | Boston, MA | Attorney | Indefinite from December 20, 2005 |
| Wintroub, Edward L. | Omaha, NE | Attorney | Indefinite from December 20, 2005 |
| Johnson, Jr. Walter T. | Greensboro, NC | Attorney | Indefinite from December 27, 2005 |
| Szaro, Stanley J. | New York, NY | Attorney | Indefinite from December 27, 2005 |
| Recchione, Louis | Woodcliff Lake, NJ | Attorney | Indefinite from December 27, 2005 |
| Pepper, Louis | Great Neck, NY | Attorney | Indefinite from January 2, 2006 |

| Name | Address | Designation | Date of Suspension |
|-----------------------|----------------------|-------------|---------------------------------------|
| Fritzshall, Robert S. | Skokie, IL | Attorney | Indefinite from January 9, 2006 |
| DiCaprio, Joseph A. | Cherry Valley, IL | Attorney | Indefinite from January 9, 2006 |
| Rosenberg, Keith A. | N. Bethesda, MD | Attorney | Indefinite from January 9, 2006 |
| Boudreau, Patricia L. | Lexington, MA | Attorney | Indefinite from January 9, 2006 |
| Webb, Daniel F. | Milwaukee, WI | Attorney | Indefinite from January 9, 2006 |
| Miranda, Jesse R. | Phoenix, AZ | Attorney | Indefinite from January 9, 2006 |
| Kuzel, Gary | Plainfield, IL | CPA | Indefinite from January 9, 2006 |
| Nomura, Edmund Y. | Phoenix, AZ | Attorney | Indefinite from January 9, 2006 |
| Mason, Robert J. | Colorado Springs, CO | Attorney | Indefinite from January 9, 2006 |
| Land, Janet P. | Stedman, NC | Attorney | Indefinite from January 9, 2006 |
| Fitzgerald, Maurice | Lexington, MA | Attorney | Indefinite from January 9, 2006 |
| Valadez, Librado R. | San Antonio, TX | CPA | Indefinite from January 9, 2006 |
| Williams, Frank C. | Houston, TX | Attorney | Indefinite from January 9, 2006 |
| LaGrand, Tara | Naples, FL | CPA | Indefinite from January 9, 2006 |
| Harris, Susan L. | Houston, TX | Attorney | Indefinite from January 9, 2006 |
| Hobbs, James B. | Amherst, NH | Attorney | Indefinite from January 9, 2006 |

| Name | Address | Designation | Date of Suspension |
|------------------------|------------------|-------------|--|
| Momsen, Joel | Napa, CA | Attorney | Indefinite from January 10, 2006 |
| Lambert, Brett J. | Fort Collins, CO | Attorney | Indefinite from January 10, 2006 |
| Lefevre, Keith H. | Longwood, FL | Attorney | Indefinite from January 13, 2006 |
| Bronner, Bernard | Great Neck, NY | Attorney | Indefinite from January 18, 2006 |
| Kuhnreich, Robert M. | New York, NY | Attorney | Indefinite from January 20, 2006 |
| Walser, Vicki L. | Valencia, CA | Attorney | Indefinite from January 20, 2006 |
| Menter, Jeffrey | Centennial, CO | Attorney | Indefinite from January 23, 2006 |
| Catagnus, Patricia A. | Richardson, TX | CPA | Indefinite from January 23, 2006 |
| Matthews, Elizabeth B. | Denver, CO | Attorney | Indefinite from January 23, 2006 |
| Sisselman, Barry A. | Temecula, CA | Attorney | Indefinite from January 23, 2006 |
| Armstrong, Thomas I. | Irvine, CA | Attorney | Indefinite from January 23, 2006 |
| Chestnut, A. Johnson | Fayetteville, NC | CPA | Indefinite from January 24, 2006 |
| Kerby, John C. | Desoto, TX | CPA | Indefinite from February 2, 2006 |
| Phillips, John D. | Albuquerque, NM | Attorney | Indefinite from February 2, 2006 |
| Broomas, James | Baytown, TX | Attorney | Indefinite from February 2, 2006 |
| Wilson, Joel M. | Denver, NC | CPA | Indefinite from February 2, 2006 |

| Name | Address | Designation | Date of Suspension |
|-------------------------|---------------------|-------------|---|
| Olivieri Jr., Robert C. | Bensalem, PA | CPA | Indefinite from February 7, 2006 |
| Scher, Robert A. | Port Washington, NY | Attorney | Indefinite from February 15, 2006 |
| Mintz, David J. | Evergreen, CO | Attorney | Indefinite from February 15, 2006 |
| Abelson, Richard H. | White Plains, NY | Attorney | Indefinite from February 15, 2006 |
| Drum, Joel A. | Van Nuys, CA | Attorney | Indefinite from February 17, 2006 |
| Nissenbaum, Susan | Grafton, MA | Attorney | Indefinite from February 22, 2006 |
| Mahon, Edward J. | Warenville, IL | Attorney | Indefinite from February 22, 2006 |
| Nash, Bruce | Chicago, IL | Attorney | Indefinite from February 22, 2006 |
| Duru, Ike E. | Powder Springs, GA | Attorney | Indefinite from February 22, 2006 |
| Hirth, Gary E. | Phoenix, AZ | Attorney | Indefinite from February 22, 2006 |
| Madden, James G. | Hudson, IL | Attorney | Indefinite from February 22, 2006 |
| Thomas, Robert C. | Chicago, IL | Attorney | Indefinite from February 22, 2006 |
| Moore, Jr. William D. | Libertyville, IL | Attorney | Indefinite from February 22, 2006 |
| Weit Jr., John V. | Homewood, IL | Attorney | Indefinite from February 22, 2006 |
| Berlin, Marc D. | Chicago, IL | Attorney | Indefinite from February 22, 2006 |
| Lebensbaum, Henry | Andover, MD | Attorney | Indefinite from February 22, 2006 |

| Name | Address | Designation | Date of Suspension |
|-------------------------|-------------------|----------------|---|
| Leonhart, Georgia L. | Ocean View, DE | Attorney | Indefinite from February 22, 2006 |
| Wolf, Marvin H. | Boynton Beach, FL | Attorney | Indefinite from February 22, 2006 |
| Dorsa, Lawrence R. | Oceanside, CA | Attorney | Indefinite from February 23, 2006 |
| Battista Jr., Gerard F. | Norwell, MA | Attorney | Indefinite from February 27, 2006 |
| Koehn, Charles R. | Green Bay, WI | Attorney | Indefinite from February 28, 2006 |
| Phillips, Claudia L. | Oak Park, CA | Attorney | Indefinite from March 9, 2006 |
| Zarate, Gustavo A. | Pasadena, CA | Attorney | Indefinite from March 9, 2006 |
| Schorling, Douglas D. | Fresno, CA | Attorney | Indefinite from March 9, 2006 |
| Bowman Jr., John J. | Gibsonia, PA | Enrolled Agent | Indefinite from March 9, 2006 |
| Jordan, Richard W. | Austin, TX | CPA | Indefinite from March 9, 2006 |
| Rothenberg, Steven G. | Kingston, NY | Attorney | Indefinite from March 24, 2006 |
| Osterloh, Douglas D. | Boring, OR | Attorney | Indefinite from March 24, 2006 |
| Benevenia, Eugene | Tucson, AZ | Attorney | Indefinite from March 24, 2006 |
| Krombach, Charles | Brookfield, WI | Attorney | Indefinite from March 24, 2006 |
| Caldwell, David G. | Austin, TX | Attorney | Indefinite from March 24, 2006 |

| Name | Address | Designation | Date of Suspension |
|---------------|--------------|-------------|--------------------------------------|
| Zwibel, David | Lawrence, NY | CPA | Indefinite from March 31, 2006 |

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 |
|---------------------|-------------------|-------------|--|
| Fitzpatrick, Pamela | Arroyo Grande, CA | CPA | November 14, 2005 to November 13, 2009 |

Disbarments 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 disbarred from practice before the Internal Revenue Service:

| Name | Address | Designation | Effective Date |
|-------------------|-----------------|-------------|-----------------|
| Edgar, Richard A. | Los Angeles, CA | CPA | October 3, 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 |
|-------------------|--------------|-------------|-------------------|
| Porter, Donald E. | Burleson, TX | CPA | February 10, 2006 |

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the In-

ternal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

| Name | Address | Date of Resignation |
|--------------------|------------|---------------------|
| Casagna, Ronald M. | Tustin, CA | November 25, 2005 |

Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

Announcement 2006-24

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer

qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section

7428(c) would begin on March 20, 2006, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Consumer Guidance Corp.
Sun Valley, CA

Next Step Foundation, Inc.
Little Rock, AR

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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