

## **HIGHLIGHTS OF THIS ISSUE**

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

### **INCOME TAX**

#### **Notice 2006-60, page 82.**

This notice announces that the Treasury Department and IRS will amend regulations section 1.45D-1 to provide guidance on how an entity meets the requirements to be a qualified active low-income community business when its activities involve certain targeted populations under section 45D(e)(2) of the Code. Comments related to section 45D(e)(2) and this notice must be received on or before August 31, 2006.

#### **Notice 2006-61, page 85.**

**2006 marginal production rates.** This notice announces the applicable percentage under section 613A of the Code to be used in determining percentage depletion for marginal properties for the 2006 calendar year.

#### **Notice 2006-62, page 86.**

**2006 enhanced oil recovery credit.** The enhanced oil recovery credit for taxable years beginning in the 2006 calendar year is determined without regard to the phase-out for crude oil price increases provided in section 43(b) of the Code.

#### **Notice 2006-63, page 87.**

This notice requests comments for developing record retention standards, including recordkeeping limitation programs, for tax-exempt bond issues. In particular, the notice seeks comments regarding any burdens associated with the record retention requirements that apply to issuers and other parties to tax-exempt bond transactions in order to substantiate compliance with section 103 of the Code. Comments should be received by October 16, 2006.

#### **Notice 2006-64, page 88.**

This notice provides interim guidance on the application of section 409A to accelerated payments to satisfy federal conflict of interest requirements.

### **EMPLOYEE PLANS**

#### **Rev. Rul. 2006-38, page 80.**

**Prohibited transactions; first tier excise tax calculations.** This ruling describes how the amount involved is calculated with respect to the section 4975 prohibited transaction excise tax if an employer does not timely pay elective deferrals to a qualified plan.

### **ADMINISTRATIVE**

#### **Notice 2006-63, page 87.**

This notice requests comments for developing record retention standards, including recordkeeping limitation programs, for tax-exempt bond issues. In particular, the notice seeks comments regarding any burdens associated with the record retention requirements that apply to issuers and other parties to tax-exempt bond transactions in order to substantiate compliance with section 103 of the Code. Comments should be received by October 16, 2006.

#### **Announcement 2006-49, page 89.**

**Work opportunity tax credit; welfare-to-work (W-t-W) tax credit.** This document sets forth the conclusions of the IRS study relating to Rev. Rul. 2003-112 and announces that no credit will be allowed by the Service for any WOTC and W-t-W tax credit claims without proper certification by a designated local agency in accordance with the statute.

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.

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

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

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

## Section 4975.—Tax on Prohibited Transactions

26 CFR 141.4975-13: Definition of “amount involved” and “correction”.

**Prohibited transactions; first tier excise tax calculations.** This ruling describes how the amount involved is calculated with respect to the section 4975 prohibited transaction excise tax if an employer does not timely pay elective deferrals to a qualified plan.

### Rev. Rul. 2006-38

#### ISSUE

What is the amount involved, for purposes of calculating the prohibited transaction excise tax under § 4975 of the Internal Revenue Code, if an employer does not timely pay elective deferrals to a qualified plan?

#### FACTS

Employer X sponsors a calendar year profit-sharing plan that is qualified under § 401(a) of the Internal Revenue Code and contains a qualified cash or deferred arrangement described in § 401(k). Employees of Employer X are paid on a payment date following the close of each payroll period. Pursuant to the terms of the plan, during a specific payroll period, a portion of the pay of each employee was withheld from his or her pay in accordance with a cash or deferred election made by the employee. The aggregate amount withheld for all employees for that payroll period totaled \$100,000. Although Employer X could reasonably segregate this amount from its general assets and transmit it to the plan on December 8, 2004, Employer X failed to do so, and did not correct the failure until December 30, 2005.

The interest rate for underpayments under § 6621(a)(2) was 5 percent on December 8, 2004, and on January 1, 2005.

#### LAW AND ANALYSIS

Section 4975(a) imposes a 15% excise tax (the first tier excise tax) on a prohibited transaction. In addition, § 4975(b) imposes a 100% excise tax (the second tier excise tax) on a prohibited transaction if that prohibited transaction is not corrected during the taxable period. The tax applies to any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such). Under § 4975, the applicable excise tax is applied to the amount involved in the prohibited transaction.<sup>1</sup>

Section 4975(c)(1)(D)<sup>2</sup> defines a prohibited transaction to include any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan. In addition, § 4975(c)(1)(E) defines a prohibited transaction to include any act by a disqualified person who is a fiduciary whereby the fiduciary deals with the income or assets of a plan for his or her own interest or for his or her own account. Section 4975(e)(2) includes in its definition of a disqualified person an employer any of whose employees are covered by the plan.

Section 4975(f)(4) defines the term “amount involved,” generally, as the greater of (1) the amount of money and the fair market value of the other property given or (2) the amount of money and the fair market value of the other property received in such transaction. For purposes of the first tier excise tax, the fair market value is determined as of the date on which the prohibited transaction occurs, whereas, for purposes of the second tier excise tax, the fair market value is the highest fair market value during the taxable period described in § 4975(f)(2).

Section 4975(f)(2) defines the term “taxable period” as the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of (1) the date of the mailing of a

statutory notice of deficiency, (2) the date on which the first tier excise tax is assessed, or (3) the date on which correction of the prohibited transaction is completed.

Section 4975(f)(5) defines “correction” as undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

Section 141.4975-13 of the Temporary Pension Excise Tax Regulations provides that, under paragraphs (4) and (5) of § 4975(f), § 53.4941(e)-1 of the Foundation Excise Tax Regulations is controlling to the extent those regulations describe terms appearing both in § 4941(e) and § 4975(f). The term “amount involved” appears in both § 4941(e) and § 4975(f).

Section 53.4941(e)-1(b)(2)(ii) provides that, where the transaction involves the use of money or other property, the amount involved is the greater of the amount paid for such use or the fair market value of such use for the period for which the money or other property is used and the amount involved is determined for the entire period that the money or other property is used. In addition, § 53.4941(e)-1(e)(1) provides that, in the instance of a prohibited transaction that is a loan, an additional prohibited transaction is deemed to occur on the first day of each taxable year in the taxable period after the taxable year in which the use occurred. Example (2) of § 53.4941(e)-1(b)(4) illustrates this where principal and interest already have been repaid by stating that, in that context, the amount involved is the principal times the percentage that constitutes the fair market value of the use of money on the date of the transaction for each year or partial year in the taxable period.

Rev. Rul. 2002-43, 2002-2 C.B. 85, addresses a prohibited transaction that spans multiple taxable years in a taxable

<sup>1</sup> Section 102(a) of Reorganization Plan No. 4 of 1978 (43 FR. 47713, October 17, 1978, 1979-1 C.B. 480) generally provides that the Secretary of Labor has the authority to issue regulations interpreting § 4975(c)(1). However, the Secretary of the Treasury retains the authority to issue rulings, etc., to the extent necessary for the continued enforcement of § 4975(a) and (b) and § 4975(f)(4).

<sup>2</sup> The Department of Labor has advised the Service that the failure to remit employee contributions to an employee benefit plan may constitute a crime under 18 U.S.C. 664 which provides, in relevant part, that anyone who unlawfully and willfully converts to his or her own use or to the use of another, any of the moneys or funds, or other assets of any employee benefit plan shall be subject to the fines and/or imprisonment as provided for under the provisions of title 18. This revenue ruling does not express any opinion concerning the application of title 18 to the facts set forth in it.

period where the first tier excise tax rate changes and illustrates that where interest is not repaid in a given year, that interest is added to the principal amount in the subsequent year.

Section 2510.3-102 of the Department of Labor regulations provides that, for purposes of § 4975, amounts withheld from a participant's wages for contributions to a plan become plan assets as of the earliest date on which such contributions can reasonably be segregated from the employer's general assets. However, in the case of a plan, such as a section 401(k) plan, in no event does the date on which such contributions become plan assets occur later than the 15<sup>th</sup> business day of the month immediately following the month in which the participant contributions are received by the employer (in the case of amounts that a participant or beneficiary pays to

an employer) or the 15<sup>th</sup> business day of the month following the month in which such amounts would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant's wages).

In the facts above, the failure to transmit the contribution until December 30, 2005, constitutes a prohibited transaction for 2004 and a prohibited transaction for 2005 under § 4975(c)(1). Accordingly, (1) the amount involved for the 2004 prohibited transaction is interest on \$100,000 from December 8, 2004, to December 31, 2004, and (2) the amount involved for the 2005 prohibited transaction is interest on the new balance owed to the plan after increasing the principal as a result of there not being a correction of the 2004 prohibited transaction and is calculated from January 1, 2005, to December 30, 2005.

The taxable period for the 2004 prohibited transaction begins on December 8, 2004 and ends on December 30, 2005 (the date of the correction), and the taxable period for the 2005 prohibited transaction begins on January 1, 2005 and ends on December 30, 2005 (the date of the correction).

For purposes of calculating the § 4975 excise tax on a timely filed Form 5330 for a failure to transmit participant contributions or amounts that would have otherwise been payable to the participant in cash, under the authority of § 7805, the interest rate for underpayments described in § 6621(a)(2) on the date of the prohibited transaction is an appropriate rate used to calculate the amount involved. The following illustrates the application of this rate to the facts above (and taking into account only the first tier excise tax):

*Calculation of the amount involved*

<i>Date</i>	<i>Principal</i>	<i>Interest Rate</i>	<i>Time</i>	<i>Amount involved</i>
1. 12/8/2004	\$100,000	.05	.0628415	\$314
2. 1/1/2005	\$100,314	.05	.9972602	\$5,002

*Calculation of the first tier excise tax under § 4975*

<i>Act #</i>	<i>Date of Prohibited Transaction</i>	<i>Taxable Period</i>	<i>2004 Taxable Year</i>	<i>2005 Taxable Year</i>
1	12/8/2004	12/8/04 to 12/30/05	\$314	\$314
2	1/1/2005	1/1/05 to 12/30/05	-----	\$5,002
			\$314	\$5,316
			x .15	x .15
			\$47	\$797

Accordingly, the § 4975(a) first tier excise tax totals \$844 (\$47 plus \$797).

This revenue ruling only applies for purposes of determining the amount involved under § 4975 where there is a failure to transmit participant contributions or amounts that would have otherwise been payable to the participant in cash, and does not apply for self-dealing violations under § 4941.

**HOLDING**

Solely for purposes of calculating the prohibited transaction excise tax under

§ 4975, the amount involved if an employer does not timely pay the participant deferrals or contributions to a qualified plan is based on interest on those elective deferrals.

**Drafting Information**

The principal author of this revenue ruling is Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans' taxpayer assistance telephone service at 877-829-5500

(a toll-free number), between the hours of 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday. Mr. Rubin can be reached at 202-283-9888 (not a toll-free number).

## Part III. Administrative, Procedural, and Miscellaneous

### Section 45D.—New Markets Tax Credit

#### Notice 2006–60

##### SECTION 1. PURPOSE

The purpose of this notice is to announce that the Treasury Department and Internal Revenue Service will amend § 1.45D–1 of the Income Tax Regulations to provide guidance on how an entity meets the requirements to be a qualified active low-income community business when its activities involve certain targeted populations under § 45D(e)(2) of the Internal Revenue Code. Taxpayers may rely on this notice until the regulations are issued.

##### SECTION 2. BACKGROUND

.01 Section 45D(a)(1) provides a new markets tax credit on certain credit allowance dates described in § 45D(a)(3) with respect to a qualified equity investment in a qualified community development entity (CDE) described in § 45D(c).

.02 Section 45D(b)(1) provides that an equity investment in a CDE is a “qualified equity investment” if, among other requirements: (A) the investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash; (B) substantially all of the cash is used by the CDE to make qualified low-income community investments; and (C) the investment is designated for purposes of § 45D by the CDE.

.03 Under § 45D(b)(2), the maximum amount of equity investments issued by a CDE that may be designated by the CDE as qualified equity investments shall not exceed the portion of the new markets tax credit limitation set forth in § 45D(f)(1) that is allocated to the CDE by the Secretary under § 45D(f)(2).

.04 Section 45D(c)(1) provides that an entity is a CDE only if, among other requirements, the entity is certified by the Secretary as a CDE.

.05 Section 45D(d)(1) provides that the term “qualified low-income community investment” (QLICI) means: (A) any capital or equity investment in, or loan to, any qualified active low-income community business (QALICB) (as defined in

§ 45D(d)(2)); (B) the purchase from another CDE of any loan made by the entity that is a QLICI; (C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, and residents of, low-income communities; and (D) any equity investment in, or loan to, any CDE.

.06 Under § 45D(d)(2), a QALICB is any corporation (including a nonprofit corporation) or partnership if, among other requirements, (i) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community, (ii) a substantial portion of the use of the tangible property of the entity (whether owned or leased) is within any low-income community, and (iii) a substantial portion of the services performed for the entity by its employees are performed in any low-income community.

.07 Under § 45D(d)(3), with certain exceptions, a qualified business is any trade or business. The rental to others of real property is a qualified business only if, among other requirements, the real property is located in a low-income community.

.08 Section 221 of the American Jobs Creation Act of 2004 (P.L. 108–357) amended § 45D(e)(2) to provide that the Secretary shall prescribe regulations under which one or more targeted populations (within the meaning of § 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. The regulations shall include procedures for determining which entities are QALICBs with respect to those populations.

.09 The term “targeted population,” as defined in 12 U.S.C. 4702(20) and 12 C.F.R. 1805.201, means individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loans or equity investments. Under 12 U.S.C. 4702(17) as interpreted by 12 C.F.R. 1805.104, the term “low-income” means having an income, adjusted for family size, of not more than (A) for metropolitan areas, 80 percent of the area median family income; and (B) for non-metropolitan areas, the

greater of (i) 80 percent of the area median family income; or (ii) 80 percent of the statewide nonmetropolitan area median family income.

.10 Section 101(a) of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109–135) (the Act) added new § 1400M(1), which provides that the Gulf Opportunity Zone (GO Zone) is 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 Relief and Emergency Assistance Act by reason of Hurricane Katrina.

.11 Section 1400M(2) provides that the Hurricane Katrina disaster area is an area with respect to which a major disaster has been declared by the President before September 14, 2005, under section 401 of the Act by reason of Hurricane Katrina. After determination by the President that a disaster area warrants assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Federal Emergency Management Agency (FEMA) makes damage assessments. The categories for damage assessment in the wake of a hurricane are: flooded area, saturated area, limited damage, moderate damage, extensive damage, and catastrophic damage.

.12 Under § 1400N(m)(1), a CDE shall be eligible for an allocation under § 45D(f)(2) of the increase in the new markets tax credit limitation described in § 1400N(m)(2) only if a significant mission of the CDE is the recovery and redevelopment of the GO Zone. Section 1400N(m)(2) provides that the new markets tax credit limitation otherwise determined under § 45D(f)(1) shall be increased by an amount equal to \$300,000,000 for 2005 and 2006 and \$400,000,000 for 2007, to be allocated among CDEs to make QLICIs within the GO Zone. CDEs may make such QLICIs under the existing rules of § 1.45D–1 or using the guidance contained in this notice.

.13 On May 24, 2005, the Community Development Financial Institutions (CDFI) Fund published an advance notice of proposed rulemaking (ANPRM) (70 FR 29658) to seek comments from the public with respect to how targeted populations

may be treated as eligible low-income communities under § 45D(e)(2). In response to the ANPRM, comments have been received making various suggestions relating to the definition of the term “targeted populations” and proposing amendments to the requirements to be a QALICB under § 1.45D–1.

.14 In conjunction with the publication of Income Tax Regulations specifying how an entity meets the requirements to be a QALICB when its activities involve certain targeted populations under § 45D(e)(2), the CDFI Fund shall provide additional guidance with respect to: (A) the definition of such targeted populations; and (B) administrative procedures relating to the certification of CDEs wishing to serve such populations. Taxpayers may rely upon this notice until such guidance is issued.

### SECTION 3. DISCUSSION

.01 *Notice of Proposed Rulemaking.* The Treasury Department and Internal Revenue Service are developing regulations to provide guidance on how an entity meets the requirements to be a QALICB when its activities involve certain targeted populations under § 45D(e)(2). Taxpayers may rely on this notice until the regulations are issued. Based upon the statutory changes made by the American Jobs Creation Act of 2004 and in response to comments received in response to the CDFI Fund ANPRM, the Treasury Department and Internal Revenue Service expect to amend § 1.45D–1 to provide guidance consistent with this notice.

.02 *Low-Income Community.* Section 1.45D–1 will be amended to provide that, for purposes of § 45D(e)(2), targeted populations that will be treated as a low-income community are individuals, or an identifiable group of individuals, including an Indian tribe, who are low-income persons as defined in section 3.03 of this notice or who are individuals who otherwise lack adequate access to loans or equity investments as defined in section 3.04 of this notice.

.03 *Low-Income Persons.*

(1) *Definition.* For purposes of § 45D(e)(2), an individual shall be considered to be low-income if the individual’s family income, adjusted for family size, is

not more than (A) for metropolitan areas, 80 percent of the area median family income; and (B) for non-metropolitan areas, the greater of (i) 80 percent of the area median family income; or (ii) 80 percent of the statewide nonmetropolitan area median family income.

(2) *QALICB Requirements for Low-Income Targeted Populations.*

(a) *In general.* Section 1.45D–1(d)(4)(A), (B), and (C) will be amended to provide that a QALICB for low-income targeted populations, with respect to any taxable year, is a corporation (including a nonprofit corporation) or a partnership engaged in the active conduct of a qualified business as defined in § 1.45D–1(d)(5) if:

(i) at least 50 percent of the entity’s total gross income for any taxable year is derived from sales, rentals, services, or other transactions with individuals who are low-income persons for purposes of § 45D(e)(2),

(ii) at least 40 percent of the entity’s employees are individuals who are low-income persons for purposes of § 45D(e)(2), or

(iii) at least 50 percent of the entity is owned by individuals who are low-income persons for purposes of § 45D(e)(2).

(b) *Employee.* The determination of whether an employee is a low-income person must be made at the time the employee is hired. If the employee is a low-income person at the time of hire, that employee is considered a low-income person for purposes of § 45D(e)(2) throughout the time of employment, without regard to any increase in the employee’s income after the time of hire.

(c) *Owner.* The determination of whether an owner is a low-income person must be made at the time the QALICB is made. If an owner is a low-income person at the time the QALICB is made, that owner is considered a low-income person for purposes of § 45D(e)(2) throughout the time the ownership interest is held by that owner.

(3) *120-Percent-Income Restriction.*

(a) *In general.*

(i) In no case will an entity be treated as a QALICB under section 3.03 of this notice if the entity is located in a population census tract for which the median family income exceeds 120 percent of:

(A) in the case of a tract not located within a metropolitan area, the statewide median family income, or

(B) in the case of a tract located within a metropolitan area, the greater of statewide median family income or metropolitan area median family income (120-percent-income restriction).

(ii) The 120-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is not located in a metropolitan area.

(iii) The 120-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is located in a metropolitan area and more than 75 percent of the tract is zoned for commercial or industrial use.

(b) *Population Census Tract Location.*

(i) For purposes of the 120-percent-income restriction, an entity will be considered to be located in a population census tract for which the median family income exceeds 120 percent of the applicable median family income under section 3.03(3)(a)(i)(A) or (B) of this notice (non-qualifying population census tract) if:

(A) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business (as defined in § 1.45D–1(d)(5)) within one or more non-qualifying population census tracts (non-qualifying gross income amount);

(B) at least 40 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts (non-qualifying tangible property usage); and

(C) at least 40 percent of the services performed for the entity by its employees are performed in one or more non-qualifying population census tracts (non-qualifying services performance).

(ii) The entity is considered to have the non-qualifying gross income amount if the entity has non-qualifying tangible property usage or non-qualifying services performance of at least 50 percent instead of 40 percent.

(iii) If the entity has no employees, the entity is considered to have the non-qualifying gross income amount as well as non-qualifying services performance if at least 85 percent of the use of the tangible

property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts.

(4) *Rental of Real Property for Low-Income Targeted Populations.* In addition, § 1.45D-1(d)(5)(ii) will be amended to provide that the rental to others of real property for low-income targeted populations that otherwise satisfies the requirements to be a qualified business will be treated as located in a low-income community if at least 50 percent of the entity's total gross income is derived from rentals to individuals who are low-income persons for purposes of section 45D(e)(2) and/or to a QALICB that meets the requirements for low-income targeted populations under section 3.03(2)(a)(i) or (ii) and 3.03(2)(b) of this notice.

.04 *Individuals who Otherwise Lack Adequate Access to Loans or Equity Investments.*

(1) *In general.* Section 3.04 of this notice may be applied only with regard to QLICs made under the increase in the new markets tax credit limitation pursuant to § 1400N(m)(2). Therefore, only CDEs with a significant mission of recovery and redevelopment of the GO Zone that receive an allocation from the increase described in § 1400N(m)(2) may make QLICs from that allocation pursuant to the rules in section 3.04 of this notice.

(2) *GO Zone Targeted Population.* For purposes of targeted populations under § 45D(e)(2), an individual is considered to otherwise lack adequate access to loans or equity investments only if the individual was displaced from his or her principal residence as a result of Hurricane Katrina and/or the individual lost his or her principal source of employment as a result of Hurricane Katrina (GO Zone Targeted Population). In order to meet this definition, the individual's principal residence or principal source of employment, as applicable, must have been located in a population census tract within the GO Zone that contains one or more areas designated by FEMA as flooded, having sustained extensive damage, or having sustained catastrophic damage as a result of Hurricane Katrina.

(3) *QALICB Requirements for the GO Zone Targeted Population.*

(a) *In general.* Section 1.45D-1(d)(4)(A), (B), and (C) will be amended to provide that a QALICB for the GO Zone

Targeted Population, with respect to any taxable year, is a corporation (including a nonprofit corporation) or a partnership engaged in the active conduct of a qualified business as defined in § 1.45D-1(d)(5) if:

(i) at least 50 percent of the entity's total gross income for any taxable year is derived from sales, rentals, services, or other transactions with the GO Zone Targeted Population, low-income persons as defined in section 3.03 of this notice, or some combination thereof;

(ii) at least 40 percent of the entity's employees consist of the GO Zone Targeted Population, low-income persons as defined in section 3.03 of this notice, or some combination thereof; or

(iii) at least 50 percent of the entity is owned by the GO Zone Targeted Population, low-income persons as defined in section 3.03 of this notice, or some combination thereof.

(b) *Location.*

(i) *In general.* In order to be a QALICB under section 3.04(3) of this notice, the entity must be located in a population census tract within the GO Zone that contains one or more areas designated by FEMA as flooded, having sustained extensive damage, or having sustained catastrophic damage as a result of Hurricane Katrina (qualifying population census tract).

(ii) *Determination.*

(A) For purposes of the preceding paragraph, an entity will be considered to be located in a qualifying population census tract if:

(1) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business (as defined in § 1.45D-1(d)(5)) within one or more qualifying population census tracts (gross income requirement);

(2) at least 40 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more qualifying population census tracts (use of tangible property requirement); and

(3) at least 40 percent of the services performed for the entity by its employees are performed in one or more qualifying population census tracts (services performed requirement).

(B) The entity is deemed to satisfy the gross income requirement if the entity meets either the use of tangible property requirement or the services performed re-

quirement of at least 50 percent instead of 40 percent.

(C) If the entity has no employees, the entity is deemed to satisfy the services performed requirement as well as the gross income requirement if at least 85 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more qualifying population census tracts.

(4) *200-Percent-Income Restriction.*

(a) *In general.*

(i) In no case will an entity be treated as a QALICB under section 3.04 of this notice if the entity is located in a population census tract for which the median family income exceeds 200 percent of:

(A) in the case of a tract not located within a metropolitan area, the statewide median family income, or

(B) in the case of a tract located within a metropolitan area, the greater of statewide median family income or metropolitan area median family income (200-percent-income restriction).

(ii) The 200-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is not located in a metropolitan area.

(iii) The 200-percent-income restriction shall not apply to an entity located within a population census tract with a population of less than 2,000 if such tract is located in a metropolitan area and more than 75 percent of the tract is zoned for commercial or industrial use.

(b) *Population Census Tract Location.*

(i) For purposes of the 200-percent-income restriction, an entity will be considered to be located in a population census tract for which the median family income exceeds 200 percent of the applicable median family income under section 3.04(4)(a)(i)(A) or (B) of this notice (non-qualifying population census tract) if:

(A) at least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business (as defined in § 1.45D-1(d)(5)) within one or more non-qualifying population census tracts (non-qualifying gross income amount);

(B) at least 40 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts

(non-qualifying tangible property usage); and

(C) at least 40 percent of the services performed for the entity by its employees are performed in one or more non-qualifying population census tracts (non-qualifying services performance).

(ii) The entity is considered to have the non-qualifying gross income amount if the entity has non-qualifying tangible property usage or non-qualifying services performance of at least 50 percent instead of 40 percent.

(iii) If the entity has no employees, the entity is considered to have the non-qualifying gross income amount as well as non-qualifying services performance if at least 85 percent of the use of the tangible property of the entity (whether owned or leased) is within one or more non-qualifying population census tracts.

(5) *Rental of Real Property for the GO Zone Targeted Population.* In addition, § 1.45D-1(d)(5)(ii) will be amended to provide that the rental to others of real property for the GO Zone Targeted Population that otherwise satisfies the requirements to be a qualified business will be treated as located in a low-income community if at least 50 percent of the entity's total gross income is derived from rentals to the GO Zone Targeted Population, low-income persons as defined in section 3.03 of this notice, or some combination thereof and/or to a QALICB that meets the requirements for the GO Zone Targeted Population under section 3.04(3)(a)(i) or (ii) of this notice.

#### SECTION 4. EFFECTIVE DATE

The regulations will be revised to incorporate the guidance set forth in this notice. Taxpayers may rely on this notice for

designations made by the Secretary after October 22, 2004. Therefore, taxpayers may apply section 3.03 of this notice for all QLICIs made on or after October 22, 2004, and may apply section 3.04 of this notice for all QLICIs made by CDEs from allocations under § 1400N(m).

#### SECTION 5. REQUEST FOR COMMENTS

.01 The Internal Revenue Service and Treasury Department invite taxpayers to submit written comments on issues relating to § 45D(e)(2) and this notice. In particular, the Internal Revenue Service and Treasury Department encourage taxpayers to submit written comments regarding circumstances under which an entity can be a QALICB when its activities involve individuals, or an identifiable group of individuals, including an Indian tribe, who otherwise lack adequate access to loans or equity investments under 12 U.S.C. 4702(20).

.02 Send comments to: CC:PA:LPD:PR (Notice 2006-60), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2006-60), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Submissions may also be sent electronically via the Internet to the following e-mail address: [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov). Include the notice number (Notice 2006-60) in the subject line. Comments must be received on or before August 31, 2006.

#### SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Lauren Ross Taylor of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Taylor at (202) 622-3040 (not a toll-free call).

## 2006 Marginal Production Rates

### Notice 2006-61

This notice announces the applicable percentage under section 613A of the Internal Revenue Code to be used in determining percentage depletion for marginal properties for the 2006 calendar year.

Section 613A(c)(6)(C) of the Code defines the term "applicable percentage" for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which \$20 exceeds the reference price (determined under § 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 29(d)(2)(C) for the 2005 calendar year is \$50.26.

Table 1 contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2006.

Notice 2006-61 Table 1

#### APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

<i>Calendar Year</i>	<i>Applicable Percentage</i>
1991	15 percent
1992	18 percent
1993	19 percent
1994	20 percent
1995	21 percent
1996	20 percent
1997	16 percent
1998	17 percent
1999	24 percent



Notice 2006–61 Table 1

APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION – Continued

<i>Calendar Year</i>	<i>Applicable Percentage</i>
2000	19 percent
2001	15 percent
2002	15 percent
2003	15 percent
2004	15 percent
2005	15 percent
2006	15 percent

The principal author of this notice is Jaime C. Park of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Park at (202) 622–3120 (not a toll-free call).

**2006 Section 43 Inflation Adjustment**

**Notice 2006–62**

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor.

The enhanced oil recovery credit under § 43 for any taxable year is reduced if the “reference price,” determined under § 45K(d)(2)(C), for the calendar year preceding the calendar year in which the taxable year begins is greater than \$28 multiplied by the inflation adjustment factor for that year. The credit is phased out in any taxable year in which the reference price for the preceding calendar year exceeds \$28 (as adjusted) by at least \$6.

The term “inflation adjustment factor” means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of

which is the GNP implicit price deflator for 1990.

Because the reference price for the 2005 calendar year (\$50.26) exceeds \$28 multiplied by the inflation adjustment factor for the 2005 calendar year by \$11.78, the credit for enhanced oil recovery credit for qualified costs paid or incurred in 2006 is phased out completely.

Table 1 contains the GNP implicit price deflator used for the 2006 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2005 calendar years.

Notice 2006–62 TABLE 1

GNP IMPLICIT PRICE DEFLATORS

<i>Calendar Year</i>	<i>GNP Implicit Price Deflator</i>
1990	112.9 (used for 1991)
1991	117.0 (used for 1992)
1992	120.9 (used for 1993)
1993	124.1 (used for 1994)
1994	126.0 (used for 1995)*
1995	107.5 (used for 1996)
1996	109.7 (used for 1997)**
1997	112.35 (used for 1998)
1998	112.64 (used for 1999)***
1999	104.59 (used for 2000)
2000	106.89 (used for 2001)
2001	109.31 (used for 2002)
2002	110.63 (used for 2003)
2003	105.67 (used for 2004)****
2004	108.23 (used for 2005)
2005	112.129 (used for 2006)

\*\*\*\* Beginning in 2003, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.589.

\*\*\* Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

\*\* Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

\* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2006 calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years beginning in 1991 through 2005 calendar years.

Notice 2006-62 TABLE 2 INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS		
<i>Calendar Year</i>	<i>Inflation Adjustment Factor</i>	<i>Phase-out Amount</i>
1991	1.0000	0
1992	1.0363	0
1993	1.0708	0
1994	1.0992	0
1995	1.1160	0
1996	1.1485	0
1997	1.1720	0
1998	1.1999	0
1999	1.2030	0
2000	1.2087	0
2001	1.2353	0
2002	1.2633	0
2003	1.2785	0
2004	1.2952	0
2005	1.3266	0
2006	1.3743	100 percent

**DRAFTING INFORMATION**

The principal author of this notice is Jaime C. Park of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Park at (202) 622-3120 (not a toll-free call).

**Record Retention Requirements for Tax Exempt Bonds**

**Notice 2006-63**

**PURPOSE**

This notice requests comments for developing record retention standards,

including recordkeeping limitation programs, for tax-exempt bond issues. In particular, the Service is seeking comments on managing any burdens potentially associated with the record retention requirements that apply to issuers and other parties to tax-exempt bond transactions in order to substantiate compliance with section 103 of the Internal Revenue Code and related provisions.

**BACKGROUND**

In general, under section 103(a), gross income does not include interest on any State or local bond if certain requirements are met. Various provisions of the Code and the Income Tax Regulations, including, but not limited to, sections 103, 141-150, and 6001, impose record re-

tention requirements on issuers and other parties to tax-exempt bond transactions in order to substantiate compliance with section 103 and related provisions.

The Service has received inquiries regarding the scope and nature of records that issuers and other parties to tax-exempt bond transactions must retain. In addition, the Service has received requests for guidance addressing State and local governmental recordkeeping requirements in the tax-exempt bond context. For example, industry representatives have recommended that the Service issue guidance that would permit a combination of assumptions, certifications, and summaries of original documents to ease the compliance burden.

## REQUEST FOR COMMENTS

The Service requests comments for developing record retention standards, including recordkeeping limitation programs, for tax-exempt bond issues. Comments are invited regarding all aspects of compliance with recordkeeping requirements for tax-exempt bond transactions, including whether different programs may be appropriate for specific types of bond records or specific classes of tax-exempt bond issues. Interested persons should send comments to CC:PA:LPD:PR (Notice 2006-63), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. Monday to Friday to CC:PA:LPD:PR (Notice 2006-63), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include "Notice 2006-63" in the subject line of any electronic communications. Written comments should be received by October 16, 2006. All comments will be available for public inspection and copying.

## DRAFTING INFORMATION

The principal authors of this notice are Barbara M. Pettoni of the Office of Associate Chief Counsel (Procedure & Administration) and Steven A. Chamberlin of the Tax Exempt Bonds Division, Office of Outreach, Planning & Review (Tax Exempt & Government Entities). For further information regarding this notice, please contact Ms. Pettoni at (202) 622-4910 or Mr. Chamberlin at (636) 940-6466 (not a toll-free call).

## Interim Guidance on the Application of Section 409A to Accelerated Payments to Satisfy Federal Conflict of Interest Requirements

### Notice 2006-64

#### I. Background

Section 409A was added to the Internal Revenue Code as part of the American Jobs Creation Act of 2004, Pub. Law No. 108-357, 118 Stat. 1418. Section 409A generally provides that all amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income, unless certain requirements are met. The IRS issued Notice 2005-1, 2005-1 C.B. 274, on December 20, 2004 (published as modified on January 6, 2005) and issued proposed regulations (REG-158080-04, 2005-2 C.B. 786) under section 409A on September 29, 2005 (70 Fed. Reg. 57930 (Oct. 4, 2005)). The proposed regulations do not limit the application of the guidance provided in Notice 2005-1.

#### II. Accelerated Payments of Nonqualified Deferred Compensation to Satisfy Federal Conflict of Interest Requirements

Section 409A(a)(3) provides that a plan may not permit acceleration of the time or schedule of payment for nonqualified deferred compensation subject to section 409A except as provided in regulations by the Secretary. The legislative history to section 409A provides that it was intended that the Secretary would provide limited exceptions to the prohibition on acceleration of payments, including, for example, a distribution necessary to comply with Federal conflict of interest requirements. H.R. Conf. Rep. No. 108-755, at 731 (2004). Both Notice 2005-1, Q&A-15(c) and § 1.409A-3(h)(2)(ii) of the proposed regulations provide that a plan may permit such acceleration of the time and schedule of a payment of nonqualified deferred compensation subject to the requirements

of section 409A as may be necessary to comply with a certificate of divestiture (as defined in section 1043(b)(2)).

Commentators, including the Office of Government Ethics, expressed concern about the indication in Notice 2005-1 and the proposed regulations that a "certificate of divestiture" (as defined in section 1043(b)(2)) would be effective to permit an accelerated payment of nonqualified deferred compensation subject to section 409A. The Office of Government Ethics issues such certificates of divestiture so that an employee may defer recognition of capital gains when property is sold to comply with conflict of interest provisions. Because payment under a nonqualified deferred compensation plan is treated as ordinary income, rather than as capital gain, the Office of Government Ethics could not issue a certificate of divestiture in connection with an accelerated payment under such a plan.

Accordingly, until further guidance is issued, a nonqualified deferred compensation arrangement subject to section 409A may permit such acceleration of the time or schedule of payment as is necessary to satisfy requirements established pursuant to a written determination by the Office of Government Ethics that: (1) divestiture of the financial interest or termination of the financial arrangement is reasonably necessary to comply with any Federal conflict of interest statute, regulation, rule or executive order (including section 208 of title 18, United States Code), or is requested by a congressional committee as a condition of confirmation; and (2) specifies the financial interest to be divested or terminated. Of course, amounts actually paid pursuant to such acceleration generally will be includible in income by the recipient.

#### III. Drafting Information

The principal author of this notice is Stephen Tackney of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Stephen Tackney at (202) 927-9639 (not a toll-free call).

# Part IV. Items of General Interest

## Industry Issue Resolution Regarding the Work Opportunity and Welfare-to-Work Tax Credits

### Announcement 2006-49

On August 8, 2005, in IR-2005-81, the Internal Revenue Service and the Treasury Department announced that the Industry Issue Resolution (IIR) Program would address concerns relating to “member of a family receiving assistance” requirements for the work opportunity and welfare-to-work tax credits. Employers had expressed concern that, before the issuance of Rev. Rul. 2003-112, 2003-2 C.B. 1007, states applied the family-member requirements in a manner inconsistent with the holding in that revenue ruling and, as a result, employers were not permitted to claim credits that should have been allowed. A multi-functional team was formed to analyze the relevant facts. Based upon the analysis conducted by the team, the IRS and Treasury have concluded that the states applied the family-member requirements in a manner consistent with the holding of Rev. Rul. 2003-112 in all but a small number of cases and that these cases had an insignificant impact on the aggregate amount of work opportunity and welfare-to-work tax credits employers were permitted to claim. Consequently, no administrative resolution through the IIR program is appropriate.

#### BACKGROUND

Section 51 of the Internal Revenue Code allows a work opportunity tax credit (WOTC) to an employer who paid qualified wages during the taxable year to an individual who is a member of a targeted group described in section 51(d). To be a member of a targeted group, an individual must be certified by the designated local agency (state workforce agency) as satisfying the applicable conditions for that group. To qualify for three of the targeted groups (qualified IV-A recipient, qualified veteran, and qualified food stamp recipient), the individual must be certified by the state workforce agency as being “a member of a family receiving assistance”

under a stated benefit program for a specified period of time.

Section 51A allows a welfare-to-work (W-t-W) tax credit to an employer who paid qualified wages during the taxable year to an individual who is a long-term family assistance recipient. A long-term family assistance recipient under section 51A must be certified as “a member of a family receiving assistance” under rules similar to the certification requirements for qualified IV-A recipients, qualified veterans, and qualified food stamp recipients under section 51.

In 2002, the Internal Revenue Service received a request for clarification of the standards under which an individual could be certified as “a member of a family receiving assistance” who qualifies for inclusion in one of these four groups (affected groups). The Service then issued Rev. Rul. 2003-112, which holds that an individual can be certified as a member of a family receiving assistance if the individual’s family receives assistance for the requisite period and the individual is included on the grant (and thus receives assistance) for some portion of the specified period.

During the period before publication of the ruling, some state workforce agencies might have applied standards differing from the standard in Rev. Rul. 2003-112. Because the Service did not limit the retroactive effect of the ruling, the application of a different standard could have resulted in an incorrect denial of certification for some employees. Under normal procedures, an employer that believes a denial of certification is incorrect would request that the state workforce agency reconsider its denial and would be allowed a credit only if, after reconsideration, the agency certified the employee.

A trade association representing service providers that screen employees for credit eligibility and assist employers in submitting requests for their certification proposed an alternative procedure. Under the alternative procedure, employers would be permitted to claim credits for a percentage of requests for certification that were denied before issuance of Rev. Rul. 2003-112. The proposal became the subject of an Industry Issue Resolution (IIR) project.

#### IIR PROCESS: INDUSTRY DATA, IRS STUDY, AND CONCLUSION

The trade association asserted that its member data indicated that certification rates varied among states and were lower for the targeted groups requiring certification as a member of a family receiving assistance (affected groups). However, the data did not provide a complete picture of WOTC employers and certification rates. The data also did not differentiate between denials for administrative reasons (such as lack of timeliness or original signature) and denials for technical reasons (failure to meet a statutory requirement for a targeted group), nor did it provide a valid basis for determining what proportion of the denials for technical reasons were the result of the application of a standard differing from that set forth in Rev. Rul. 2003-112.

In response to the IIR submission, the Service undertook a study to determine whether a significant portion of the denials of requests for certification issued before the publication of Rev. Rul. 2003-112 were the result of state agencies taking a position inconsistent with the conclusion in the revenue ruling. In doing so, the Service worked with state authorities and the Department of Labor to collect data on the reasons for denials of requests for certification in the four affected groups and conducted a statistical analysis of that data. The Service also considered information presented by interested parties. Based upon this study, the Service has determined that only an insignificant fraction (less than one percent) of the denials of requests for certification in the four affected groups resulted from state workforce agencies taking a position inconsistent with Rev. Rul. 2003-112.

Accordingly, the Service and Treasury have concluded that any failures prior to the issuance of Rev. Rul. 2003-112 to apply a standard consistent with the standard set forth in the ruling had a negligible effect on the aggregate amount of credits taxpayers were permitted to claim. Therefore, no Internal Revenue Service administrative resolution is necessary or appropriate, and no credit will be allowed by the Service for any WOTC and W-t-W tax credit claims without proper certification by a designated local agency in accordance

with the statute. An employer that believes an employee was improperly denied certification prior to the publication of Rev. Rul. 2003–112 may request that the appropriate state workforce agency reconsider the denial.

#### DRAFTING INFORMATION

The principal author of this announcement is Karin Loverud of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities).

For further information regarding this announcement, contact Karin Loverud at (202) 622–6080 (not a toll-free call).

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

## Abbreviations

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

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

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

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

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

Bulletins 2006–27 through 2006–29

### **Announcements:**

2006-42, 2006-27 I.R.B. 48  
2006-43, 2006-27 I.R.B. 48  
2006-44, 2006-27 I.R.B. 49  
2006-46, 2006-28 I.R.B. 76  
2006-47, 2006-28 I.R.B. 78  
2006-49, 2006-29 I.R.B. 89

### **Notices:**

2006-56, 2006-28 I.R.B. 58  
2006-57, 2006-27 I.R.B. 13  
2006-58, 2006-28 I.R.B. 59  
2006-59, 2006-28 I.R.B. 60  
2006-60, 2006-29 I.R.B. 82  
2006-61, 2006-29 I.R.B. 85  
2006-62, 2006-29 I.R.B. 86  
2006-63, 2006-29 I.R.B. 87  
2006-64, 2006-29 I.R.B. 88

### **Proposed Regulations:**

REG-135866-02, 2006-27 I.R.B. 34  
REG-112994-06, 2006-27 I.R.B. 47  
REG-118775-06, 2006-28 I.R.B. 73

### **Revenue Procedures:**

2006-29, 2006-27 I.R.B. 13  
2006-31, 2006-27 I.R.B. 32  
2006-32, 2006-28 I.R.B. 61

### **Revenue Rulings:**

2006-35, 2006-28 I.R.B. 50  
2006-38, 2006-29 I.R.B. 80

### **Treasury Decisions:**

9265, 2006-27 I.R.B. 1  
9266, 2006-28 I.R.B. 52

---

<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2006–1 through 2006–26 is in Internal Revenue Bulletin 2006–26, dated June 26, 2006.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

Bulletins 2006–27 through 2006–29

### **Notices:**

#### **2006-20**

Supplemented and modified by  
Notice 2006-56, 2006-28 I.R.B. 58

### **Proposed Regulations:**

#### **REG-134317-05**

Corrected by  
Ann. 2006-47, 2006-28 I.R.B. 78

### **Revenue Procedures:**

#### **2005-41**

Superseded by  
Rev. Proc. 2006-29, 2006-27 I.R.B. 13

### **Treasury Decisions:**

#### **9254**

Corrected by  
Ann. 2006-44, 2006-27 I.R.B. 49

#### **9258**

Corrected by  
Ann. 2006-46, 2006-28 I.R.B. 76

#### **9264**

Corrected by  
Ann. 2006-46, 2006-28 I.R.B. 76

---

<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2006–1 through 2006–26 is in Internal Revenue Bulletin 2006–26, dated June 26, 2006.







# Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

Order Processing Code:  
3432

Easy Secure Internet:  
bookstore.gpo.gov

Toll Free: 866 512-1800  
DC Area: 202 512-2800  
Fax: 202 512-2250

Mail: Superintendent of Documents  
P.O. Box 371954  
Pittsburgh, PA 15250-7954

### Publications

Qty.	Stock Number	Title	Price Each	Total Price
	048-004-02405-5	Cum. Bulletin 1998-1 (Jan-June)	86.00	
	048-004-02422-5	Cum. Bulletin 1998-2 (Jul-Dec)	85.00	
	048-004-02451-9	Cum. Bulletin 1998-4	72.50	
	048-004-02467-5	Cum. Bulletin 1999-3	51.00	
	048-004-02455-1	Cum. Bulletin 2000-1 (Jan-June)	82.00	
	048-004-02453-5	Cum. Bulletin 2000-2 (July-Dec)	58.00	
	048-004-02454-3	Cum. Bulletin 2001-1 (Jan-June)	83.00	
	048-004-02462-4	Cum. Bulletin 2001-2 (July-Dec)	60.00	
	048-004-02463-2	Cum. Bulletin 2002-1 (Jan-June)	78.00	
	048-004-02470-5	Cum. Bulletin 2002-2 (July-Dec)	72.00	
<b>Total for Publications</b>				

### Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	IRS	Internal Revenue Bulletin	\$247	
		Optional - Add \$50 to open Deposit Account		
<b>Total for Subscriptions</b>				
<b>Total for Publications and Subscriptions</b>				



Check method of payment:

Check payable to Superintendent of Documents

SOD Deposit Account  -

VISA  MasterCard  Discover/NOVUS  AMEX

(expiration date)

*Thank you for your Order!*

Authorizing signature

08/03

Company or personal name

(Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

#### Standing Order Service\*

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

#### Authorization

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:

(enter account information at right)

VISA  MasterCard  Discover/NOVUS  American Express

Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number (\_\_\_\_\_) \_\_\_\_\_

#### SuDocs Deposit Account

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of \$50 you can establish your Superintendent of Documents Deposit Account.

**YES!** Open a SOD Deposit Account for me so I can order future publications quickly and easily.

I am enclosing the \$50 initial deposit.

#### \*Standing Order Service

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA or MasterCard, Discover/NOVUS, or American Express account. Or open a Deposit Account with an initial deposit of \$50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted, but must be followed up with a written cancellation within 10 days).

**Important:** Please include this completed order form with your payment.

# INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

## CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

---

## ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at [www.irs.gov](http://www.irs.gov). Under information for: select Businesses. Under related topics, select More Topics. Then select Internal Revenue Bulletins.

---

## INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

---

## HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh PA, 15250-7954. Please allow two to six weeks, plus mailing time, for delivery.

---

## WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page ([www.irs.gov](http://www.irs.gov)) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:T:SP, Washington, DC 20224

---

**Internal Revenue Service**  
**Washington, DC 20224**

Official Business  
Penalty for Private Use, \$300