

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

T.D. 9364, page 1177.

REG-115910-07, page 1214.

Temporary and proposed regulations under section 6039I of the Code will implement the authority given the Secretary to require information reporting on employer-owned life insurance.

REG-151884-03, page 1200.

Proposed regulations under section 381 of the Code provide guidance regarding the accounting method or combination of methods, including inventory methods, to use following certain corporate reorganizations and tax-free liquidations. The regulations will clarify and simplify the existing regulations.

EMPLOYEE PLANS

Notice 2007-94, page 1179.

Retirement plans; qualification, list of changes. This notice sets forth a list of changes referred to in Rev. Proc. 2007-44, 2007-28 I.R.B. 54, pertaining to the statutory, regulatory, and guidance changes needed for certain requests to the Service for opinion, advisory, and determination letters for the 12-month period beginning February 1, 2008.

Rev. Proc. 2007-71, page 1184.

Tax-sheltered annuities; written program; public schools; model amendments. This procedure sets forth model amendments that may be adopted in order to satisfy certain requirements for a definite written program for certain tax-sheltered annuities under section 403(b) of the Code. This revenue procedure also provides additional relief for certain section 403(b) tax-sheltered annuity contracts.

EXEMPT ORGANIZATIONS

Announcement 2007-113, page 1215.

This announcement is a public notice of the suspension of the federal tax exemption under section 501(p) of the Code of a certain organization that has been designated as supporting or engaging in terrorist activity or supporting terrorism. Contributions made to this organization during the period that the organization's tax-exempt status is suspended are not deductible for federal tax purposes.

Announcement 2007-115, page 1216.

The IRS has revoked its determination that Somolian Women's Association of Hopkins, MN; The Charitable ASP Family Foundation of Sun City, AZ; Prisma Zona Explorotia De Puerto Rico of San Juan, PR; Design Coalition, Inc., of Madison, WI; RVing Women of Apache Junction, AZ; Black Heritage Society, Inc., of Houston, TX; Affordable Housing USA, Inc., of Camarillo, CA; Consumer Credit Education and Counseling, Inc., of Huntsville, AL; United Debt Counseling, Inc., of Fort Lauderdale, FL; and Chicago Principals and Administrators of Chicago, IL, qualify as organizations described in section 501(c)(3) and 170(c)(2) of the Code.

Announcement 2007-117, page 1217.

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

ADMINISTRATIVE

Announcement 2007-116, page 1216.

This document contains a correction to proposed regulations (REG-140206-06, 2007-46 I.R.B. 1006) relating to a withholding agent's obligation to withhold and report tax under Chapter 3 of the Code.

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 403.—Taxation of Employee Annuities

26 CFR 1.403(b)–3: Exclusion for contributions to purchase section 403(b) contracts.

Whether there are model amendments for public schools that address the provisions of section 1.403(b) of the Income Tax Regulations. See Rev. Proc. 2007-71, page 1184.

Section 6039.—Returns Required in Connection With Certain Options

26 CFR 1.6039–1T: Reporting of certain employer-owned life insurance contracts (temporary).

T.D. 9364

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Information Reporting on Employer-Owned Life Insurance Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning information reporting on employer-owned life insurance contracts under section 6039I of the Internal Revenue Code (Code). This temporary regulation is necessary to provide taxpayers with immediate guidance as to how the requirements of section 6039I should be applied. The temporary regulations generally apply to taxpayers that are engaged in a trade or business and that are directly or indirectly a beneficiary of a life insurance contract covering the life of an insured who is an employee of the trade or business on the date the contract is issued. The text of these temporary regulations also serves as the text of proposed regulations (REG–115910–07) set forth in the notice of proposed rulemaking on this subject elsewhere in this issue of the Bulletin.

DATES: Effective Date: These regulations are effective on November 13, 2007.

Applicability Date: For date of applicability, see §1.6039I–1T(b).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda K. Boyd, 202–622–3970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (2006), added sections 101(j) and 6039I to the Internal Revenue Code (Code) concerning employer-owned life insurance contracts.

Section 101(j)(1) provides that, in the case of an employer-owned life insurance contract, the amount of death benefits excluded from gross income under section 101(a)(1) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract. For this purpose, an employer-owned life insurance contract is a life insurance contract that (i) is owned by a person engaged in a trade or business and under which such person is directly or indirectly a beneficiary under the contract, and (ii) covers the life of an insured who is an employee with respect to the trade or business on the date the contract is issued. An applicable policyholder is generally a person who owns an employer-owned life insurance contract, or a related person as described in section 101(j)(3).

Section 101(j)(2) provides exceptions to the general rule of section 101(j)(1) in the case of certain employer-owned life insurance contracts with respect to which certain notice and consent requirements are met. Those exceptions are based either on (i) the insured's status as an employee within 12 months of death or as a highly compensated employee or highly compensated individual, or (ii) the extent to which death benefits are paid to a family member, trust, or estate of the insured employee, or are used to purchase an equity interest in

the applicable policyholder from a family member, trust or estate.

Section 6039I provides that every applicable policyholder that owns one or more employer-owned life insurance contracts shall file a return, at such time and in such manner as the Secretary shall prescribe by regulations, showing for each year the contracts are owned—

(1) The number of employees of the applicable policyholder at the end of the year;

(2) The number of such employees insured under such contracts at the end of the year;

(3) The total amount of insurance in force at the end of the year under such contracts;

(4) The name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged; and

(5) That the policyholder has a valid consent for each insured employee (or, if not all such consents are obtained, the number of insured employees for whom such consent was not obtained).

Section 6039I(c) provides that any term used in section 6039I that is used in section 101(j) has the same meaning given that term by section 101(j).

Sections 101(j) and 6039I apply to life insurance contracts issued after August 17, 2006, except for a contract issued after that date pursuant to a section 1035 exchange for a contract issued before that date. For this purpose, a material increase in the death benefit or other material change causes the contract to be treated as a new contract except that, in the case of a master contract within the meaning of section 264(f)(4)(E), the addition of covered lives is treated as a new contract only with respect to those additional covered lives.

These temporary regulations provide that the Commissioner may prescribe the form and manner of satisfying the reporting requirements imposed by section 6039I on applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006. The regulations are effective on November 13, 2007, and apply to taxable years ending after that date.

Special Analyses

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

The Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to this temporary regulation because the regulation does not impose a collection of information on small entities. Even though a substantial number of small businesses may be subject to the requirements of section 6039I, it is anticipated that whatever requirements the Commissioner may prescribe pursuant to this regulation will not impose a “significant economic impact” because the information requested will already be available to taxpayers and the burden of compliance will be minimal.

Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration

for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Linda K. Boyd, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department 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 is amended by adding an entry in numerical order to read in part as follows:

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

Section 1.6039I-1T also issued under 26 U.S.C. 6039I. * * *

Par. 2. Section 1.6039I-1T is added to read as follows:

§1.6039I-1T Reporting of certain employer-owned life insurance contracts (temporary).

(a) *In general.* The Commissioner may prescribe the form and manner of satisfying the reporting requirements imposed by section 6039I on applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006.

(b) *Effective/applicability date.* These regulations are applicable for tax years ending after November 13, 2007.

(c) *Expiration date.* The applicability of this section expires on or before November 9, 2010.

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

Approved November 2, 2007.

Eric Solomon,
*Assistant Secretary of
the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register for November 9, 2007, 8:45 a.m., and published in the issue of the Federal Register for November 13, 2007, 72 F.R. 63806)

Part III. Administrative, Procedural, and Miscellaneous

2007 Cumulative List of Changes in Plan Qualification Requirements

Notice 2007-94

I. PURPOSE

This notice contains the 2007 Cumulative List of Changes in Plan Qualification Requirements (2007 Cumulative List) described in section 4 of Rev. Proc. 2007-44, 2007-28 I.R.B. 54. The 2007 Cumulative List is to be used primarily by plan sponsors of individually designed plans that are in Cycle C. An individually designed plan is in Cycle C if it is a single employer plan where the last digit of the employer identification number of the plan sponsor is 3 or 8, or it is a § 414(d) governmental plan (including a governmental multiemployer plan or governmental multiple employer plan).

The list of changes in section V of this notice does not extend the deadline by which a plan must be amended to comply with any statutory, regulatory, or guidance changes. The general deadline for timely adoption of an interim or discretionary amendment can be found in section 5.05 of Rev. Proc. 2007-44.

II. BACKGROUND

Rev. Proc. 2007-44 sets forth procedures for issuing opinion, advisory, and determination letters and describes the five-year remedial amendment cycle for individually designed plans and the six-year remedial amendment cycle for pre-approved plans. In addition, section 5.05 of Rev. Proc. 2007-44 provides the deadline for timely adoption of an interim amendment or discretionary amendment.

Under section 4 of Rev. Proc. 2007-44, the Internal Revenue Service intends to annually publish a Cumulative List to identify statutory, regulatory and guidance changes that must be taken into account in submissions by plan sponsors to the Service for opinion, advisory and determination letters whose remedial amendment period begins on February 1st following issuance of the Cumulative List.

In Notice 2007-3, 2007-2 I.R.B. 255, the Service published the 2006 Cumulative List of Changes in Plan Qualification Requirements (2006 Cumulative List). In Notice 2005-101, 2005-2 C.B. 1219, the Service published the 2005 Cumulative List of Changes in Plan Qualification Requirements (2005 Cumulative List). In Notice 2004-84, 2004-2 C.B. 1030, the Service published the 2004 Cumulative List of Changes in Plan Qualification Requirements (2004 Cumulative List).

III. APPLICATION OF 2007 CUMULATIVE LIST

This notice is being issued for purposes of the determination letter program for plans submitted for determination letters during the Cycle C submission period. In Rev. Proc. 2005-66, the Service announced the opening of the initial five-year remedial amendment cycle. In accordance with Rev. Proc. 2007-44, the Service will start accepting determination letter applications for Cycle C plans beginning on February 1, 2008. The 12-month submission period for Cycle C plans will end January 31, 2009.

The 2007 Cumulative List, set forth in section V of this notice, informs plan sponsors of issues the Service has specifically identified for review in determining whether a plan filing in Cycle C has been properly updated. Specifically, the 2007 Cumulative List reflects law changes under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16 (with technical corrections made by the Job Creation and Worker Assistance Act of 2002 (JCWAA), Pub. L. 104-147, the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108-218, the American Jobs Creation Act of 2004 (AJCA), Pub. L. 108-357, the Gulf Opportunity Zone Act of 2005 (GOZA), Pub. L. 109-135, and the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28.

The Service will not consider in its review of any determination letter application, for the submission period that begins February 1, 2008, any:

- (1) guidance published after October 1, 2007;
- (2) statutes enacted after October 1, 2007;
- (3) qualification requirements first effective in 2009 or later; or
- (4) statutory provisions that are first effective in 2008, for which there is no guidance identified in this notice.

The 2007 Cumulative List does not include any items described in (1) through (4) above. However, in order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2007 Cumulative List.

Terminating plans must include all law changes in effect at the time of termination. See section 8 of Rev. Proc. 2007-44 regarding plan termination.

IV. SPECIAL RULES FOR THE PENSION PROTECTION ACT OF 2006

Under section 1107 of the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280, a plan amendment made pursuant to any amendment made by PPA '06 generally may be retroactively effective, if, in addition to meeting the other applicable requirements, the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011 in the case of a governmental plan). Section VI of this notice includes certain PPA '06 law changes effective in 2008 or earlier.

Plans submitting in Cycle C can be amended, at the option of plan sponsors, to include the applicable PPA '06 provisions listed in section VI of this notice. Cycle C plans must identify which PPA '06 provisions the plan has been amended to include and the plan provision that reflects the PPA '06 provision when submitting the determination letter application. However, the Service will not consider PPA '06 in issuing determination letters for Cycle C plans, and such letters cannot be relied on with respect to any plan provision identified as reflecting PPA '06, regardless of whether the plan has been amended to reflect PPA '06 provisions.

Terminating plans must include the applicable PPA '06 provisions that are in effect at the time of termination.

V. 2007 CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS

The following list consists of statutory provisions and associated guidance which reflect changes to plan qualification requirements. Miscellaneous guidance is also provided. The Service has identified below plan qualification requirements which were not on the 2006 Cumulative List as “(New)”. Thus, the 2007 Cumulative List contains those plan qualification requirements listed in the 2004, 2005, and 2006 Cumulative Lists as well as additional 2007 plan qualification requirements.

1. *72(p)*: Section 1.72(p)-1 of the Income Tax Regulations relating to plan loans was published on December 3, 2002 (67 Fed. Reg. 71821). (2004 C. L.).
2. *401(a)*: Final Regulations under § 401(a) of the Code regarding permissible normal retirement ages were published May 22, 2007 (72 Fed. Reg. 28604). (2006 C. L.).
 - Notice 2007-69, 2007-35 I.R.B. 468, provides temporary relief, until the first day of the first plan year that begins after June 30, 2008, for certain pension plans under which the definition of normal retirement age may be required to be changed to comply with the regulations. Accordingly, the final regulations will not be taken into account in the Service’s review of plans submitted for determination letters during the Cycle C submission period unless the plan, by its terms, is ineligible for the relief under Notice 2007-69 or the relief ends for the plan before December 31, 2008. (New).
3. *401(a)(4)*:
 - Amendments to § 1.401(a)(4)-8 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2004 C. L.).
 - Rev. Rul. 2001-30, 2001-2 C.B. 46. (2004 C. L.).
- Amendments to § 1.401(a)(4)-9 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2005 C. L.).
- Rev. Rul. 2004-21, 2004-1 C.B. 544. (2005 C. L.).
4. *401(a)(9)*:
 - Sections 1.401(a)(9)-1 through -9 of the Regulations were published on April 17, 2002 and June 15, 2004 (67 Fed. Reg. 18988 and 69 Fed. Reg. 33288). (2004 C. L.).
5. *401(a)(17)*:

Section 401(a)(17) of the Code was amended by § 611(c) of EGTRRA to increase the compensation limit to \$200,000. (2004 C. L.).

 - Notice 2001-56, 2001-2 C.B. 277. (2004 C. L.).
6. *401(a)(31)*:
 - Section 401(a)(31) was amended by § 643(b) of EGTRRA to allow employees’ after-tax contributions to be rolled over under certain circumstances. (2004 C. L.).
 - Section 401(a)(31)(B) was amended by § 657(a) of EGTRRA (as amended by § 411(t) of JCWAA) to provide for the automatic rollover of certain mandatory distributions. The effective date is March 28, 2005. (2004 C. L.).
 - Notice 2005-2, 2005-1 C.B. 337. (2004 C. L.).
 - Sections 641, 642 and 643 of EGTRRA (as amended by § 411(q) of JCWAA) amended the definition of eligible retirement plan in § 402 of the Code to include a § 403(b) annuity contract and eligible governmental § 457(b) plan. (2004 C. L.).
 - Section 636(b) of EGTRRA modified the definition of eligible rollover distribution to exclude hardship distributions. (2004 C. L.).
7. *401(k) & 401(m)*:
 - Section 401(k)(2) and § 401(k)(10) of the Code were amended by § 646(a)(1) of EGTRRA to permit distributions of elective deferrals from a § 401(k) plan upon severance from employment. (2004 C. L.).
 - Notice 2002-4, 2002-1 C.B. 298. (2004 C. L.).
 - Section 636(a) of EGTRRA directed the Secretary of the Treasury to revise the regulations relating to safe harbor hardship distributions of elective deferrals from § 401(k) plans so that the time the employee is prohibited from making elective and employee contributions is reduced from one year to six months after a hardship distribution. (2004 C. L.).
 - Notice 2001-56. (2004 C. L.).
 - Notice 2002-4. (2004 C. L.).
 - Section 401(k)(11) of the Code was amended by § 611(f) of EGTRRA to increase the maximum amount of qualified salary reduction contributions that can be made to SIMPLE 401(k) plans. (2004 C. L.).
 - Section 402(g) of the Code was amended by § 611(d) of EGTRRA to increase the applicable dollar amount. (2004 C. L.).
 - Section 401(m)(9) of the Code was amended by § 666 of EGTRRA to eliminate the multiple use test. (2004 C. L.).
 - Final Regulations under § 401(k) and § 401(m) of the Code were published on December 29, 2004 (69 Fed. Reg. 78144). (2004 C. L.).
 - Announcement 2007-59, 2007-25 I.R.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement a designated Roth contribution program. (New).
8. *402A*: Section 402A of the Code was added by § 617 of EGTRRA to offer optional treatment of elective deferrals as designated Roth contributions to defined contribution plans, effective for taxable years beginning after December 31, 2005. (2004 C. L.).
 - Final Regulations under § 401(k) and § 401(m) of the Code relating

to designated Roth contributions were published on January 3, 2006 (71 Fed. Reg. 6). (2005 C. L.).

- Notice 2006-44, 2006-1 C.B. 889, provides a sample amendment for Roth § 401(k) plans. (2006 C. L.).
- Final Regulations under § 402A of the Code were published on April 30, 2007 (72 Fed. Reg. 21103).¹ (2006 C. L.).

9. 404:

- Section 404(k)(2)(A) of the Code was amended by § 662(a) of EGTRRA (as amended by § 411(w) of JCWAA) to allow ESOP dividends to be reinvested without the loss of dividend deductions. (2005 C. L.).
- Notice 2002-2, 2002-1 C.B. 285, provides guidance with respect to the changes made to § 404(k) of the Code and on the effective date of § 409(p) of the Code. (2005 C. L.).

10. 408(q): Section 408(q) of the Code was added by § 602 of EGTRRA (as amended by § 411(i) of JCWAA) to allow for deemed individual retirement accounts (IRAs) in an eligible retirement plan. (2004 C. L.).

- Section 1.408(q)-1 of the Regulations was published on July 22, 2004 (69 Fed. Reg. 43735). (2004 C. L.).

11. 409: Section 409(p) of the Code was added by § 656 of EGTRRA relating to restrictions on the allocation of employer securities in an ESOP maintained by an S corporation. (2005 C. L.).

- Section 1.409(p)-1T of the Regulations was published on July 21, 2003 (68 Fed. Reg. 42970). (2005 C. L.).
- Section 1.409(p)-1T of the Regulations was published on December 17, 2004 (69 Fed. Reg. 75455). (2005 C. L.).
- Rev. Proc. 2003-23, 2003-1 C.B. 599, as modified and superseded

by Rev. Proc. 2004-14, 2004-1 C.B. 489, allows a direct rollover from an ESOP maintained by an S corporation to an individual retirement plan (IRA). (2005 C. L.).

- Rev. Rul. 2003-6, 2003-1 C.B. 286, provides guidance with respect to whether an ESOP maintained by an S corporation is eligible for the delayed effective date of § 409(p) under § 656(d)(2) of EGTRRA. (2005 C. L.).
- Rev. Rul. 2004-4, 2004-1 C.B. 414, provides guidance relating to synthetic equity owned by a disqualified person in a nonallocation year of an ESOP maintained by an S corporation. (2005 C. L.).
- Final Regulations were published on December 20, 2006 (71 Fed. Reg. 76134) that provide guidance concerning requirements under § 409(p) for ESOPs holding stock of S corporations. (2006 C. L.).

12. 410(b): Final Regulations were published on July 21, 2006 (71 Fed. Reg. 41357) permitting some employees of tax-exempt organizations to be excluded when determining whether a § 401(k) plan meets the § 410(b) minimum coverage requirements. (2006 C. L.).

13. 411(a):

- Section 411(a) of the Code was amended by § 633 of EGTRRA (as amended by § 411(o) of JCWAA) to provide for faster vesting of matching contributions. (2004 C. L.).
- Rev. Rul. 2003-65, 2003-1 C.B. 1035. (2005 C. L.).
- Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeiture requirements of § 411(a). (2006 C. L.).

14. 411(a)(11): Section 411(a)(11)(D) of the Code was added by § 648(a) of EGTRRA (as amended by § 411(r)

of JCWAA) to allow amounts attributable to rollover contributions to be disregarded in determining the value of an account balance for involuntary distributions. (2004 C. L.).

15. 411(d)(3):

- Rev. Rul. 2007-43, 2007-28 I.R.B. 45, provides guidance regarding the partial termination of a defined contribution plan. (New).

16. 411(d)(6):

- *Central Laborers' Pension Fund v. Heinz*, 124 S. Ct. 2230 (2004). (2005 C. L.).
- Rev. Proc. 2005-23, 2005-1 C.B. 991, as modified by Rev. Proc. 2005-76, 2005-2 C.B. 1139. (2005 C. L.).
- Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeiture requirements of § 411(a). (2006 C. L.).
- Section 645(b)(3) of EGTRRA directed the Secretary of the Treasury to issue regulations under § 411(d)(6)(B). (2005 C. L.).
- Section 1.411(d)-3 of the Regulations was published on August 12, 2005 (70 Fed. Reg. 47109). (2005 C. L.).
- Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to a utilization test. (2006 C. L.).
- Section 411(d)(6)(D) and § 411(d)(6)(E) of the Code were added by § 645 of EGTRRA to permit the elimination of certain optional forms of benefit under certain conditions. (2005 C. L.).
- Section 1.411(d)-4, Q&A-2(e) of the Regulations was published on January 25, 2005 (70 Fed. Reg. 3475) to implement § 411(d)(6)(E). (2005 C. L.).

¹ Proposed Regulations under § 402A were published on January 26, 2006 (71 Fed. Reg. 4320). (2005 C. L.).

17. 412:

- Rev. Rul. 2004–20, 2004–1 C.B. 546, provides guidance with respect to whether a qualified pension plan can be a § 412(i) plan if the plan holds life insurance contracts and annuity contracts for benefits at normal retirement age in excess of a participant’s benefits at normal retirement age under the plan. (2005 C. L.).
- Notice 2004–59, 2004–2 C.B. 447, provides guidance with respect to restrictions placed on plan amendments following an employer’s election of an alternative deficit reduction contribution. (2005 C. L.).

18. 414(v): Section 414(v) of the Code was added by § 631 of EGTRRA (as amended by § 411(o) of JCWAA) to allow for catch-up contributions for individuals age 50 or older. (2004 C. L.).

- Regulations under § 414(v) were published on July 8, 2003 (68 Fed. Reg. 40510). (2004 C. L.).
- Notice 2002–4. (2004 C. L.).

19. 415:

- Section 415(b) of the Code was amended by § 611 of EGTRRA to increase the dollar limit and change the age when the limit is reduced or increased. (2005 C. L.).
- Rev. Rul. 2001–51, 2001–2 C.B. 427. (2004 C. L.).
- Section 415(b)(2)(E)(ii) of the Code was amended by § 101(b)(4) of PFEA to fix the percentage at 5.5%. (2005 C. L.).
- Notice 2004–78, 2004–2 C.B. 879, provides the actuarial assumptions that must be used for distributions with annuity starting dates occurring during the plans years beginning in 2004 and 2005. (2005 C. L.).
- Section 415(c) of the Code was amended by §§ 611(b) and 632 of EGTRRA (as amended by

§ 411(p) of JCWAA) to increase the maximum annual additions permitted to the lesser of \$40,000 or 100% of compensation. (2004 C. L.).

- Rev. Rul. 2001–51, 2001–2 C.B. 427. (2004 C. L.).
- Rev. Rul. 2002–27, 2002–1 C.B. 925, provided that “compensation” within the meaning of § 415(c) could in certain situations include “deemed § 125 compensation”. (2004 C. L.).
- Final Regulations under § 415 with respect to pre-PPA ’06 law were published April 5, 2007 (72 Fed. Reg. 16878).² (2006 C. L.).
- See section VI of this notice for PPA ’06 provisions related to § 415 that are reflected in the § 415 Final Regulations. (2006 C. L.).

20. 416: Section 416 of the Code was amended by § 613 of EGTRRA (as amended by § 411(k) of JCWAA) to make several changes to the top-heavy rules. (2004 C. L.).

- Section 416(g)(4)(H) of the Code was added by § 613(d) of EGTRRA to provide certain safe harbor § 401(k) plans and § 401(m) plans an exemption from the top-heavy rules. (2004 C. L.).
- Rev. Rul. 2004–13, 2004–1 C.B. 485. (2004 C. L.).
- Section 416(c)(1)(C) of the Code was amended by § 613(e) of EGTRRA (as amended by § 411(k)(1) of JCWAA) to provide when a frozen defined benefit plan is exempt from the minimum benefit requirements. (2005 C. L.).

21. 417:

- Section 1.417(e)–1 of the Regulations was published on July 16, 2003 (68 Fed. Reg. 41906) relating to retroactive annuity starting dates. (2005 C. L.).
- Final Regulations under § 417(a)(3) were published on March 24, 2006 (71 Fed. Reg.

14798) regarding the disclosure of the relative value of optional forms of benefit. (2006 C. L.).

22. 420(c)(3)(A): Section 6613 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, amends § 420(c)(3)(A) regarding minimum cost requirements for transfers of excess pension assets to retiree health accounts. (New)

23. 4975:

- Section 4975 of the Code was amended by § 612 of EGTRRA to allow plan loans for Subchapter S shareholder-employees. (2004 C. L.).
- Section 4975(f) of the Code was amended by § 240 of AJCA to allow an S corporation distribution on allocated shares to pay off an exempt loan as long as equal amounts are allocated to participant accounts. (2005 C. L.).

24. Hurricane Relief:

- Katrina Emergency Tax Relief Act of 2005, Pub. L. 109–73. (2005 C. L.).
- Notice 2005–92, 2005–2 C.B. 1165. (2005 C. L.).
- Announcement 2005–70, 2005–2 C.B. 682. (2005 C. L.).
- Gulf Opportunity Zone Act of 2005, Pub. L. 109–135, added § 1400M and § 1400Q to the Code to provide certain tax benefits to those areas affected by Hurricanes Katrina, Wilma, and Rita. (2006 C. L.).

25. Miscellaneous:

- Rev. Rul. 2001–62, 2001–2 C.B. 632, provides guidance with respect to the mortality table under § 415(b)(2)(E)(v) of the Code and the applicable mortality table under § 417(e)(3)(A)(ii)(I) of the Code. (2005 C. L.).
- Rev. Rul. 2002–42, 2002–1 C.B. 76, provides guidance with respect to a situation where a money

² Section 1.415(c)–2(e) of the Proposed Regulations under § 415 was published on May 31, 2005 (70 Fed. Reg. 31214). (2004 C. L.).

purchase pension plan is merged or converted into a profit sharing plan. (2004 C. L.).

- Rev. Proc. 2002–21, 2002–1 C.B. 911, provides guidance with respect to defined contribution retirement plans maintained by professional employer organizations. (2004 C. L.).
- Rev. Proc. 2003–86, 2003–2 C.B. 1211, amplifies Rev. Proc. 2002–21 relating to relief provided for certain defined contribution plans maintained by professional employer organizations. (2004 C. L.).
- Rev. Rul. 2003–11, 2003–1 C.B. 285, provides guidance with respect to satisfying the nondiscrimination rules under § 401(a)(4) of the Code and the minimum coverage requirements under § 410(b) of the Code when applying the increased compensation limit to former employees. (2005 C. L.).
- Rev. Rul. 2004–10, 2004–1 C.B. 484, provides guidance with respect to charging administrative expenses to former and current employees. (2004 C. L.).
- Rev. Rul. 2004–12, 2004–1 C.B. 478, provides guidance with respect to the distribution restrictions applicable to rollover contributions. (2004 C. L.).
- Rev. Rul. 2005–55, 2005–2 C.B. 284, provides guidance with respect to medical reimbursement accounts under a profit sharing plan. (2005 C. L.).
- Section 1.401(a)–21 of the Final Regulations were published on October 20, 2006 (71 Fed. Reg. 61877) setting forth standards for the use of an electronic medium to applicable notices to recipients or to make participant elections. (2006 C. L.).

The following guidance contains sample or model amendments: Notice 2001–57, 2001–1 C.B. 279 (miscellaneous EGTRRA amendments); Rev. Rul. 2001–62, 2001–2 C.B. 632 (applicable mortality table); Rev. Proc. 2002–29, 2002–2 C.B. 1176 (required minimum distribution amendments); Rev. Proc. 2003–13, 2003–1 C.B. 317 (required language for deemed IRAs); Notice 2005–5

(automatic rollover); and Notice 2006–44, 2006–1 C.B. 889 (Roth § 401(k) plans).

VI. PENSION PROTECTION ACT OF 2006 PROVISIONS

As provided in section IV of this notice, plans submitting in Cycle C may be amended for PPA '06, but the Service will not consider PPA '06 in issuing determination letters. The following list includes PPA '06 provisions effective in 2008 or earlier and guidance relating to those PPA '06 provisions (other than proposed guidance and guidance issued after October 1, 2007).

1. *401(a)(35)*: PPA '06 § 901(a)(1) added § 401(a)(35) requiring that defined contribution plans provide employees with the freedom to divest publicly traded securities. (2006 C. L.).
 - Notice 2006–107, 2006–51 I.R.B. 1114. (2006 C. L.).
2. *401(a)(36)*: PPA '06 § 905(b) added § 401(a)(36) regarding distributions to a participant who has attained age 62 and who has not separated from employment at the time of the distribution. (New).
3. *401(k)*: PPA '06 § 826 modified the rules relating to distributions from a § 401(k) plan on account of a participant's hardship to permit the plan to treat a participant's beneficiary under the plan the same as the participant's spouse or dependent. (2006 C. L.).
 - Notice 2007–7, 2007–5 I.R.B. 395, provides guidance regarding PPA '06 § 826. (2006 C. L.).
 - Announcement 2007–59, 2007–25 I.R.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement the PPA '06 § 826 hardship withdrawals. (New).
4. *401(k)(2)(B)(i)(V)*: PPA '06 § 827 permits reservists called to active duty after September 11, 2001 and before 2008 to take in-service distributions from a § 401(k) plan. (2006 C. L.).

5. *401(k)(8)(A)(i)*: PPA '06 § 902(e)(3) eliminates the gap period income rule for excess contributions. (New).
6. *401(k)(13)*: PPA '06 § 902 added § 401(k)(13) with respect to automatic contribution arrangements. (New).
7. *401(m)(6)(A)*: PPA '06 § 902(e)(3) eliminates the gap period income rule for excess aggregate contributions. (New).
8. *401(m)(12)*: PPA '06 § 902 added § 401(m)(12) with respect to automatic contribution arrangements. (New).
9. *402(c)(2)(A)*: PPA '06 § 822(a) amended § 402(c)(2)(A) to permit nontaxable distributions from a qualified plan to be directly rolled over tax-free to either another qualified plan or a § 403(b) plan if the separate accounting requirements are met. (2006 C. L.).
 - Notice 2007–7, 2007–5 I.R.B. 395, provides guidance regarding § 402(c)(11). (2006 C. L.).
10. *402(c)(11)*: PPA '06 § 829(a)(1) added § 402(c)(11) to allow non-spouse beneficiaries to directly roll over distributions from a qualified plan to an individual retirement plan. (2006 C. L.).
 - Notice 2007–7, 2007–5 I.R.B. 395, provides guidance regarding PPA '06 § 1102. (2006 C. L.).
11. *402(f)*: PPA '06 § 1102(a) provides that notice required to be provided under § 402(f) may be provided as much as 180 days before the annuity starting date. (2006 C. L.).
 - Notice 2007–7, 2007–5 I.R.B. 395, provides guidance regarding PPA '06 § 1102. (2006 C. L.).
12. *408A(e)*: PPA '06 § 824 added § 408A(e) which permits rollovers to Roth IRAs from qualified plans, § 403(b) plans, and § 457 plans. (New).
13. *411*: PPA '06 § 701 provides rules for cash balance plans and other hybrid defined benefit plans. (2006 C. L.).
 - Notice 2007–6, 2007–3 I.R.B. 272, provides guidance regarding

- cash balance plans and other hybrid defined benefit plans. (2006 C. L.).
14. *411(a)*: Section 411(a) of the Code was amended by § 904 of PPA '06 to provide for faster vesting of employer nonelective contributions. (2006 C. L.).
 - Notice 2007-7, 2007-5 I.R.B. 395, provides guidance regarding § 411(a), as amended by § 904 of PPA '06. (2006 C. L.).
 15. *411(a)(11)*: PPA '06 § 1102(a) provides that notice required to be provided under § 411(a)(11) may be provided as much as 180 days before the annuity starting date. Section 1102(b) of PPA '06 provides that the notice under § 411(a)(11) also include a description of the consequences of failing to defer receipt of a distribution. (2006 C. L.).
 - Notice 2007-7, 2007-5 I.R.B. 395, provides guidance regarding PPA '06 § 1102. (2006 C. L.).
 16. *414(d)*: PPA '06 § 906(a)(1) added language to the definition of governmental plan in § 414(d) with respect to Indian tribal governments. (New).
 - Notice 2006-89, 2006-43 I.R.B. 772, provides transition relief for plans subject to PPA '06 § 906. (New).
 - Notice 2007-67, 2007-35 I.R.B. 467, extends the transition relief provided in Notice 2006-89. (New).
 17. *414(f)(6)*: PPA '06 § 1106(b) added § 414(f)(6) with respect to a multiemployer status election. Section 6611(a)(2) and (b)(2) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 amends § 414(f)(6). (New).
 18. *414(w)*: PPA '06 § 902(d)(1) added § 414(w) with respect to automatic contribution arrangements. (New).
 19. *415(b)(2)(E)(ii)*: Section 415(b)(2)(E)(ii) of the Code was amended by § 303 of PPA '06 regarding the interest rate assumption for applying benefit limitations to lump sum distributions. (2006 C. L.).
 - Final Regulations under § 415 were published April 5, 2007 (72 Fed. Reg. 16878), which provide guidance regarding § 415(b)(2)(E)(ii), as amended by PPA '06. (2006 C. L.).
 20. *415(b)(11)*: PPA '06 § 867(a) removed the 100% of compensation limitation for a church plan participant if the participant has never been a highly compensated employee of the church. (2006 C. L.).
 - Final Regulations under § 415 were published April 5, 2007 (72 Fed. Reg. 16878), which provide guidance regarding § 415(b)(11), as added by PPA '06. (2006 C. L.).
 21. *415(n)*: PPA '06 § 821 retroactively clarified the rules in § 415(n) relating to the purchase of permissive service credit under defined benefit governmental plans. (New).
 22. *417*: PPA '06 § 1102(a) provides that notice required to be provided under § 417 may be provided as much as 180 days before the annuity starting date. (2006 C. L.).
 - Notice 2007-7, 2007-5 I.R.B. 395, provides guidance regarding PPA '06 § 1102. (2006 C. L.).
 23. *417(e)(3)*: PPA '06 § 302(b) amended the applicable interest rate and mortality table to be used for determining the present value of lump sum distributions. (New).
 24. *417(g)*: PPA '06 § 1004(a)(2) added § 417(g), the qualified optional survivor annuity benefit. (New).
 25. *420(e)(2)*: PPA '06 § 114(d)(1) modified the definition of the term "excess pension assets." Section 6612(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 amends § 420(e)(2)(B). (New).
 26. *432(c)*: PPA '06 § 212(a) added § 432(c) which requires that a funding improvement plan be adopted for multiemployer plans in endangered status. (New).
 27. *432(e)*: PPA '06 § 212(a) added § 432(e) which requires that a rehabilitation plan be adopted for multiemployer plans in critical status. (New).
 28. *436*: PPA '06 § 113(a)(1)(B) added § 436 with respect to funding-based limits on benefits and benefit accruals under defined benefit single employer plans. (New).

DRAFTING INFORMATION

The principal author of this notice is Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll-free number) or Ms. Carrington at RetirementPlanQuestions@irs.gov.

26 CFR 601.201: Rulings and determination letters. (Also, Part I, § 403; § 1.403(b)-3.)

Rev. Proc. 2007-71

SECTION 1. PURPOSE

This revenue procedure provides model plan language that may be used by public schools either to adopt a written plan to reflect the requirements of § 403(b) and the regulations thereunder or to amend its § 403(b) plan to reflect the requirements of § 403(b) and the regulations thereunder. This revenue procedure also provides rules for when plan amendments or a written plan are required to be adopted by public schools or other eligible employers to comply with the recently published final regulations under § 403(b) (72 FR 41128; T.D. 9340). This revenue procedure also provides guidance relating to the application of § 403(b) to certain contracts issued before 2009.

SECTION 2. BACKGROUND AND GENERAL INFORMATION

.01 Section 403(b) applies to contributions made for employees who are performing services for a public school of a

State or a local government or for employees of employers that are tax-exempt organizations under § 501(c)(3). Section 403(b) also applies to contributions made for certain ministers. Under § 403(b), contributions are excluded from gross income only if made to certain funding arrangements: (1) contracts issued by an insurance company qualified to issue annuities in a State that includes payment in the form of an annuity; (2) custodial accounts that are exclusively invested in stock of a regulated investment company (as defined in § 851(a) relating to mutual funds); or (3) a retirement income account for employees of a church-related organization (as defined in § 1.403(b)-2 of the Income Tax Regulations).

.02 Final regulations under § 403(b) (T.D. 9340, 2007-36 I.R.B. 487) were published in the **Federal Register** (72 FR 41128) on July 26, 2007 (2007 regulations). The 2007 regulations replaced existing regulations that were published in the **Federal Register** (29 FR 18356) on December 24, 1964, 1965-1 C.B. 180, that provided guidance for complying with § 403(b), as well as certain provisions of regulations that were published in the **Federal Register** (60 FR 49199) on September 22, 1995, relating to eligible rollover distributions and regulations that were that were published in the **Federal Register** (67 FR 18987) on April 17, 2002, relating to minimum distributions under § 401(a)(9). The 2007 regulations reflected the numerous amendments made to § 403(b) by legislation enacted since 1964. Subject to a number of special effective date rules, the 2007 regulations are generally effective for taxable years beginning after December 31, 2008.

.03 The 2007 regulations include comprehensive guidance relating to § 403(b), including the requirement that § 403(b) contracts must be maintained pursuant to a written plan. (References in this revenue procedure to a contract or an issuer include a custodial account under § 403(b)(7) and an issuer of such an account, respectively.) As indicated in the preamble to the regulations, while § 403(b) contracts that are subject to the Employee Retirement Income Security Act of 1974 (ERISA) are already maintained pursuant to written plans, there may be a potential cost associated with satisfying the written plan requirement for those employers that do not have existing

plan documents, such as public schools. This revenue procedure is intended to address this concern by providing model plan language that may be used for this purpose by public schools.

.04 Section 1.403(b)-3(b)(3) of the 2007 regulations requires that contracts be issued under a plan, which, in both form and operation, satisfies the requirements of the 2007 regulations and which contains all the material terms and conditions for eligibility, benefits, applicable limitations, the contracts available under the plan, and the time and form under which benefit distributions would be made. Section 1.403(b)-10(b) of the 2007 regulations includes a special rule for situations in which a contract has been exchanged for another contract, under which the successor contract (an “exchange contract”) is treated as part of the plan if certain conditions are satisfied, including an information sharing agreement between the employer and the issuer. Section 1.403(b)-11(g) of the 2007 regulations provides that those conditions are not imposed with respect to a contract if the exchange occurred before September 25, 2007, and the exchange satisfied applicable requirements at that time (a “grandfathered exchange contract”).

SECTION 3. USE OF MODEL PLAN LANGUAGE BY PUBLIC SCHOOLS

.01 Any public school employer with respect to its employees performing services for it, to the extent provided, may comply with the written plan requirements of the 2007 regulations by adopting the model provision(s) contained in the Appendix to this revenue procedure. The model language has been prepared to take into account the general requirement that a § 403(b) plan include all the material terms and conditions for benefits under the plan. For example, the model language does not incorporate the applicable legal requirements by reference, but instead describes them in a manner intended to enable the plan administrator to implement the plan provisions on the basis of the model language to the extent feasible.

.02 The 2007 regulations provide that a § 403(b) plan, including one established by a public school employer, may contain certain optional features not required to satisfy § 403(b), such as in-service distributions from rollover accounts, distributions

for financial hardships, loans, contract exchanges, and plan to plan transfers. If optional provisions are used, the optional provisions must meet, in both form and operation, the relevant requirements under the Code and the 2007 regulations, as well as operate in accordance with the terms of the plan. If a public school employer adopts one or more of these optional model plan language provisions for its § 403(b) plan, the form of the plan will be treated as meeting the requirements under § 403(b) with respect to those provisions.

SECTION 4. RELIANCE BY PUBLIC SCHOOL EMPLOYERS ON MODEL PLAN LANGUAGE

.01 *Amendments.* (a) *Reliance.* If a public school employer amends its plan language to include any portion of the model language, the form of the written plan will be treated as meeting the requirements of § 403(b), to the extent covered by the model plan language that is adopted. This reliance applies only if the employer adopts the model language on a word-for-word basis or adopts an amendment that is substantially similar in all material respects.

(b) *Effect on public schools.* If a public school employer adopts any portion of the model plan language, the written plan must also be operated in accordance with the amendment, from and after the effective date of the amendment, and the § 403(b) plan must continue to satisfy, in both form and operation, all other requirements of § 403(b) in order to maintain § 403(b) status. To the extent a public school employer’s § 403(b) plan does not include the model plan language or an amendment that is substantially similar in all respects, a public school that requests a private letter ruling from the Internal Revenue Service (IRS) with respect to the qualification of its § 403(b) written plan must clearly highlight and describe in the written request how its plan provisions differ from the model language.

.02 *Adoption of written plan.* The model language is also designed for use by a public school that does not have a written § 403(b) plan. Thus, adoption of the entire model language (on a word-for-word basis or using language that is substantially similar in all material respects) by a public school has the

same status as a private letter ruling which provides that the written form of the plan satisfies § 403(b). However, if a public school employer adopts the entire model plan language, the § 403(b) written plan must also be operated in accordance with that language, from and after the effective date of adoption, and must continue to satisfy in both form and operation all other requirements of § 403(b) in order for the plan to maintain its § 403(b) status.

SECTION 5. USE OF THE MODEL PLAN LANGUAGE BY EMPLOYERS THAT ARE NOT PUBLIC SCHOOLS

.01 The model plan language in the Appendix to this revenue procedure is designed for use by a public school employer with respect to its employees. The model language is intended for a basic plan under which contributions are limited to pre-tax elective deferrals (without any designated Roth, employer matching, or other employer nonelective contributions). An eligible employer that is not a public school may use the provisions of the Appendix as sample language to comply with one or more of the requirements imposed by the 2007 regulations issued under § 403(b).

.02 Because the model plan language in the Appendix has been designed for a State or local government with respect to its employees performing services for a public school, a § 501(c)(3) organization must determine the extent to which the model language is appropriate for use in connection with its § 403(b) plan to comply with one or more of the requirements imposed by the regulations issued under § 403(b). Notes in the Appendix identify the principal provisions which require modification for use by an eligible employer that is not a public school maintaining a § 403(b) arrangement. Moreover, if an eligible employer that is not a public school uses the model language in the Appendix, additional or revised provisions may be necessary or appropriate in order to comply with the 2007 regulations and, if applicable, ERISA, especially if either (i) the plan is not limited to elective deferrals, (ii) the plan is designed to not be an employee pension benefit plan under ERISA in accordance with 29 CFR 2510.3-2(f) of the Department of Labor

Regulations, or (iii) the plan is maintained by a church (or a church-related organization described in § 414(e)(3)(A) or a qualified church-controlled organization under § 3121(w)(3)(B)) or applies with respect to one or more ministers.¹

.03 Adoption of the model plan language contained in the Appendix by an eligible employer that is not a public school does not have the same status as a private letter ruling with respect to the adopted language. However, if an eligible employer that is not a public school has received from the IRS a favorable private letter ruling under § 403(b), then, except as provided in section 5.02 of this revenue procedure, the eligible employer's adoption of appropriate plan model language contained in the Appendix will not result in the loss of its reliance on the private letter ruling for periods prior to the effective date of the 2007 regulations.

SECTION 6. DATE AMENDMENTS ARE ADOPTED

Pursuant to this revenue procedure, a § 403(b) plan will be treated as having been amended timely to reflect a requirement of the 2007 regulations if an amendment that satisfies that requirement (such as the model language in the Appendix of this revenue procedure that reflects that requirement) is adopted no later than the first day of the first taxable year beginning after December 31, 2008, the amendment is effective as of the applicable effective date of the requirement under the 2007 regulations, and the written plan is operated as if that amendment is in effect. This section 6 applies to the requirement to have a written plan. However, for a special rule with respect to amendments made pursuant to the Pension Protection Act of 2006, Public Law 109-280 (PPA '06), see section 1107 of the PPA '06.

SECTION 7. AREAS NOT COVERED BY SECTIONS 3 AND 4 OF THIS REVENUE PROCEDURE

Except as provided in section 5 of this revenue procedure, the model plan language referenced in sections 3 and 4 of this revenue procedure is not designed to apply to any employer other than a State or local

government with respect to its employees performing services for a public school.

SECTION 8. GUIDANCE REGARDING CERTAIN CONTRACTS ISSUED BEFORE 2009

.01 *Contracts issued before 2009 as part of employer's plan.* In the case of a contract issued after December 31, 2004 and before January 1, 2009 by an issuer that does not receive contributions under the plan in a year after the contract was issued (e.g., due to the issuer having been discontinued as an issuer under the plan or the issuer having become an issuer under the plan due to the contract having been issued in a post-September 24, 2007 exchange permitted under Rev. Rul. 90-24, 1990-1 C.B. 97), the contract will not fail to satisfy § 403(b) for the year merely because the contract is not part of a written plan that satisfies § 1.403(b)-3(b)(3) of the 2007 regulations if the employer makes a reasonable, good faith effort to include the contract as part of the employer's plan that satisfies § 1.403(b)-3(b)(3) of the 2007 regulations. For this purpose, a reasonable, good faith effort to include those contracts as part of the employer's plan includes collecting available information concerning those issuers (for which purpose, the information is not required to be collected for issuers that ceased to receive contributions before January 1, 2005) and notifying them of the name and contact information for the person in charge of administering the employer's plan for the purpose of coordinating information necessary to satisfy § 403(b). As an alternative to the actions described in the preceding sentence, a reasonable, good faith effort to include that contract as part of the employer's plan also includes the issuer taking action before making any distribution or loan to the participant or beneficiary which constitutes a reasonable, good faith effort to contact the employer and exchange any information that may be needed in order to satisfy § 403(b) with the person in charge of administering the employer's plan.

.02 *Contracts issued before 2009 held for former employees or beneficiaries.* In the case of an issuer that holds § 403(b) contracts under a § 403(b) plan, but which

¹ See United States Department of Labor Field Assistance Bulletin No. 2007-02.

ceases to receive contributions before January 1, 2009 (e.g., due to the issuer having been discontinued as an issuer under the plan, the employer having ceased to exist, or the issuer having become an issuer under the plan due to the contract having been issued in a post-September 24, 2007 exchange permitted under Rev. Rul. 90–24, 1990–1 C.B. 97), those contracts continue to be subject to the requirements of § 403(b) and the 2007 regulations to the extent applicable. However, pursuant to this revenue procedure, a § 403(b) plan will not be treated as failing to satisfy the requirements of § 1.403(b)–3(b)(3) if the plan does not include terms relating to those contracts. If the participant or beneficiary requests a loan from the contract in accordance with § 72(p)(2), this relief applies only if the issuer makes such a loan only after the issuer has made reasonable efforts to determine: (1) whether the participant or beneficiary has in the prior 12 months had any other outstanding loans from qualified employer plans of the employer (taking into account §§ 72(p)(2)(D) and 72(p)(5)); and (2) if the participant or beneficiary has had any such loans, the highest outstanding balance of such loans during that period. For this purpose, assuming the employer is still in existence at the time of the loan, mere reliance on information from the participant or beneficiary about outstanding loans does not constitute reasonable efforts to determine whether the participant or beneficiary has other outstanding loans from plans of the employer.

The special rules in this section 8.02 apply only with respect to a contract that has been issued before January 1, 2009, under a § 403(b) plan that is held on behalf of a participant who, on January 1, 2009, is a former employee of the employer or for a beneficiary. For this purpose, the issuer can rely on information from the participant as to whether the participant is a former employee, assuming that reliance on that information is not unreasonable under the facts and circumstances.

8.03. *Re-exchange back into plan.* If, after September 24, 2007 and before January 1, 2009, a contract is issued in an exchange permitted under Rev. Rul. 90–24 (an “intermediate contract”) and, before July 1, 2009, the contract is exchanged in accordance with Rev. Rul. 90–24 for a contract issued by an issuer which is either receiving contributions as part of the plan or has an information sharing agreement as set forth in § 1.403(b)–10(b)(2)(i)(C)(I) and (2) of the 2007 regulations, then the information sharing conditions in § 1.403(b)–10(b)(2)(i)(C)(I) and (2) of the 2007 regulations do not apply to the intermediate contract.

8.04. *Information sharing agreements.* The model plan in this revenue procedure includes optional provisions in Section 6.4(a) through (d) to allow contract exchanges with an issuer that is not receiving contributions. See Section 6.4(d) of the model language for the type of information that would satisfy the information sharing agreement conditions in § 1.403(b)–10(b)(2)(i)(C)(I) and (2) of the 2007 regulations.

SECTION 9. COMMENTS REQUESTED

Treasury and IRS are interested in receiving comments on the model language contained in this revenue procedure and any other model language that interested parties believe should be added to this revenue procedure. Comments are specifically requested on the following questions. While the model language has generally been prepared for use by employers based on provisions commonly found in defined contribution retirement plans, are there additional provisions which should be added to reflect features that are widely used? Are there changes that should especially be made to reflect the circumstances applicable to public schools, including not only revised versions of the model language, but also whether additional provisions are necessary or appropriate for

them? Should the provisions found in section 7.3 of the model language, which have been prepared to satisfy the 2007 final regulations requirements for the plan document to reflect the available vendors, be expanded, including changes to reflect the special relief in section 8 of this revenue procedure?

Comments should be sent to the following address: Internal Revenue Service, Attn: CC:PA:LPD:PR (Rev. Proc. 2007–71), Room 5203, P. O. Box 7604, Ben Franklin Station, Washington, DC 20044. Written comments may be hand delivered Monday through Friday between 8 a.m. and 4 p.m. to: Internal Revenue Service, Courier’s Desk, Attn: CC:PA:RU (Section 403(b) Plans), 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, written comments may be submitted electronically via the Internet to notice.comments@irs.counsel.treas.gov (Rev. Proc. 2007–71). Comments should be received by March 16, 2008.

SECTION 10. EFFECTIVE DATE

This revenue procedure is effective December 17, 2007.

DRAFTING INFORMATION

The principal author of this revenue procedure is Robert Architect of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans taxpayer assistance telephone service at (877) 829–5500 (a toll-free number) between the hours of 8:30 am and 4:30 pm Eastern Time, Monday through Friday. Mr. Architect may be e-mailed at RetirementPlanQuestions@irs.gov.

APPENDIX FOR REVENUE PROCEDURE 2007-71
MODEL PLAN LANGUAGE

Note to sponsors: The model language in this Appendix is designed primarily for use by a public school in order for it to offer its employees the ability to elect to make pre-tax elective deferrals in accordance with § 403(b) of the Internal Revenue Code. (See section 5 of the revenue procedure for use of the model language by an organization that is a tax-exempt organization under § 501(c)(3) or for a church entity.) In addition, the contributions permitted under the model language are limited to pre-tax elective deferrals, and it is assumed that the plan is maintained on the basis of the calendar year. This model language is not designed for a plan that provides for matching contributions or other employer nonelective contributions, or for adoption by any other type of employer. The model language also includes certain optional alternatives, including an alternative under which the plan may automatically enroll employees for elective deferrals (or alternatively to enroll only employees who file an affirmative election) and an alternative under which the plan may permit a contract issued under the plan by a vendor to whom contributions are made to be exchanged for a contract issued by vendors to whom contributions are not made under the plan.

The portions of this Appendix printed in italics are explanatory notes for the benefit of the public school plan sponsor and thus are not to be included in the model plan document. In addition, certain items indicated by brackets can be filled in by the plan sponsor as appropriate.

Section 403(b) Model Plan Language for a Public School

Section 1
Definition of Terms Used

The following words and terms, when used in the Plan, have the meaning set forth below.

1.1 **“Account”**: The account or accumulation maintained for the benefit of any Participant or Beneficiary under an Annuity Contract or a Custodial Account.

1.2 **“Account Balance”**: The bookkeeping account maintained for each Participant which reflects the aggregate amount credited to the Participant’s Account under all Accounts, including the Participant’s Elective Deferrals, the earnings or loss of each Annuity Contract or a Custodial Account (net of expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or the Participant’s Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant’s death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code).

Note: A vendor is not required to maintain a separate account for each beneficiary in order to satisfy § 401(a)(9), but this sample plan language provides for such separate accounts so that installment payments are permitted to be made over each beneficiary’s life expectancy as permitted under § 1.401(a)(9)-8, A-2(a)(2) of the Income Tax Regulations. However, because, under the sample plan language, each separate account is permitted to have only a single beneficiary, certain beneficiary designations are not permitted under the sample plan language, such as a death benefit in the form of a fixed dollar payment that is not determined as of the date of death and that is not to be maintained in a separate account to which gains and losses are credited.

1.3 **“Administrator”**: [INSERT IDENTITY OF PERSON, COMMITTEE, OR ORGANIZATION APPOINTED TO ADMINISTER THE PLAN].

1.4 **“Annuity Contract”**: A nontransferable contract as defined in section 403(b)(1) of the Code, established for each Participant by the Employer, or by each Participant individually, that is issued by an insurance company qualified to issue annuities in [Insert name of State] and that includes payment in the form of an annuity.

1.5 **“Beneficiary”**: The designated person who is entitled to receive benefits under the Plan after the death of a Participant, subject to such additional rules as may be set forth in the Individual Agreements.

1.6 **“Custodial Account”**: The group or individual custodial account or accounts, as defined in section 403(b)(7) of the Code, established for each Participant by the Employer, or by each Participant individually, to hold assets of the Plan.

1.7 **“Code”**: The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered.

1.8 **“Compensation”**: All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includible in the Employee’s gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includible in the Employee’s gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election under Section 2 made to reduce compensation in order to have Elective Deferrals under the Plan).

1.9 **“Disabled”**: The definition of disability provided in the applicable Individual Agreement.

1.10 **“Elective Deferral”**: The Employer contributions made to the Plan at the election of the Participant in lieu of receiving cash compensation. Elective Deferrals are limited to pre-tax salary reduction contributions.

1.11 **“Employee”**: Each individual, whether appointed or elected, who is a common law employee of the Employer performing services for a public school as an employee of the Employer. This definition is not applicable unless the employee’s compensation for performing services for a public school is paid by the Employer. Further, a person occupying an elective or appointive public office is not an employee performing services for a public school unless such office is one to which an individual is elected or appointed only if the individual has received training, or is experienced, in the field of education. A public office includes any elective or appointive office of a State or local government.

1.12 **“Employer”**: [NAME OF PUBLIC SCHOOL].

Note: The definitions of “Employee” and “Employer” are specifically tailored for use by a State or local government maintaining a § 403(b) plan for its employees who perform services for a public school and must be modified for use by any other employer.

1.13 **“Funding Vehicles”**: The Annuity Contracts or Custodial Accounts issued for funding amounts held under the Plan and specifically approved by the Employer for use under the Plan.

1.14 **“Includible Compensation”**: An Employee’s actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). The amount of Includible Compensation is determined without regard to any community property laws.

1.15 **“Individual Agreement”**: The agreements between a Vendor and the Employer or a Participant that constitutes or governs a Custodial Account or an Annuity Contract.

1.16 **“Participant”**: An individual for whom Elective Deferrals are currently being made, or for whom Elective Deferrals have previously been made, under the Plan and who has not received a distribution of his or her entire benefit under the Plan.

1.17 **“Plan”**: [INSERT NAME OF PLAN].

1.18 **“Plan year”**: The calendar year.

1.19 **“Related Employer”**: The Employer and any other entity which is under common control with the Employer under section 414(b) or (c) of the Code. For this purpose, the Employer shall determine which entities are Related Employers based on a reasonable, good faith standard and taking into account the special rules applicable under Notice 89-23, 1989-1 C.B. 654.

*Note: The definition of “Related Employer” is specifically tailored for use by a State or local government maintaining a § 403(b) plan for its employees who perform services for a public school and must be modified for use by any other employer by deleting the sentence in Section 1.19 that begins “For this purpose ...” because Notice 89-23 only applies to employers that are State or local public schools and churches. See § 1.414(c)-5 of the Income Tax Regulations (and the related discussion at pages 41137 and 41138 of the **Federal Register** (72 FR 41128) in the preamble to those regulations).*

1.20 **“Severance from Employment”**: For purpose of the Plan, Severance from Employment means Severance from Employment with the Employer and any Related Entity. However, a Severance from Employment also occurs on any date on which an Employee ceases to be an employee of a public school, even though the Employee may continue to be employed by a Related Employer that is another unit of the State or local government that is not a public school or in a capacity that is not employment with a public school (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).

Note: The definition of “Severance from Employment” is specifically tailored for use by a State or local government maintaining a § 403(b) plan for its employees who perform services for a public school and must be modified for use by any other employer.

1.21 **“Vendor”**: The provider of an Annuity Contract or Custodial Account.

1.22 **“Valuation Date”**: [Each business day/The last day of the calendar month/The last day of the calendar quarter/ Each December 31].

Section 2

Participation and Contributions

2.1 **Eligibility**. Each Employee shall be eligible to participate in the Plan and elect to have Elective Deferrals made on his or her behalf hereunder immediately upon becoming employed by the Employer. However, an Employee who is a student-teacher (*i.e.*, a person providing service as a teacher’s aid on a temporary basis while attending a school, college or university) or who normally works fewer than 20 hours per week is not eligible to participate in the Plan. An Employee normally works fewer than 20 hours per week if, for the 12-month period beginning on the date the employee’s employment commenced, the Employer reasonably expects the Employee to work fewer than 1,000 hours of service (as defined under section 410(a)(3)(C) of the Code) and, for each plan year ending after the close of that 12-month period, the Employee has worked fewer than 1,000 hours of service.

Note: This model language assumes that the plan has immediate eligibility, that the plan is limited to pre-tax elective deferrals, and that the plan has no matching or other employer non-elective contributions.

The model language in Section 2.1 also assumes that employees who normally work fewer than 20 hours per week or who are student-teachers are not eligible. Either of these exclusions may be deleted on a uniform basis for all employees. If this model language is used by a § 501(c)(3) employer that is not a public school and the plan is subject to ERISA, the plan should delete the exclusion for employees who normally work fewer than 20 hours per week.

2.2 **Compensation Reduction Election**. (a) **General Rule**. An Employee elects to become a Participant by executing an election to reduce his or her Compensation (and have that amount contributed as an Elective Deferral on his or her behalf) and filing it with the Administrator. This Compensation reduction election shall be made on the agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish an annual minimum deferral amount no higher than \$200, and may change such minimum to a lower amount from time to time. The participation election shall also include designation of the Funding Vehicles and Accounts therein to which Elective Deferrals are to be made and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed. Only an individual who performs services for the Employer as an Employee may reduce his or her Compensation under the Plan. Each Employee will become a Participant in accordance with the terms and conditions of the Individual Agreements. All Elective Deferrals shall be made on a pre-tax basis. An Employee shall become a Participant as soon as administratively practicable following the date applicable under the employee’s election.

(b) **Special Rule for New Employees**. (1) **Automatic Enrollment for New Employees**. For purposes of applying this Section 2.2, a new Employee is deemed to have elected to become a Participant and to have his or her Compensation reduced by [5%] (and have that amount contributed as an Elective Deferral on his or her behalf), at the time the Employee is hired, and to have agreed to be bound by all the terms and conditions of the Plan. Contributions made under this automatic participation provision shall be made to the Funding Vehicle or Vehicles selected for this purpose for all new Employees by the Administrator. Any Employee who automatically becomes a Participant under this Section 2.2(b) shall file a designation of Beneficiary with the Funding Vehicle or Vehicles to which contributions are made.

(2) **Right to File a Different Election; Notice to Employee**. This Section 2.2(b) shall not apply to the extent an Employee files an election for a different percentage reduction or elects to have no Compensation reduction, or designates a different Funding Vehicle to receive contributions made on his or her behalf. Any new Employee shall receive a statement at the time he or she is hired that describes the Employee’s rights and obligations under this Section 2.2(b) (including the information in this Section 2.2(b) and identification of how the Employee can file an election or make a designation as described in the preceding sentence, and the refund right under Section 2.2(b)(3), including the specific name and location of the person to whom any such election or designation may be filed), and how the contributions under this Section 2.2(b) will be invested.

(3) **Refund of Contributions.** An Employee for whom contributions have been automatically made under Section 2.2(b)(1) may elect to withdraw all of the contributions made on his or her behalf under Section 2.2(b)(1), including earnings thereon to the date of the withdrawal. This withdrawal right is available only if the withdrawal election is made within 90 days after the date of the first contribution made under Section 2.2(b)(1).

Note: Section 2.2(b) is an optional provision that provides for any new employee to be automatically enrolled in the Plan, with 5% of Compensation to be contributed to the Plan, unless the employee elects otherwise. See §§ 414(w) and 4979(f) of the Code for special relief that applies to a plan that uses automatic enrollment, as provided in Section 2.2(b). Plan sponsors should make any revisions in this optional provision that may be necessary in order to take into account any additional guidance that may be provided by the Treasury Department or the IRS regarding automatic enrollment under §§ 414(w) and 4979(f) of the Code.

2.3 Information Provided by the Employee. Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the Plan, including any information required under the Individual Agreements.

2.4 Change in Elective Deferrals Election. Subject to the provisions of the applicable Individual Agreements, an Employee may at any time revise his or her participation election, including a change of the amount of his or her Elective Deferrals, his or her investment direction, and his or her designated Beneficiary. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Vendor.

2.5 Contributions Made Promptly. Elective Deferrals under the Plan shall be transferred to the applicable Funding Vehicle within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

2.6 Leave of Absence. Unless an election is otherwise revised, if an Employee is absent from work by leave of absence, Elective Deferrals under the Plan shall continue to the extent that Compensation continues.

Note: If this Section 2 is adopted separately, the following definitions from Section 1 should also be adopted: Account, Administrator, Beneficiary, Compensation, Elective Deferral, Employee, Employer, Funding Vehicles, Individual Agreement, Participant, Plan, and Vendor.

Section 3 Limitations on Amounts Deferred

3.1 Basic Annual Limitation. Except as provided in Sections 3.2 and 3.3, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the applicable dollar amount or (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under section 402(g)(1)(B) of the Code, which is \$15,500 for 2007, and is adjusted for cost-of-living after 2007 to the extent provided under section 415(d) of the Code.

3.2 Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service. Because the Employer is a qualified organization (within the meaning of § 1.403(b)-4(c)(3)(ii) of the Income Tax Regulations), the applicable dollar amount under Section 3.1(a) for any "qualified employee" is increased (to the extent provided in the Individual Agreements) by the least of:

- (a) \$3,000;
- (b) The excess of:
 - (1) \$15,000, over
 - (2) The total special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or
- (c) The excess of:
 - (1) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over
 - (2) The total Elective Deferrals made for the employee by the qualified organization for prior years.

For purposes of this Section 3.2, a “qualified employee” means an employee who has completed at least 15 years of service taking into account only employment with the Employer.

Note: Section 3.2 is specifically written for use by a State or local government maintaining a § 403(b) plan for its employees who perform services for a public school and, if used by a § 501(c)(3) employer, must be limited to cases in which the Employer is a “qualified organization” under § 1.403(b)-4(c)(3)(iii) of the Income Tax Regulations.

3.3 Age 50 Catch-up Elective Deferral Contributions. An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5,000 for 2007, and is adjusted for cost-of-living after 2007 to the extent provided under the Code.

3.4 Coordination. Amounts in excess of the limitation set forth in Section 3.1 shall be allocated first to the special 403(b) catch-up under Section 3.2 and next as an age 50 catch-up contribution under Section 3.3. However, in no event can the amount of the Elective Deferrals for a year be more than the Participant’s Compensation for the year.

3.5 Special Rule for a Participant Covered by Another Section 403(b) Plan. For purposes of this Section 3, if the Participant is or has been a participant in one or more other plans under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3. For this purpose, the Administrator shall take into account any other such plan maintained by any Related Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by a Related Entity shall be taken into account for purposes of Section 3.2 only if the other plan is a § 403(b) plan.

3.6 Correction of Excess Elective Deferrals. If the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Elective Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another plan of the employer under section 403(b) of the Code (and any other plan that permits elective deferrals under section 402(g) of the Code for which the Participant provides information that is accepted by the Administrator), then the Elective Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant.

Note: Corrective distributions are generally required to be made within 2½ months after the end of the calendar year, but can be made within 6 months after the end of the calendar year if the plan uses the optional provision at Section 2.2(b) and otherwise constitutes an eligible automatic contribution arrangement. See §§ 414(w)(3) and 4979(f) of the Code.

3.7 Protection of Persons Who Serve in a Uniformed Service. An Employee whose employment is interrupted by qualified military service under section 414(u) of the Code or who is on a leave of absence for qualified military service under section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee’s employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

Note: If this Section 3 is adopted separately, the following definitions from Section 1 should also be adopted: Administrator, Code, Compensation, Elective Deferral, Employee, Employer, Includible Compensation, Participant, Plan, and Related Employer.

Section 4

Loans

4.1 Loans. Loans shall be permitted under the Plan to the extent permitted by the Individual Agreements controlling the Account assets from which the loan is made and by which the loan will be secured.

4.2 Information Coordination Concerning Loans. Each Vendor is responsible for all information reporting and tax withholding required by applicable federal and state law in connection with distributions and loans. To minimize the instances in which Participants have taxable income as a result of loans from the Plan, the Administrator shall take such steps as may be appropriate to coordinate the limitations on loans set forth in Section 4.3, including the collection of information from Vendors, and transmission of information requested by any Vendor, concerning the outstanding balance of any loans made to a Participant under the Plan or any other plan of the Employer. The Administrator shall also take such steps as may be appropriate to collect information from Vendors, and transmission of information to any Vendor, concerning any failure by a Participant to repay timely any loans made to a Participant under the Plan or any other plan of the Employer.

4.3 Maximum Loan Amount. No loan to a Participant under the Plan may exceed the lesser of:

(a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period); or

(b) one half of the value of the Participant's vested Account Balance (as of the valuation date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 4.3, any loan from any other plan maintained by the Employer and any Related Employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan to exceed the amount that would otherwise be permitted in the absence of this paragraph.

Note: Loans are included in taxable income under certain conditions, including: if the loan, when combined with the balance of all other loans from plans of the employer, exceeds the limitations described in Section 4.3; or if there is a failure to repay the loan in accordance with the repayment schedule. Because the tax treatment of a loan depends on information concerning aggregate loan balances under all annuity contracts and custodial accounts within the Plan (and under all plans of the employer), information about loan balances under the contracts and accounts of other vendors is needed before making a loan. That information may be obtained from the participant, but this sample language provides for the Administrator also to collect and coordinate that information in order to decrease the instances in which participants have taxable income from plan loans.

Note: See § 1.72(p)-1 of the Income Tax Regulations for the federal income tax treatment of loans generally.

Note: If this Section 4 is adopted separately, the following definitions from Section 1 should also be adopted: Account, Administrator, Account Balance, Employer, Individual Agreement, Participant, Plan, Related Employer, Valuation Date, and Vendor.

Section 5 Benefit Distributions

5.1 Benefit Distributions At Severance from Employment or Other Distribution Event. Except as permitted under Section 3.6 (relating to excess Elective Deferrals), Section 5.4 (relating to withdrawals of amounts rolled over into the Plan), Section 5.5 (relating to hardship), or Section 8.3 (relating to termination of the Plan), distributions from a Participant's Account may not be made earlier than the earliest of the date on which the Participant has a Severance from Employment, dies, becomes Disabled, or attains age 59½. Distributions shall otherwise be made in accordance with the terms of the Individual Agreements.

5.2 Small Account Balances. The terms of the Individual Agreement may permit distributions to be made in the form of a lump-sum payment, without the consent of the Participant or Beneficiary, but no such payment may be made without the consent of the Participant or Beneficiary unless the Account Balance does not exceed \$5,000 (determined without regard to any separate account that holds rollover contributions under Section 6.1) and any such distribution shall comply with the requirements of section 401(a)(31)(B) of the Code (relating to automatic distribution as a direct rollover to an individual retirement plan for distributions in excess of \$1,000).

5.3 Minimum Distributions. Each Individual Agreement shall comply with the minimum distribution requirements of section 401(a)(9) of the Code and the regulations thereunder. For purposes of applying the distribution rules of section 401(a)(9) of the Code, each Individual Agreement is treated as an individual retirement account (IRA) and distributions shall be made in accordance with the provisions of § 1.408-8 of the Income Tax Regulations, except as provided in § 1.403(b)-6(e) of the Income Tax Regulations.

Note: This Section 5.3 assumes that each individual agreement with a vendor complies with the minimum distribution requirements of § 401(a)(9) of the Code. See section 5 of the Appendix for Rev. Proc. 2004–56, 2004–2 C.B. 376, for model language that may be used to set forth the minimum distribution requirements of § 401(a)(9) of the Code.

5.4 In-Service Distributions From Rollover Account. If a Participant has a separate account attributable to rollover contributions to the plan, to the extent permitted by the applicable Individual Agreement, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

Note: A plan is not required to permit in-service distribution from a rollover account. See Rev. Rul. 2004–12, 2004–1 C.B. 478.

5.5 Hardship Withdrawals. (a) Hardship withdrawals shall be permitted under the Plan to the extent permitted by the Individual Agreements controlling the Account assets to be withdrawn to satisfy the hardship. If applicable under an Individual Agreement, no Elective Deferrals shall be allowed under the Plan during the 6-month period beginning on the date the Participant receives a distribution on account of hardship.

(b) The Individual Agreements shall provide for the exchange of information among the Employer and the Vendors to the extent necessary to implement the Individual Agreements, including, in the case of a hardship withdrawal that is automatically deemed to be necessary to satisfy the Participant’s financial need (pursuant to § 1.401(k)–1(d)(3)(iv)(E) of the Income Tax Regulations), the Vendor notifying the Employer of the withdrawal in order for the Employer to implement the resulting 6-month suspension of the Participant’s right to make Elective Deferrals under the Plan. In addition, in the case of a hardship withdrawal that is not automatically deemed to be necessary to satisfy the financial need (pursuant to § 1.401(k)–1(d)(3)(iii)(B) of the Income Tax Regulations), the Vendor shall obtain information from the Employer or other Vendors to determine the amount of any plan loans and rollover accounts that are available to the Participant under the Plan to satisfy the financial need.

5.6 Rollover Distributions. (a) A Participant or the Beneficiary of a deceased Participant (or a Participant’s spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect to have any portion of an eligible rollover distribution (as defined in section 402(c)(4) of the Code) from the Plan paid directly to an eligible retirement plan (as defined in section 402(c)(8)(B) of the Code) specified by the Participant in a direct rollover. In the case of a distribution to a Beneficiary who at the time of the Participant’s death was neither the spouse of the Participant nor the spouse or former spouse of the Participant who is an alternate payee under a domestic relations order, a direct rollover is payable only to an individual retirement account or individual retirement annuity (IRA) that has been established on behalf of the Beneficiary as an inherited IRA (within the meaning of section 408(d)(3)(C) of the Code).

(b) Each Vendor shall be separately responsible for providing, within a reasonable time period before making an initial eligible rollover distribution, an explanation to the Participant of his or her right to elect a direct rollover and the income tax withholding consequences of not electing a direct rollover.

Note: Section 402(f) of the Code requires a plan administrator to provide a written explanation to any recipient of an eligible rollover distribution. The written explanation must cover the direct rollover rules, the mandatory income tax withholding on distributions not directly rolled over, the tax treatment of distributions not rolled over (including the special tax treatment available for certain lump sum distributions), and when distributions may be subject to different restrictions and tax consequences after being rolled over. Section 402(f) provides that this explanation must be given within a reasonable period of time before the plan makes an eligible rollover distribution. See Notice 2002–3, 2002–1 C.B. 289, that contains a Safe Harbor Explanation that plan administrators may provide to recipients of eligible rollover distributions from employer plans in order to satisfy the notice requirement.

Note: See generally § 1.403(b)–6 of the Income Tax Regulations for rules relating to restrictions on distributions.

Note: If this Section 5 is adopted separately, the following definitions from Section 1 should also be adopted: Account, Account Balance, Beneficiary, Code, Disabled, Elective Deferral, Employer, Individual Agreement, Participant, Plan, Severance from Employment, and Vendor.

Section 6

Rollovers to the Plan and Transfers

6.1 Eligible Rollover Contributions to the Plan.

(a) **Eligible Rollover Contributions.** To the extent provided in the Individual Agreements, an Employee who is a Participant who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. Such rollover contributions shall be made in the form of cash only. The Vendor may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code. However, in no event does the Plan accept a rollover contribution from a Roth elective deferral account under an applicable retirement plan described in section 402A(e)(1) of the Code or a Roth IRA described in section 408A of the Code.

Note: This provision does not permit rollovers to be accepted from a Roth elective deferral account or a Roth IRA because the Plan does not provide for designated Roth contributions.

(b) **Eligible Rollover Distribution.** For purposes of Section 6.1(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) **Separate Accounts.** The Vendor shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan.

6.2 Plan-to-Plan Transfers to the Plan. (a) At the direction of the Employer, for a class of Employees who are participants or beneficiaries in another plan under section 403(b) of the Code, the Administrator may permit a transfer of assets to the Plan as provided in this Section 6.2. Such a transfer is permitted only if the other plan provides for the direct transfer of each person's entire interest therein to the Plan and the participant is an employee or former employee of the Employer. The Administrator and any Vendor accepting such transferred amounts may require that the transfer be in cash or other property acceptable to it. The Administrator or any Vendor accepting such transferred amounts may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with § 1.403(b)-10(b)(3) of the Income Tax Regulations and to confirm that the other plan is a plan that satisfies section 403(b) of the Code.

(b) The amount so transferred shall be credited to the Participant's Account Balance, so that the Participant or Beneficiary whose assets are being transferred has an accumulated benefit immediately after the transfer at least equal to the accumulated benefit with respect to that Participant or Beneficiary immediately before the transfer.

(c) To the extent provided in the Individual Agreements holding such transferred amounts, the amount transferred shall be held, accounted for, administered and otherwise treated in the same manner as an Elective Deferral by the Participant under the Plan, except that (1) the Individual Agreement which holds any amount transferred to the Plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the Individual Agreement must impose restrictions on distributions to the Participant or Beneficiary whose assets are being transferred that are not less stringent than those imposed on the transferor plan and (2) the transferred amount shall not be considered an Elective Deferral under the Plan in determining the maximum deferral under Section 3.

Note: This provision limits transfer to the plan to cases involving a class of participants whose entire benefit is being transferred, such as where employees are being transferred from another employer to employment with the employer maintaining this plan and the portion of the other plan held on their behalf is being merged into this plan. Plan-to-plan transfers are not required to be limited to such situations. See § 1.403(b)-10(b)(3) of the Income Tax Regulations for rules relating to plan-to-plan transfers among § 403(b) plans and, in the case of plans that are subject to ERISA, see also § 1.414(l)-1 of the Income Tax Regulations.

6.3 Plan-to-Plan Transfers from the Plan.

(a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another plan that satisfies section 403(b) of the Code in accordance with § 1.403(b)–10(b)(3) of the Income Tax Regulations. A transfer is permitted under this Section 6.3(a) only if the Participants or Beneficiaries are employees or former employees of the employer (or the business of the employer) under the receiving plan and the other plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) The other plan must provide that, to the extent any amount transferred is subject to any distribution restrictions required under section 403(b) of the Code, the other plan shall impose restrictions on distributions to the Participant or Beneficiary whose assets are transferred that are not less stringent than those imposed under the Plan. In addition, if the transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the Plan, the other plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (*e.g.*, a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

(c) Upon the transfer of assets under this Section 6.3, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.3 (for example, to confirm that the receiving plan satisfies section 403(b) of the Code and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to § 1.403(b)–10(b)(3) of the Income Tax Regulations.

Note: This provision limits transfer from the plan to cases involving a class of participants whose entire benefit is being transferred, such as where employees are being transferred from employment with the employer maintaining this plan to another employer and the portion of the plan held on their behalf is being merged into another plan. Plan-to-plan transfers are not required to be limited to such situations. See § 1.403(b)–10(b)(3) of the Income Tax Regulations for rules relating to plan-to-plan transfers among § 403(b) plans and, in the case of plans that are subject to ERISA, see also § 1.414(l)–1 of the Income Tax Regulations.

6.4 Contract and Custodial Account Exchanges. (a) A Participant or Beneficiary is permitted to change the investment of his or her Account Balance among the Vendors under the Plan, subject to the terms of the Individual Agreements. However, an investment change that includes an investment with a Vendor that is not eligible to receive contributions under Section 2 (referred to below as an exchange) is not permitted unless the conditions in paragraphs (b) through (d) of this Section 6.4 are satisfied.

(b) The Participant or Beneficiary must have an Account Balance immediately after the exchange that is at least equal to the Account Balance of that Participant or Beneficiary immediately before the exchange (taking into account the Account Balance of that Participant or Beneficiary under both section 403(b) contracts or custodial accounts immediately before the exchange).

(c) The Individual Agreement with the receiving Vendor has distribution restrictions with respect to the Participant that are not less stringent than those imposed on the investment being exchanged.

(d) The Employer enters into an agreement with the receiving Vendor for the other contract or custodial account under which the Employer and the Vendor will from time to time in the future provide each other with the following information:

(1) Information necessary for the resulting contract or custodial account, or any other contract or custodial accounts to which contributions have been made by the Employer, to satisfy section 403(b) of the Code, including the following: (i) the Employer providing information as to whether the Participant's employment with the Employer is continuing, and notifying the Vendor when the Participant has had a Severance from Employment (for purposes of the distribution restrictions in Section 5.1); (ii) the Vendor notifying the Employer of any hardship withdrawal under Section 5.5 if the withdrawal results in a 6-month suspension of the Participant's right to make Elective Deferrals under the Plan; and (iii) the Vendor providing information to the Employer or other Vendors concerning the Participant's or Beneficiary's section 403(b) contracts or custodial accounts or qualified employer plan benefits (to enable a Vendor to determine the amount of any plan loans and any rollover accounts that are available to the Participant under the Plan in order to satisfy the financial need under the hardship withdrawal rules of Section 5.5); and

(2) Information necessary in order for the resulting contract or custodial account and any other contract or custodial account to which contributions have been made for the Participant by the Employer to satisfy other tax requirements, including the following: (i) the amount of any plan loan that is outstanding to the Participant in order for a Vendor to determine whether an additional plan loan satisfies the loan limitations of Section 4.3, so that any such additional loan is not a deemed distribution under section 72(p)(1); and (ii) information concerning the Participant's or Beneficiary's after-tax employee contributions in order for a Vendor to determine the extent to which a distribution is includible in gross income.

(e) If any Vendor ceases to be eligible to receive Elective Deferrals under the Plan, the Employer will enter into an information sharing agreement as described in Section 6.4(d) to the extent the Employer's contract with the Vendor does not provide for the exchange of information described in Section 6.4(d)(1) and (2).

Note: Section 6.4(a) through (d) are optional provisions for a plan that chooses to allow participants to exchange all or a portion of their account balance with vendors with respect to which the plan has no regular contact, i.e., insurance companies or mutual funds that do not receive regular contributions made for participants. Note also that additional information would be necessary in the case of an exchange involving a designated Roth account. See generally § 1.403(b)–10(b)(2) of the Income Tax Regulations for rules relating to exchanges of contracts.

6.5 Permissive Service Credit Transfers.

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.5(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under Section 6.5(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

(c) In addition, if a plan-to-plan transfer does not constitute a complete transfer of the Participant's or Beneficiary's interest in the transferor plan, the Plan shall treat the amount transferred as a continuation of a pro rata portion of the Participant's or Beneficiary's interest in the transferor plan (e.g., a pro rata portion of the Participant's or Beneficiary's interest in any after-tax employee contributions).

Note: See § 1.403(b)–10(b)(4) of the Income Tax Regulations for rules relating to transfers for permissive service credit.

Note: If this Section 6 is adopted separately, the following definitions from Section 1 should also be adopted: Administrator, Account Balance, Beneficiary, Code, Elective Deferral, Employee, Employer, Individual Agreement, Participant, Plan, Severance from Employment, and Vendor.

Section 7 Investment of Contributions

7.1 Manner of Investment. All Elective Deferrals or other amounts contributed to the Plan, all property and rights purchased with such amounts under the Funding Vehicles, and all income attributable to such amounts, property, or rights shall be held and invested in one or more Annuity Contracts or Custodial Accounts. Each Custodial Account shall provide for it to be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Custodial Account to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

7.2 Investment of Contributions. Each Participant or Beneficiary shall direct the investment of his or her Account among the investment options available under the Annuity Contract or Custodial Account in accordance with the terms of the Individual Agreements. Transfers among Annuity Contracts and Custodial Accounts may be made to the extent provided in the Individual Agreements and permitted under applicable Income Tax Regulations.

Note: See generally § 1.403(b)–8 of the Income Tax Regulations for rules relating to funding.

Note: If this Section 7 is adopted separately, the following definitions from Section 1 should also be adopted: Annuity Contract, Beneficiary, Custodial Account, Individual Agreement, Elective Deferral, Participant, and Plan.

7.3 Current and Former Vendors. The Administrator shall maintain a list of all Vendors under the Plan. Such list is hereby incorporated as part of the Plan. Each Vendor and the Administrator shall exchange such information as may be necessary to satisfy section 403(b) of the Code or other requirements of applicable law. In the case of a Vendor which is not eligible to receive Elective Deferrals under the Plan (including a Vendor which has ceased to be a Vendor eligible to receive Elective Deferrals under the Plan and a Vendor holding assets under the Plan in accordance with Section 6.2 or 6.4), the Employer shall keep the Vendor informed of the name and contact information of the Administrator in order to coordinate information necessary to satisfy section 403(b) of the Code or other requirements of applicable law.

Section 8 Amendment and Plan Termination

8.1 Termination of Contributions. The Employer has adopted the Plan with the intention and expectation that contributions will be continued indefinitely. However, the Employer has no obligation or liability whatsoever to maintain the Plan for any length of time and may discontinue contributions under the Plan at any time without any liability hereunder for any such discontinuance.

8.2 Amendment and Termination. The Employer reserves the authority to amend or terminate this Plan at any time.

8.3 Distribution upon Termination of the Plan. The Employer may provide that, in connection with a termination of the Plan and subject to any restrictions contained in the Individual Agreements, all Accounts will be distributed, provided that the Employer and any Related Employer on the date of termination do not make contributions to an alternative section 403(b) contract that is not part of the Plan during the period beginning on the date of plan termination and ending 12 months after the distribution of all assets from the Plan, except as permitted by the Income Tax Regulations.

Note: See generally § 1.403(b)–10(a) of the Income Tax Regulations for rules relating to discontinuance of contributions and plan termination.

Note: If this Section 8 is adopted separately, the following definitions from Section 1 should also be adopted: Account, Employer, Individual Agreement, Plan, and Related Employer.

Section 9 Miscellaneous

9.1 Non-Assignability. Except as provided in Section 9.2 and 9.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant's or Beneficiary's creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

Note: The anti-alienation rules of section 401(a)(13) of the Code generally do not apply to § 403(b) plans of public schools, but the parallel rule at section 206(d) of ERISA applies to plans that are subject to ERISA.

9.2 Domestic Relation Orders. Notwithstanding Section 9.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State ("domestic relations order"), then the amount of the Participant's Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

Note: Section 9.2 is specifically written for use by a State or local government maintaining a § 403(b) plan for its employees who perform services for a public school and, if used by a § 501(c)(3) employer, must be revised to be limited to cases in which the domestic relations order is "qualified" under § 414(p) of the Code.

Note: See generally § 414(p) of the Code and § 1.403(b)–10(c) of the Income Tax Regulations for rules regarding domestic relations orders.

9.3 IRS Levy. Notwithstanding Section 9.1, the Administrator may pay from a Participant's or Beneficiary's Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

9.4 Tax Withholding. Contributions to the Plan are subject to applicable employment taxes (including, if applicable, Federal Insurance Contributions Act (FICA) taxes with respect to Elective Deferrals, which constitute wages under section 3121 of the Code). Any benefit payment made under the Plan is subject to applicable income tax withholding requirements (including section 3401 of the Code and the Treasury Regulations thereunder). A payee shall provide such information as the Administrator may need to satisfy income tax withholding obligations, and any other information that may be required by guidance issued under the Code.

9.5 Payments to Minors and Incompetents. If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

9.6 Mistaken Contributions. If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

9.7 Procedure When Distributee Cannot Be Located. The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant's Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on [INSERT NAME OF THE EMPLOYER]'s or the Administrator's records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the funding vehicle shall continue to hold the benefits due such person.

9.8 Incorporation of Individual Agreements. The Plan, together with the Individual Agreements, is intended to satisfy the requirements of section 403(b) of the Code and the Income Tax Regulations thereunder. Terms and conditions of the Individual Agreements are hereby incorporated by reference into the Plan, excluding those terms that are inconsistent with the Plan or section 403(b) of the Code.

9.9 Governing Law. The Plan will be construed, administered and enforced according to the Code and the laws of the State in which the Employer has its principal place of business.

9.10 Headings. Headings of the Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

9.11 Gender. Pronouns used in the Plan in the masculine or feminine gender include both genders unless the context clearly indicates otherwise.

IN WITNESS WHEREOF, the Employer has caused this Plan to be executed this ____ day of ____, ____.

Employer: _____

By: _____

Title: _____

Date signed: _____

Effective Date of the Plan: _____

Note: The provisions in Section 9 are optional provisions that are not required to be adopted.

Note: If this Section 9 is adopted separately, the following definitions from Section 1 should also be adopted: Administrator, Account Balance, Beneficiary, Employer, Individual Agreement, Participant, and Plan.

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Update and Revision of Sections 1.381(c)(4)–1 and 1.381(c)(5)–1

REG–151884–03

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance under sections 381(c)(4) and (c)(5) of the Internal Revenue Code (Code) relating to the accounting method or combination of methods, including the inventory method, to use after certain corporate reorganizations and tax-free liquidations. These proposed regulations clarify and simplify the existing regulations under sections 381(c)(4) and (c)(5). The regulations affect corporations that acquire the assets of other corporations in transactions described in section 381(a).

DATES: Written or electronic comments and requests for a public hearing must be received by February 14, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–151884–03), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–151884–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov/> (IRS REG–151884–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Cheryl Oseekey at (202) 622–4970; concerning submissions of comments and requests for a hearing, Kelly Banks at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Overview

Section 381 of the Code was enacted in 1954 to provide statutory authority for determining the carryover of certain tax attributes, including accounting methods, in certain corporate reorganizations and tax-free liquidations. Regulations implementing section 381(c)(4) were issued on August 5, 1964 (T.D. 6750, 1964–2 C.B. 96 [29 FR 11263]). On August 23, 1972, the IRS proposed to revise these regulations (37 FR 16947). On December 23, 1998, the IRS withdrew the regulations that had been proposed in 1972 (REG–116099–98, 1999–2 C.B. 822 [63 FR 71047]). Regulations implementing section 381(c)(5) were issued on January 15, 1975 (40 FR 2684).

Section 1.381(c)(4)–1 generally provides that after a section 381(a) transaction, the accounting method or combination of methods used by the parties to the section 381(a) transaction prior to the transaction will continue. However, when the accounting methods used prior to the section 381(a) transaction cannot continue to be used after the transaction, §1.381(c)(4)–1 identifies the accounting method(s) to use after the transaction. Section 1.381(c)(5)–1 provides similar rules regarding inventory accounting methods.

The IRS and the Treasury Department are aware that the current regulations are inconsistent in the treatment of adjustments for inventory methods and for other accounting methods, and that there is confusion regarding the appropriate procedure for making accounting method changes required by section 381. In a notice of proposed rulemaking (REG–142605–02, 2003–1 C.B. 1010 [68 FR 25310]) issued on May 12, 2003, regarding sections 263A and 448, the IRS and the Treasury Department indicated that guidance regarding the accounting method(s) to be used after a section 381(a) transaction was contemplated. This notice of proposed rulemaking provides that guidance.

This notice of proposed rulemaking generally continues many of the provi-

sions of the regulations originally issued in 1964 and 1975 regarding the accounting method or combination of methods to be used by the corporation that acquires the assets of another corporation in a section 381(a) transaction. However, the following changes to these regulations are proposed.

Consistency Between Sections 381(c)(4) and (c)(5)

Under the current regulations, there are several inconsistencies between the rules that apply to accounting method changes made pursuant to section 381(c)(4) and those made under section 381(c)(5). The proposed regulations generally make the rules that apply to accounting method changes made pursuant to section 381(c)(4) consistent with the rules that apply to changes made under section 381(c)(5).

Determining the Method to be used after the Section 381(a) Transaction

In general, the current regulations under both sections 381(c)(4) and (c)(5) provide that the accounting method to be used after a section 381(a) transaction by the party that survives the reorganization or liquidation (acquiring corporation) will depend on whether (1) The parties to the section 381(a) transaction used (or did not use) the same accounting method on the date of the section 381(a) transaction, and (2) The businesses of the parties to the section 381(a) transaction are combined after the transaction by the party that survives the transaction. If different methods are used and the combined corporations are operated as a single trade or business after the section 381(a) transaction, then the principal and special method (including the inventory method) rules apply.

The parties to the section 381(a) transaction determine the principal method by applying various tests under the regulations. The applicable test depends on whether the method under consideration is the overall accounting method, the method for a particular type of goods for which the Code or regulations provide a special method or methods, or an inventory

method. The rules under the current regulations also address situations in which there is no principal method, or the principal method does not clearly reflect income. Currently, the regulations provide that if there is no principal method after applying the appropriate test or if that method is impermissible, the Commissioner shall select a suitable accounting method to use after the transaction.

The IRS and the Treasury Department believe that the various tests in the regulations and the need for the Commissioner in some situations to select a suitable accounting method to be used after the transaction have caused confusion and have led to controversies between taxpayers and the IRS. In order to eliminate the confusion and uncertainty and provide simplicity and uniformity, the IRS and the Treasury Department propose to provide rules that are similar to the current regulations but have a default rule to determine the principal method.

The proposed regulations generally provide under both sections 381(c)(4) and (c)(5) that the accounting method to be used after a section 381(a) transaction by the acquiring corporation will depend on whether (1) The businesses of the parties to the section 381(a) transaction are combined after the transaction by the acquiring corporation, and (2) The method is permissible. As under the current regulations, if the trades or businesses of the parties to the section 381(a) transaction are operated as separate trades or businesses after the section 381(a) transaction, an accounting method used by the parties prior to the section 381(a) transaction carries over and is used by the acquiring corporation provided the method is permissible (carryover method). If the trades or businesses of the parties to the section 381(a) transaction are not operated as separate trades or businesses after the section 381(a) transaction, then the acquiring corporation must determine and use the principal method.

The proposed regulations provide a general rule that the principal method generally is the accounting method used by the acquiring corporation prior to the section 381(a) transaction. However, there are two exceptions. First, if the acquiring corporation does not have an accounting method for a particular item or type of goods, the principal method is the accounting method for the item or type of goods used by the

distributor or transferor corporation prior to the section 381(a) transaction. Second, if the distributor or transferor corporation is larger than the acquiring corporation, the principal methods for the overall accounting method and for the accounting method for a particular item or type of goods are the methods used by the distributor or transferor corporation prior to the section 381(a) transaction. The principal method continues to be determined separately for the overall accounting method and for any special accounting methods, such as an accounting method used for a long-term contract.

Under the proposed regulations, whether the distributor or transferor corporation is larger than the acquiring corporation is determined using the test in §1.381(c)(4)-1 of the current regulations for determining the overall principal method for methods other than inventory. Therefore, the parties to the section 381(a) transaction will compare their relative sizes in terms of total asset bases and gross receipts for both the overall accounting method and for special accounting methods. For inventory, whether the distributor or transferor corporation is larger than the acquiring corporation will be determined based on the value of the inventory using a test similar to the test in §1.381(c)(5)-1 of the current regulations. The principal method is the inventory method used by the party with the largest fair market value of a particular type of goods. The regulations provide a simplified election that allows the acquiring corporation to apply the principal method test by comparing the value of the entire inventories of the parties to the section 381(a) transaction rather than the value of each particular type of goods.

Under the proposed regulations, if the carryover method or principal method is an impermissible method, the acquiring corporation generally must file a request to change to a permissible accounting method. However, if the carryover method is impermissible solely because only a single accounting method with respect to a particular item may be used by the acquiring corporation on the date of the section 381(a) transaction regardless of the number of separate and distinct trades or businesses operated on that date, the acquiring corporation must use the principal method

as determined under §1.381(c)(4)-1(c) of the proposed regulations.

All parties to a section 381(a) transaction may request permission to change their accounting methods for the taxable year in which the transaction occurs or is expected to occur under section 446(e). However, the acquiring corporation need not secure the Commissioner's consent to continue a carryover method or use the principal method.

Additionally, there is confusion under the current regulations as to whether an accounting method is established immediately upon use of a carryover method or principal method if the method is impermissible, and as to the appropriate remedy if an acquiring corporation discovers after the deadline for filing a request to change an accounting method for the year of the section 381(a) transaction that the carryover method or principal method is an impermissible method. The proposed regulations make it clear that every accounting method, whether it is a carryover method or a principal method, and whether the method is a permissible or impermissible method, is an established accounting method. Therefore, if an acquiring corporation discovers after the deadline for filing a request to change an accounting method for the year of the section 381(a) transaction that it is using an impermissible method, the acquiring corporation must file for an accounting method change to a permissible accounting method for the taxable year following the section 381(a) transaction.

Determining Adjustments Arising from a Change in an Accounting Method under Sections 381(c)(4) and (c)(5)

Under the current regulations in §1.381(c)(4)-1, once a principal method is determined, any party to the section 381(a) transaction that is required to change its accounting method to the principal method must compute the adjustment necessary to reflect the change by determining the difference between its tax liability as reflected on its actual return computed using its old accounting method, and the tax liability reflected on a hypothetical federal income tax return using the new accounting method. This adjustment is computed as if, on the date of the section 381(a) transaction, each changing corporation

initiates an accounting method change. If there is an increase or decrease in tax liability, the acquiring corporation takes into account the hypothetical increase or decrease in tax in the taxable year that includes the date of the section 381(a) transaction.

The procedures are different for inventory under the current regulations in §1.381(c)(5)-1. In lieu of the acquiring corporation taking into account the hypothetical increase or decrease in tax in the taxable year that includes the date of the section 381(a) transaction, the acquiring corporation takes the increase or decrease in income attributable to the accounting method change directly into account.

The IRS and the Treasury Department believe that the procedures for implementing changes to a principal method under the current regulations have been inconsistently applied and are another source of confusion. The proposed regulations modify §1.381(c)(4)-1 and generally apply the adjustment methodology used under section 446(e) and §1.381(c)(5)-1 of the current regulations. The proposed regulations generally make accounting method changes to a principal method and the resulting section 481(a) adjustment, if any, procedurally consistent with accounting method changes made pursuant to section 446(e). Accordingly, the acquiring corporation computes the section 481(a) adjustment necessary to reflect the accounting method change, if any, as if it had initiated an accounting method change for the trade or business required to implement the principal method. The acquiring corporation takes into account the appropriate amount of the section 481(a) adjustment, if any, computed as of the date of the section 381(a) transaction, from the accounting method change as an increase or decrease to its taxable income on the date of the section 381(a) transaction.

Furthermore, to simplify the procedures under section 381(a) for accounting method changes, the proposed regulations provide that the rules governing accounting method changes under section 446(e) apply to determine (1) Whether the section 381(a) accounting method change is implemented with a section 481(a) adjustment or on a cut-off basis, (2) The computation of the section 481(a) adjustment, and (3) The appropriate period of taxable years over which the adjustment

is included in taxable income. These rules are contained in applicable administrative published procedures that govern voluntary accounting method changes under section 446(e). (See, for example, Rev. Proc. 2002-9, 2002-1 C.B. 327, (see §601.601(d)(2)(ii)(b) of this chapter), as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, (see §601.601(d)(2)(ii)(b) of this chapter), and amplified, clarified and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and Rev. Proc. 97-27, 1997-1 C.B. 680, (see §601.601(d)(2)(ii)(b) of this chapter), as modified and amplified by Rev. Proc. 2002-19, as amplified and clarified by Rev. Proc. 2002-54). For example, if the current administrative procedures allow a section 481(a) adjustment to be taken into account over a period of four years for a particular accounting method change, an acquiring corporation will take into account one-fourth of the section 481(a) adjustment in the taxable year that includes the section 381(a) transaction, and one-fourth of the section 481(a) adjustment in each of the subsequent three years.

Time and Manner of Requesting Permission to Change an Accounting Method under §1.381(c)(4)-1 or §1.381(c)(5)-1

Under the current regulations, if the acquiring corporation cannot use a principal method because it is impermissible, that is, it does not clearly reflect income or it conflicts with a closing agreement, or the acquiring corporation does not want to use the principal method even though it is permissible, there is confusion as to the manner in which a taxpayer requests the Commissioner's permission to use a different accounting method. Specifically, it is unclear whether an acquiring corporation may file a Form 3115, *Application for Change in Accounting Method*, to request the Commissioner's permission or whether the acquiring corporation must file a request for a private letter ruling. The proposed regulations make it clear that a taxpayer must request an accounting method change consistent with the manner in which accounting method changes are requested pursuant to section 446(e), that is, on a Form 3115.

The regulations under section 446(e) currently allow taxpayers to request an accounting method change at any time during the taxable year. See §1.446-1(e)(3)(i). Under §§1.381(c)(4)-1(d) and 1.381(c)(5)-1(d) of the current regulations, the time for filing a request for an accounting method change is inconsistent with the section 446(e) regulations. Although the times for filing under these two regulations were consistent when the regulations were initially published, the section 446(e) regulations were subsequently amended without making conforming changes to §§1.381(c)(4)-1(d) and 1.381(c)(5)-1(d) of the current regulations. This inconsistency also has caused confusion. Rev. Proc. 2005-63, 2005-2 C.B. 491, (see §601.601(d)(2)(ii)(b) of this chapter) was issued to address the problem. The revenue procedure extends the time to file a request to change an accounting method to the later of (1) The last day of the taxable year in which the distribution or transfer occurred, or (2) The earlier of (a) the day that is 180 days after the section 381(a) transaction date, or (b) the day on which the acquiring corporation files its tax return for the taxable year in which the distribution or transfer occurred.

The proposed regulations generally incorporate the time provided in Rev. Proc. 2005-63 for requesting the Commissioner's consent to change an accounting method. The IRS and the Treasury Department intend by this revision generally to conform the due dates for requesting an accounting method change under sections 381(c)(4) and (c)(5) to the due dates for requesting other accounting method changes under section 446(e), while providing sufficient time to request the Commissioner's consent if the section 381(a) transaction occurs at or near the end of a taxable year.

Changing Accounting Methods in the Taxable Year of the Section 381(a) Transaction

The existing regulations under sections 381(c)(4) and (c)(5) require certain adjustments attributable to an accounting method change to be taken into account entirely in one taxable year. The adjustment required of the acquiring corporation under the existing section 381(c)(4) regulations is to take into account the hypo-

thetical tax increase due to the accounting method change rather than a section 481(a) adjustment. The administrative procedures applicable to voluntary accounting method changes historically have required a section 481(a) adjustment to be taken into account over a period of taxable years. This discrepancy in when the adjustments are taken into account produced an incentive for taxpayers to request a voluntary accounting method change in the year in which the section 381(a) transaction occurred for changes that would result in a positive adjustment while making changes that would result in a negative adjustment under the rules in §1.381(c)(4)-1 or §1.381(c)(5)-1 of the current regulations. The IRS generally declined to entertain requests for an accounting method change that otherwise would be effected pursuant to sections 381(c)(4) and (c)(5). More recently, however, the administrative procedures that apply to voluntary accounting method changes have provided for taking positive section 481(a) adjustments into account over a period of taxable years while allowing negative section 481(a) adjustments to be taken into account in the year in which the method change is effected, which lessens the incentive to make an accounting method change under section 446(e) in lieu of section 381(a).

Generally, the proposed regulations provide that the acquiring corporation will be permitted to request an accounting method change for the taxable year in which the section 381(a) transaction occurs. The proposed regulations also provide that the other parties to a section 381(a) transaction will be allowed to request accounting method changes for the taxable year that ends with the section 381(a) transaction. For trades or businesses that will not operate as separate trades or businesses after the section 381(a) transaction, an accounting method change will be granted only if the requested method is the method that will continue to be used after the section 381(a) transaction. For example, an acquiring corporation will be granted permission to change an accounting method only if the proposed method will be the principal method on the date of the section 381(a) transaction. The IRS generally will not grant an accounting method change to a distributor or transferor corporation for the taxable year

that ends with the section 381(a) transaction if that method must change to a different method under the principal method rules of §§1.381(c)(4)-1(c) and 1.381(c)(5)-1(c) of the proposed regulations. Similarly, the IRS generally will not grant an accounting method change to an acquiring corporation in the taxable year that includes the section 381(a) transaction if that method must change to a different method under the principal method rules of §§1.381(c)(4)-1(c) and 1.381(c)(5)-1(c) of the proposed regulations. If and when the proposed regulations are finalized, the IRS and the Treasury Department intend to make changes to the administrative procedures applicable to voluntary accounting methods to generally allow changes during the year of a section 381(a) transaction as previously described and will change relevant terms and conditions, as needed, particularly for taxpayers who are under exam or in appeals.

Audit Protection

Changes to the principal method under §§1.381(c)(4)-1 and 1.381(c)(5)-1 of the current regulations are made without audit protection. The IRS and the Treasury Department believe that audit protection is not warranted when either the carryover method or principal method, as applicable, is used in the context of voluntary compliance under sections 381(c)(4) and (c)(5). Unlike accounting method changes under section 446(e) for which a taxpayer must disclose its use of an improper accounting method as part of the accounting method change process, changes to a principal method pursuant to §§1.381(c)(4)-1 and 1.381(c)(5)-1 of the current regulations are made by the taxpayer on the tax return without disclosing the change on a Form 3115, *Application for Change in Accounting Method*.

The IRS and the Treasury Department, however, believe that audit protection is warranted when an accounting method other than the carryover method or principal method is used in the context of voluntary compliance under sections 381(c)(4) and (c)(5). Under the proposed regulations, a taxpayer using an improper accounting method may request permission to change the method at any time before the end of its taxable year. Thus, if the acquiring corporation is using an improper

accounting method or would be required to use an improper accounting method because of the application of §1.381(c)(4)-1 or §1.381(c)(5)-1 of the proposed regulations, it can request consent to change to a proper accounting method. That change will be accorded the usual audit protection procedures provided in guidance issued under section 446(e) for the requested change. Similarly, if another party to the section 381(a) transaction is using an improper accounting method, it may request consent to change to a proper accounting method at any time prior to the section 381(a) transaction. That change also will be accorded the usual audit protection procedures provided in guidance issued under section 446(e) for the requested change.

Proposed Effective/Applicability Date

These regulations are proposed to apply to corporate reorganizations and tax-free liquidations described in section 381(a) that occur on or after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Although there is a lack of available data regarding the extent to which small entities engage in the corporate reorganizations and tax-free liquidations described in section 381(a), this certification is based on the belief of the IRS and the Treasury Department that these transactions generally involve larger entities. Notwithstanding this certification that only large entities are affected, these proposed regulations will not have a significant economic impact on large or small taxpayers. These proposed regulations will reduce burden on taxpayers by clarifying existing rules and simplifying the procedures for requesting changes in accounting methods to methods other than the carryover or principal methods. Additionally, these proposed regulations make

the implementation rules more consistent with the general rules for changes in accounting methods. Therefore, because these proposed regulations would generally clarify and simplify existing rules, these regulations will not have a significant economic impact on a substantial number of small entities. The IRS and the Treasury Department specifically solicit comment from any party, particularly affected small entities, on the accuracy of this certification. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department want to provide clear, consistent, and administrable rules that will reduce the uncertainty and controversy in this area. Thus, the IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. Topics on which comments are requested include (1) In determining the relative sizes of the parties to a section 381(a) transaction, is it appropriate to calculate the gross receipts for a representative period by examining the gross receipts that are properly recognized under the acquiring corporation's and the distributor or transferor corporation's accounting method used for that period for federal income tax purposes, and (2) For a taxpayer using the last-in, first-out (LIFO) inventory method, should the principal method be applied at the level of each particular type of goods, or to pools of goods? All comments will be made available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Cheryl Oseekey, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.381(c)(4)–1 also issued under 26 U.S.C. 381(c)(4). * * *

Section 1.381(c)(5)–1 also issued under 26 U.S.C. 381(c)(5). * * *

Par. 2. In §1.381(a)–1, paragraph (b)(1)(i) is revised and paragraph (e) is added to read as follows:

§1.381(a)–1 General rule relating to carryovers in certain corporate acquisitions.

* * * * *

(b) * * *

(1) * * * (i) The complete liquidation of a subsidiary corporation upon which no gain or loss is recognized in accordance with the provisions of section 332;

* * * * *

(e) *Effective/applicability date.* The rules of paragraph (b)(1)(i) of this section apply to corporate reorganizations and tax-free liquidations described in section 381(a) that occur on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 3. Section 1.381(c)(4)–1 is revised to read as follows:

§1.381(c)(4)–1 Accounting method.

(a) *Introduction*—(1) *Purpose.* This section provides guidance regarding the accounting method or combination of methods (other than inventory and depreciation accounting methods) an acquiring

corporation must use following a distribution or transfer to which sections 381(a) and (c)(4) apply and how to implement any associated accounting method changes. See §1.381(c)(5)–1 for guidance regarding the inventory accounting methods an acquiring corporation must use following a distribution or transfer to which sections 381(a) and (c)(5) apply. See §1.381(c)(6)–1 for guidance regarding the depreciation accounting methods an acquiring corporation must use following a distribution or transfer to which sections 381(a) and (c)(6) apply.

(2) *Carryover requirement*—(i) *In general.* In a transaction to which section 381(a) applies, if an acquiring corporation operates the trades or businesses of the parties to the section 381(a) transaction as separate and distinct trades or businesses after the date of distribution or transfer, then the acquiring corporation generally must use the same accounting method(s) used by the distributor or transferor corporation(s) on the date of distribution or transfer for the acquired trade or business (carryover method). If an acquiring corporation does not operate the trades or businesses of the parties to the section 381(a) transaction as separate and distinct trades or businesses after the date of distribution or transfer, then the acquiring corporation must use a principal method as determined under paragraph (c) of this section and must take into account any section 481(a) adjustment, if applicable, as required under paragraph (d)(1) of this section. The acquiring corporation need not secure the Commissioner's consent to continue or to use a permissible carryover method or principal method.

(ii) *Carryover method or principal method not permissible.* In general, if a carryover method or principal method is an impermissible accounting method, the acquiring corporation must secure the Commissioner's consent to change to a different accounting method as provided in paragraph (d)(2) of this section. If, however, a carryover method is impermissible solely because only a single accounting method with respect to a particular item may be used by the acquiring corporation after the date of the section 381(a) transaction regardless of the number of separate and distinct trades or businesses operated on that date, the acquiring corporation

must use a principal method as determined under paragraph (c) of this section.

(iii) *Voluntary change.* All parties to a section 381(a) transaction may request permission under section 446(e) to change an accounting method for the taxable year in which the transaction occurs or is expected to occur. For trades or businesses that will not operate as separate trades or businesses after the section 381(a) transaction, an accounting method change will be granted only if the requested method is the method that the acquiring corporation must use after the date of the distribution or transfer in the taxable year that includes the section 381(a) transaction. The time and manner of obtaining the Commissioner's consent to change to a different accounting method is described in paragraph (d)(2) of this section.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a):

Example 1. Separate and distinct trades or businesses after the date of the distribution or transfer—(i) Facts. X Corporation operates an employment agency that uses the overall cash receipts and disbursements accounting method. T Corporation operates an educational institution that uses an overall accrual method. X Corporation acquires the assets of T Corporation in a transaction to which section 381(a) applies. X Corporation operates the employment agency and educational institution as separate and distinct trades or businesses after the date of the section 381(a) transaction.

(ii) *Conclusion.* After the section 381(a) transaction, X Corporation will use the cash receipts and disbursements method for the employment agency and an accrual method for the educational institution. X Corporation need not secure the Commissioner's consent to continue either accounting method.

Example 2. Carryover of special accounting method—(i) Facts. X Corporation provides personal grooming consulting and T Corporation provides weight management consulting. Both X Corporation and T Corporation use an overall accrual method. X Corporation acquires all of the assets of T Corporation in a transaction to which section 381(a) applies. X Corporation operates the personal grooming and weight management consulting businesses as separate and distinct trades or businesses after the date of the section 381(a) transaction. X Corporation has made an election to use the recurring item exception under §1.461-4(h). T Corporation has not.

(ii) *Conclusion.* After the section 381(a) transaction, X Corporation will use an overall accrual method for both the personal grooming consulting business and the weight management consulting business. X Corporation must continue to use the recurring item exception under §1.461-4(h) for the personal grooming consulting business. X Corporation need not secure the Commissioner's consent to continue its overall accrual method and the recurring item exception under §1.461-4(h) for the personal grooming consulting business.

Example 3. One accounting method allowed—(i) Facts. X Corporation is an engineering firm that uses the overall cash receipts and disbursements accounting method and has elected under section 171 to amortize bond premium with respect to its taxable bonds acquired at a premium. T Corporation is a manufacturer that uses an overall accrual accounting method and has not made a section 171 election to amortize bond premium with respect to its taxable bonds acquired at a premium. X Corporation acquires the assets of T Corporation in a transaction to which section 381(a) applies. X Corporation operates the engineering firm and manufacturing operations as separate and distinct trades or businesses after the date of the section 381(a) transaction.

(ii) *Conclusion.* After the section 381(a) transaction, X Corporation will use the cash receipts and disbursements method for the engineering firm and an overall accrual method for the manufacturing operations. X Corporation may not continue separate accounting methods for amortizable bond premium, notwithstanding that it has two separate and distinct trades or businesses, because a taxpayer is permitted only one accounting method for amortizable bond premium. For both trades or businesses, X Corporation must use the principal method for bond premium as determined under paragraph (c) of this section. X Corporation will make the necessary changes to this principal method using the procedures described in paragraph (d)(1) of this section. Further, if the principal method is not to amortize bond premium, X Corporation may make an election to amortize bond premium to the extent permitted by section 171. See paragraph (e)(2) of this section.

Example 4. Voluntary change—(i) Facts. The facts are the same as in *Example 1* except that X Corporation wants to cease using an overall accrual method for the educational institution and change to the cash receipts and disbursements method.

(ii) *Conclusion.* X Corporation must secure the Commissioner's consent to use the cash receipts and disbursements method for the educational institution by filing a Form 3115, *Application for Change in Accounting Method*, as described in paragraph (d)(2) of this section.

(b) *Definitions—(1) Accounting method* has the same meaning as provided in section 446 and any applicable regulations.

(2) *Special accounting method* is a method expressly permitted or required by the Code, Income Tax Regulations, or administrative guidance published in the Internal Revenue Bulletin that deviates from the normal application of the cash receipts and disbursements method or an accrual method. For example, the installment method under section 453 and the mark-to-market method under section 475 are special accounting methods. See §1.446-1(c)(1)(iii).

(3) *Principal method* is an accounting method that is determined under paragraph (c) of this section.

(4) *Adopting an accounting method* has the same meaning as provided in §1.446-1(e)(1).

(5) *Changing an accounting method* has the same meaning as provided in §1.446-1(e)(2).

(6) *Acquiring corporation* has the same meaning as provided in §1.381(a)-1(b)(2).

(7) *Distributor corporation* means the corporation, foreign or domestic, that distributes its assets to another corporation described in section 332(b) in a distribution to which section 332 (relating to liquidations of subsidiaries) applies.

(8) *Transferor corporation* means the corporation, foreign or domestic, that transfers its assets to another corporation in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if—

(i) The transfer is in connection with a reorganization described in section 368(a)(1)(A), (C), or (F), or

(ii) The transfer is in connection with a reorganization described in section 368(a)(1)(D) or (G), provided the requirements of section 354(b) are met.

(9) *Parties to the section 381(a) transaction* means the acquiring corporation and the distributor or transferor corporation(s) that participate in a transaction to which section 381(a) applies.

(10) *Date of distribution or transfer* has the same meaning as provided in section 381(b)(2) and §1.381(b)-(1)(b).

(11) *Separate and distinct trades or businesses* has the same meaning as provided in §1.446-1(d).

(12) *Gross receipts* means all the receipts in the appropriate period that must be recognized under the acquiring corporation's and the distributor or transferor corporation's accounting method actually used in that period (determined without regard to this section) for federal income tax purposes. For example, gross receipts includes income from investments, amounts received for services, rents, total sales (net of returns and allowances) and interest.

(13) *Audit protection* means that the IRS will not require the corporation required to change its accounting method under this section to change its method for the same item for a taxable year prior to the taxable year of the section 381(a) transaction requiring the change in accounting method.

(14) *Section 481(a) adjustment* means an adjustment that must be taken into account as required under section 481(a) to prevent amounts from being duplicated or omitted when the taxable income of a taxpayer is computed under an accounting method different from the method used to compute taxable income for the preceding taxable year.

(15) *Cut-off basis* means an accounting method change made without a section 481(a) adjustment and under which only the items arising on or after the date the accounting method change is made are accounted for under the new accounting method.

(16) *Adjustment period* means the number of taxable years for taking into account the section 481(a) adjustment required as a result of an accounting method change.

(c) *Principal method*—(1) *In general.* The principal methods for the overall accounting method and for all accounting methods for particular items generally are the accounting methods used by the acquiring corporation immediately prior to the date of the section 381(a) transaction (acquiring corporation's carryover method(s)). If, however, the acquiring corporation does not have an accounting method for a particular item or if the distributor or transferor corporation is larger, the principal methods are the methods used by the distributor or transferor corporation immediately prior to the date of the transaction (distributor or transferor corporation's carryover method). The distributor or transferor corporation is larger if the—

(i) Adjusted bases of the distributor or transferor corporation's assets (determined under section 1011 and the regulations thereunder) exceed the adjusted bases of the acquiring corporation's assets immediately prior to the date of distribution or transfer, and

(ii) The distributor or transferor corporation's gross receipts for a representative period (generally the most recent period of 12 consecutive calendar months ending on the date of distribution or transfer) exceed the acquiring corporation's gross receipts for the same period.

(2) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. Principal method is the acquiring corporation's carryover method—(i) *Facts.* X Corporation and T Corporation operate employment

agencies. X Corporation uses the overall cash receipts and disbursements accounting method while T Corporation uses an overall accrual method. X Corporation acquires the assets of T Corporation in a transaction to which section 381(a) applies. The adjusted bases of X Corporation's assets immediately prior to the transaction exceed the adjusted bases of T Corporation's assets and X Corporation's gross receipts for the representative period are more than T Corporation's gross receipts for the period. The employment agencies are not operated as separate and distinct trades or businesses after the date of the distribution or transfer.

(ii) *Conclusion.* Because the adjusted bases of the assets and the gross receipts of X Corporation exceed the adjusted bases of the assets and the gross receipts of T Corporation, the accounting method used by X Corporation immediately prior to the date of the section 381(a) transaction is the principal method. After the section 381(a) transaction, X Corporation uses the cash receipts and disbursements method for the employment agency business operated by X Corporation prior to the section 381(a) transaction. X Corporation need not secure the Commissioner's consent to use this method. However, X Corporation must change the accounting method for the employment agency business acquired from T Corporation to the cash receipts and disbursements method and take into account the applicable section 481(a) adjustment as provided in paragraph (d)(1) of this section.

Example 2. Principal method is the acquiring corporation's carryover method—(i) *Facts.* The facts are the same as in *Example 1* except that T Corporation's gross receipts for the representative period exceed X Corporation's gross receipts.

(ii) *Conclusion.* Because the gross receipts of T Corporation exceed the gross receipts of X Corporation but the adjusted bases of the assets of T Corporation do not exceed the adjusted bases of the assets of X Corporation, the accounting method used by X Corporation immediately prior to the date of the section 381(a) transaction is the principal method. After the section 381(a) transaction, X Corporation will use the cash receipts and disbursements method for the employment agency business operated by X Corporation prior to the section 381(a) transaction. X Corporation need not secure the Commissioner's consent to use this method. However, X Corporation must change the accounting method for the employment agency business acquired from T Corporation to the cash receipts and disbursements method and take into account the applicable section 481(a) adjustment as provided in paragraph (d)(1) of this section.

Example 3. Principal method is the distributor or transferor corporation's carryover method—(i) *Facts.* The facts are the same as in *Example 1* except that the adjusted bases of T Corporation's assets immediately prior to the section 381(a) transaction exceed the adjusted bases of Corporation X's assets and T Corporation's gross receipts for the representative period are more than X Corporation's gross receipts for the period.

(ii) *Conclusion.* Because the adjusted bases of the assets and the gross receipts of T Corporation exceed the adjusted bases of the assets and the gross receipts of X Corporation, the accounting method used by T Corporation immediately prior to the date of the section 381(a) transaction is the principal method. After the section 381(a) transaction, X Corporation uses an

overall accrual method for the employment agency business operated by T Corporation prior to the section 381(a) transaction. X Corporation need not secure the Commissioner's consent to use this method. However, X Corporation must change the accounting method for the employment agency business operated by X Corporation prior to the section 381(a) transaction to an overall accrual method and take into account the applicable section 481(a) adjustment as provided in paragraph (d)(1) of this section. If X Corporation chooses, it may request the Commissioner's consent to change to the cash receipts and disbursements method, if permissible, or some other permissible method as provided in paragraph (d)(2) of this section.

Example 4. Impermissible method—(i) *Facts.* The facts are the same as in *Example 1* except that X Corporation is prohibited under section 448 from using the cash receipts and disbursements method after the date of the section 381(a) transaction.

(ii) *Conclusion.* Because X Corporation is not permitted under section 448 to use the cash receipts and disbursements method, X Corporation must request permission to change to a permissible method as provided in paragraph (d)(2) of this section.

Example 5. Principal method is the acquiring corporation's carryover method with a special accounting method—(i) *Facts.* X Corporation and T Corporation publish magazines. X Corporation acquires the assets of T Corporation in a transaction to which section 381(a) applies. Both X Corporation and T Corporation use an overall accrual method. X Corporation has elected to defer income from its subscription sales under section 455. T Corporation has not elected to defer income from its subscription sales under section 455 and instead has recognized the income from these sales in accordance with section 451. The adjusted bases of X Corporation's assets immediately prior to the section 381(a) transaction exceed the adjusted bases of T Corporation's assets and X Corporation's gross receipts for the representative period are more than T Corporation's gross receipts for the period. The publication businesses are not operated as separate and distinct trades or businesses after the date of the distribution or transfer.

(ii) *Conclusion.* Because the adjusted bases of the assets and the gross receipts of X Corporation exceed the adjusted bases of the assets and the gross receipts of T Corporation, the accounting method used by X Corporation immediately prior to the date of the section 381(a) transaction is the principal method. After the section 381(a) transaction, X Corporation will continue to use its overall accrual method and the section 455 deferral method. X Corporation need not secure the Commissioner's consent to continue to use its overall accrual method and the section 455 deferral method. However, under paragraph (d)(1) of this section X Corporation must change its accounting method for the magazine business acquired from T Corporation to the section 455 deferral method using a cut-off basis.

Example 6. Principal method is the acquiring corporation's carryover method with a special accounting method—(i) *Facts.* The facts are the same as in *Example 5* except that T Corporation's gross receipts for the representative period exceed X Corporation's gross receipts for the period.

(ii) *Conclusion.* Because the gross receipts of T Corporation exceed the gross receipts of X Corpora-

tion but the adjusted bases of the assets of T Corporation do not exceed the adjusted bases of the assets of X Corporation, the accounting method used by X Corporation immediately prior to the date of the section 381(a) transaction is the principal method. After the section 381(a) transaction, X Corporation continues to use an overall accrual method and the section 455 deferral method. X Corporation need not secure the Commissioner's consent to continue to use an overall accrual method and the section 455 deferral method. However, under paragraph (d)(1) of this section X Corporation must change its accounting method for the magazine business acquired from T Corporation to the section 455 deferral method using a cut-off basis.

(d) *Procedures for changing accounting methods*—(1) *Change made to principal method*—(i) *Section 481(a) adjustment*—(A) *In general.* The acquiring corporation does not need to secure the Commissioner's consent to use a principal method. To the extent use of a principal method constitutes a change in an accounting method, the change in accounting method is treated as a change initiated by the acquiring corporation for purposes of section 481(a)(2). Any change to a principal method under paragraph (c)(1) of this section, whether the change relates to the trade or business of the acquiring corporation or the trade or business of the distributor or transferor corporation, must be reflected on the acquiring corporation's federal income tax return for the taxable year that includes the date of distribution or transfer. The amount of the section 481(a) adjustment and the adjustment period, if any, necessary to implement this accounting method change are determined under §1.446-1(e) and the applicable administrative procedures that govern voluntary changes in accounting methods under section 446(e). The appropriate section 481(a) adjustment as determined above is included in the taxable income of the acquiring corporation for the taxable year that includes the date of distribution or transfer and subsequent taxable year(s), as necessary. Thus, if the administrative procedures require that an accounting method change be implemented on a cut-off basis, the acquiring corporation must implement the change, on a cut-off basis as of the date of distribution or transfer, on its federal income tax return for the taxable year that includes the date of distribution or transfer. If the administrative procedures require a section 481(a) adjustment, the acquiring corporation must determine the section 481(a) adjustment and include the

appropriate amount of the section 481(a) adjustment on its federal income tax return for the taxable year that includes the date of distribution or transfer and subsequent taxable year(s), as necessary. This adjustment is determined by the acquiring corporation as of the beginning of the day that is immediately after the day on which the section 381(a) transaction occurs.

(B) *Example.* The following example illustrates the rules of this paragraph (d)(1)(i):

Example. X Corporation uses the overall cash receipts and disbursements accounting method while T Corporation uses an overall accrual method. X Corporation acquires the assets of T Corporation in a transaction to which section 381(a) applies. X Corporation determines that under the rules of paragraph (c)(1) of this section, X Corporation must change the accounting method for the business acquired from T Corporation to the cash receipts and disbursements method. X Corporation will determine the section 481(a) adjustment pertaining to the change to the cash receipts and disbursements method by consolidating the adjustments (whether the amounts thereof represent increases or decreases in items of income or deductions) arising with respect to balances in the various accounts, such as accounts receivable, as of the beginning of the day that immediately follows the day on which X Corporation acquires the assets of T Corporation. This adjustment, or an appropriate part thereof, will be reflected on the federal income tax return filed by X Corporation for the taxable year that includes this section 381(a) transaction.

(ii) *Audit protection.* Notwithstanding any other provision in any other regulation or administrative procedure, no audit protection is provided for any change in accounting method under paragraph (d)(1)(i) of this section.

(iii) *Other terms and conditions.* Except as otherwise provided in this section, other terms and conditions provided in §1.446-1(e) and the applicable administrative procedures that govern voluntary accounting method changes under section 446(e) apply to a change in accounting method under this section. Thus, for example, if the administrative procedures that govern a particular accounting method change have a term and condition that provides for the acceleration of the section 481(a) adjustment period, this term and condition applies to changes made under this paragraph (d)(1). Similarly, if the administrative procedures provide as a term and condition that an identical accounting method change is barred for a period of years, this term and condition applies to changes made under this paragraph (d)(1) to bar future changes of that accounting

method, if identical, for the same period, but not changes to the principal method under this section.

(2) *Change made to an accounting method other than the principal method or a carryover method.* A party to a section 381(a) transaction that desires to change to an accounting method other than the principal method as determined under paragraph (c) of this section, or a carryover method within the meaning of paragraph (a)(2)(i) of this section, must follow the provisions of §1.446-1(e) that govern the accounting method change, except that for an accounting method change requiring advance consent—

(i) Under the authority of §1.446-1(e)(3)(ii), the application for accounting method change (for example, Form 3115) must be filed with the IRS on or before the later of—

(A) The due date for filing a Form 3115 as specified in §1.446-1(e), for example, the last day of the taxable year in which the distribution or transfer occurred, or

(B) The earlier of—

(1) The day that is 180 days after the date of the distribution or transfer, or

(2) The day on which the acquiring corporation files its federal income tax return for the taxable year in which the distribution or transfer occurred; and

(ii) An application on Form 3115 filed with the IRS should be labeled "Filed under section 381(c)(4)" at the top.

(e) *Rules and procedures*—(1) *No accounting method.* If a party to a section 381(a) transaction is not using an accounting method, does not have an accounting method for a particular item, or came into existence as a result of the transaction, the party will not be treated as having an accounting method different from that used by the other parties to the section 381(a) transaction.

(2) *Elections and adoptions allowed.* An acquiring corporation is not precluded by section 381(c)(4) or these regulations from making any election for the taxable year that includes the date of distribution or transfer that does not require the Commissioner's consent and that is otherwise permissible. Similarly, an acquiring corporation may adopt any accounting method in that year that is otherwise permissible.

(3) *Elections continue after section 381(a) transaction*—(i) *General rule.* The

acquiring corporation is not required to renew any election previously made by it or by a distributor or transferor corporation with respect to a carryover method or principal method if the acquiring corporation uses the method after a section 381(a) transaction. Furthermore, an election previously made by an acquiring corporation or by a distributor or transferor corporation with respect to a method that is in effect immediately prior to the date of distribution or transfer continues to the same extent as though the distribution or transfer had not occurred.

(ii) *Examples.* The following examples illustrate the rules of this paragraph (e)(3):

Example 1. Election continues. The acquiring corporation, X Corporation, has previously elected to treat animals purchased for dairy purposes as property used in its trade or business subject to depreciation after maturity while otherwise using the unit-livestock-price method. X Corporation's accounting method continues after its merger with T Corporation in a transaction to which section 381(a) applies. X Corporation is not required to renew its election, and is bound by it, after the section 381(a) transaction.

Example 2. Election continues. The acquiring corporation, X Corporation, has previously elected under section 171 to amortize bond premium with respect to taxable bonds. X Corporation's method for bond premium continues after T Corporation merges with X Corporation in a transaction to which section 381(a) applies. X Corporation is not required to renew its election, and is bound by it, after the section 381(a) transaction.

(4) *Appropriate times for determining the method used and trade or business character—(i) Determining the accounting method.* The accounting method existing at the time of a section 381(a) transaction is the method used immediately prior to the distribution or transfer by the parties to the transaction.

(ii) *Determining whether there are separate trades or businesses after a section 381(a) transaction.* Whether an acquiring corporation will operate the trades or businesses of the parties to a section 381(a) transaction as separate and distinct trades or businesses after the distribution or transfer will be determined as of the time of the transaction based upon the facts and circumstances. Intent to combine books and records of the trades or businesses may be demonstrated by contemporaneous records and documents or by other objective evidence that reflects the acquiring corporation's ultimate plan of operation, even though the actual combination of the books and records may extend beyond the

end of the taxable year in which the section 381(a) transaction occurs.

(5) *Representative period for accumulating gross receipts.* If a party to the section 381(a) transaction was not in existence for the 12 consecutive months immediately prior to the date of distribution or transfer, then all parties to the section 381(a) transaction will compare their gross receipts for the period that the party was in existence. For example, if the acquiring corporation was formed in August and the section 381(a) transaction occurred in December of the same year, the gross receipts for those five months will be compared with the gross receipts of the other parties to the section 381(a) transaction for the same period.

(6) *Establishing an accounting method.* Notwithstanding any other provision in any other regulation or administrative procedure, an accounting method used by the distributor or transferor corporation immediately prior to the date of distribution or transfer that continues to be used by the acquiring corporation in the taxable year that includes the date of distribution or transfer is an established method of accounting for purposes of section 446(e).

(7) *Other applicable provisions.* Section 381(c)(4) and these regulations do not preempt any other section of the Code or regulations that is applicable to the acquiring corporation's circumstances. For example, income, deductions, credits, allowances, and exclusions may be allocated among the parties to a section 381(a) transaction and other taxpayers under sections 269 and 482, if appropriate. Similarly, transfers of contracts accounted for using a long-term contract accounting method are governed by the rules provided in §1.460-4(k). Further, if other paragraphs of section 381(c) apply for purposes of determining accounting methods that carryover in a section 381(a) transaction, section 381(c)(4) and this §1.381(c)(4)-1 will not apply to the tax treatment of the items. For example, section 381(c)(4) and these regulations do not apply to inventories that an acquiring corporation obtains in a transaction to which section 381(a) applies. Instead, the rules of section 381(c)(5) and §1.381(c)(5)-1 govern the inventory method to be used by the acquiring corporation after the distribution or transfer. Similarly, if the acquiring corporation assumes an obligation of the

distributor or transferor corporation that gives rise to a liability, within the meaning of §1.381(c)(16)-1(a)(4), the deductibility of the item is determined under section 381(c)(4) and these regulations only after the rules of section 381(c)(16) and its regulations are applied.

(8) *Character of items of income and deduction.* Items of income and deduction have the same character in the hands of the acquiring corporation as they would have had in the hands of the distributor or transferor corporation if no distribution or transfer had occurred.

(9) *Accounting method selected by project or job.* If other sections of the Code or regulations permit an acquiring corporation to elect an accounting method on a project-by-project, job-by-job, or other similar basis, the method elected with respect to each project or job is the established method only for that project or job. For example, the election under section 460 to classify a "hybrid contract," that is, a contract to perform both manufacturing and construction activities, as a long-term construction contract if at least 95 percent of the estimated total allocable contract costs are reasonably allocated to the construction activities is made on a contract-by-contract basis. Accordingly, the accounting method previously elected for a project or job generally continues after the section 381(a) transaction. However, if the trades or businesses of the parties to a section 381(a) transaction are not operated as separate and distinct trades or businesses after the date of distribution or transfer, and two or more of the parties to the section 381(a) transaction previously worked on the same project or job and used different accounting methods for the project or job immediately before the distribution or transfer, then the acquiring corporation must determine the method to use after the section 381(a) transaction as provided in paragraph (c) of this section.

(10) *Prohibited accounting methods.* An acquiring corporation may not use the accounting method determined under paragraph (a)(2) of this section if the method fails to reflect clearly the acquiring corporation's income within the meaning of section 446(b). Thus, section 381(c)(4) and these regulations do not limit, restrict, or otherwise prevent the Commissioner from requiring the use of another accounting method.

(f) *Effective/applicability date.* The rules of this section apply to corporate reorganizations and tax-free liquidations described in section 381(a) that occur on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 4. Section 1.381(c)(5)–1 is revised to read as follows:

§1.381(c)(5)–1 Inventory method.

(a) *Introduction—(1) Purpose.* This section provides guidance regarding the inventory accounting method an acquiring corporation must use following a distribution or transfer to which sections 381(a) and (c)(5) apply and how to implement any associated accounting method changes. See §1.381(c)(4)–1 for guidance regarding the accounting method or combination of methods (other than inventory and depreciation accounting methods) an acquiring corporation must use following a distribution or transfer to which sections 381(a) and (c)(4) apply. See §1.381(c)(6)–1 for guidance regarding the depreciation accounting methods an acquiring corporation must use following a distribution or transfer to which sections 381(a) and (c)(6) apply.

(2) *Carryover requirement—(i) In general.* In a transaction to which section 381(a) applies, if an acquiring corporation operates the trades or businesses of the parties to the section 381(a) transaction as separate and distinct trades or businesses after the date of distribution or transfer, then the acquiring corporation generally must use the same accounting method(s) for inventory used by the distributor or transferor corporation(s) on the date of distribution or transfer for the acquired trade or business (carryover method). If the acquiring corporation does not operate the trades or businesses of the parties to the section 381(a) transaction as separate and distinct trades or businesses after the date of distribution or transfer, then the acquiring corporation must use a principal method as determined under paragraph (c) of this section and must take into account any section 481(a) adjustment, if applicable, as required under paragraph (d)(1) of this section. The acquiring corporation need not secure the Commissioner's consent to continue or to use a permissible carryover method or principal method.

(ii) *Carryover method or principal method not permissible.* In general, if a carryover method or principal method is an impermissible accounting method, the acquiring corporation must secure the Commissioner's consent to change to a different accounting method as provided in paragraph (d)(2) of this section. If, however, a carryover method is impermissible solely because only a single inventory method with respect to a particular type of goods may be used by the acquiring corporation after the date of the section 381(a) transaction regardless of the number of separate and distinct trades or businesses operated on that date, the acquiring corporation must use a principal method as determined under paragraph (c) of this section.

(iii) *Voluntary change.* All parties to a section 381(a) transaction may request permission under section 446(e) to change an inventory accounting method for the taxable year in which the transaction occurs or is expected to occur. For trades or businesses that will not operate as separate trades or businesses after the section 381(a) transaction, an accounting method change will be granted only if the requested change is the method that the acquiring corporation must use after the date of the distribution or transfer in the taxable year that includes the section 381(a) transaction. The time and manner of obtaining the Commissioner's consent to change to a different inventory accounting method is described in paragraph (d)(2) of this section.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (a):

Example 1. Separate and distinct trades or businesses after the date of the distribution or transfer—(i) Facts. X Corporation manufactures radios and television sets. X Corporation uses the first-in, first-out (FIFO) inventory method to identify its inventory goods, values the goods at cost, and capitalizes costs under section 263A. T Corporation manufactures washing machines and dryers. T Corporation uses the last-in, first-out (LIFO) inventory method to identify its inventory goods, values the goods at cost, and capitalizes costs under section 263A using methods other than those used by X Corporation. X Corporation acquires the inventory of T Corporation in a transaction to which section 381(a) applies. X Corporation operates the two manufacturing operations as separate and distinct trades or businesses after the date of the section 381(a) transaction.

(ii) *Conclusion.* After the section 381(a) transaction, for the business of manufacturing radios and television sets X Corporation will use the same FIFO inventory method to identify its inventory goods,

value the goods at cost, and capitalize costs under section 263A using the methods it had previously used. For the business of manufacturing washing machines and dryers X Corporation will use the same LIFO inventory method to identify its inventory goods, value the goods at cost, and capitalize costs under section 263A using the methods previously used by T Corporation. X Corporation need not secure the Commissioner's consent to continue the inventory methods.

Example 2. Impermissible method—(i) Facts. X Corporation manufactures food and beverages. X Corporation uses the FIFO inventory method to identify its inventory goods, values the goods at cost, and capitalizes costs under section 263A. T Corporation sells sporting equipment. T Corporation uses the FIFO inventory method to identify its inventory goods, and values the goods at cost. T Corporation did not capitalize costs under section 263A because it met the small reseller exception under section 263A. X Corporation acquires the inventory of T Corporation in a transaction to which section 381(a) applies. X Corporation operates the food and beverage business and the sporting goods business as separate trades or businesses after the date of the section 381(a) transaction. After the section 381(a) transaction, X Corporation does not qualify for the small reseller exception under section 263A for its sporting equipment business.

(ii) *Conclusion.* After the section 381(a) transaction, X Corporation will continue to identify its food and beverage inventory goods by using the FIFO inventory method, value the inventory at cost, and use its previously selected cost capitalization methods under section 263A as provided in paragraph (a)(2)(i) of this section. X Corporation will continue to identify its sporting equipment inventory goods by using the FIFO inventory method and value the inventory at cost in the same manner as T Corporation did prior to the section 381(a) transaction. X Corporation need not secure the Commissioner's consent to continue these inventory methods. Because X Corporation does not qualify for the small reseller exception under section 263A for its sporting equipment business, X Corporation must secure the Commissioner's consent to change to a permissible cost capitalization method under section 263A for the sporting equipment business. X Corporation must request this consent by filing a Form 3115, Application for Change in Accounting Method, using the procedures in paragraph (d)(2) of this section.

Example 3. Voluntary change—(i) Facts. The facts are the same as in *Example 1* except that X Corporation wants to cease valuing the radios and television sets at cost and change to the cost or market, whichever is lower, method.

(ii) *Conclusion.* X Corporation must secure the Commissioner's consent to use the cost or market, whichever is lower, method and must do so by filing a Form 3115 as described in paragraph (d)(2) of this section.

(b) *Definitions—(1) Inventory method* is a method used to account for merchandise on hand (including finished goods, work in process, and raw materials) at the beginning of a year for purposes of computing taxable income for that year. The term includes not only the method for iden-

tifying inventory, for example, the FIFO inventory method or the LIFO inventory method, but also all other methods necessary to account for merchandise.

(2) *Principal method* is an accounting method that is determined under paragraph (c) of this section.

(3) *Adopting an accounting method* has the same meaning as provided in §1.446-1(e)(1).

(4) *Changing an accounting method* has the same meaning as provided in §1.446-1(e)(2).

(5) *Acquiring corporation* has the same meaning as provided in §1.381(a)-1(b)(2).

(6) *Distributor corporation* means the corporation, foreign or domestic, that distributes its assets to another corporation described in section 332(b) in a distribution to which section 332 (relating to liquidations of subsidiaries) applies.

(7) *Transferor corporation* means the corporation, foreign or domestic, that transfers its assets to another corporation in a transfer to which section 361 (relating to nonrecognition of gain or loss to corporations) applies, but only if—

(i) The transfer is in connection with a reorganization described in section 368(a)(1)(A), (C), or (F), or

(ii) The transfer is in connection with a reorganization described in section 368(a)(1)(D) or (G), provided the requirements of section 354(b) are met.

(8) *Parties to the section 381(a) transaction* means the acquiring corporation and the distributor or transferor corporation(s) involved in the transaction to which section 381(a) applies.

(9) *Date of distribution or transfer* has the same meaning as provided in section 381(b)(2) and §1.381(b)-1(b).

(10) *Separate and distinct trades or businesses* has the same meaning as provided in §1.446-1(d).

(11) *Audit protection* means that the IRS will not require the corporation required to change its accounting method under this section to change its method for the same item for a taxable year prior to the taxable year of the section 381(a) transaction requiring the change in accounting method.

(12) *Section 481(a) adjustment* means an adjustment that must be taken into account as required under section 481(a) to prevent amounts from being duplicated or omitted when the taxable income of a tax-

payer is computed under an accounting method different from the method used to compute taxable income for the preceding taxable year.

(13) *Cut-off basis* means an accounting method change made without a section 481(a) adjustment and under which only the goods arising on or after the date the accounting method change is made are accounted for under the new accounting method.

(14) *Adjustment period* means the number of taxable years for taking into account the section 481(a) adjustment required as a result of an accounting method change.

(c) *Principal method*—(1) *In general.* The principal method for a particular type of goods generally is the method used by the acquiring corporation for that type of goods immediately prior to the date of the section 381(a) transaction (acquiring corporation's carryover method). If, however, the acquiring corporation does not have an inventory accounting method for a particular type of goods or if the distributor or transferor corporation holds more inventory of that type of goods, the principal method for that type of goods is the method used by the distributor or transferor corporation for that type of goods immediately prior to the date of the transaction (distributor or transferor corporation's carryover method). The distributor or transferor corporation holds more inventory if, for a particular type of goods, the fair market value of the goods held by the distributor or transferor corporation exceeds the fair market value of the goods held by the acquiring corporation immediately prior to the date of distribution or transfer. Alternatively, as a simplifying convention, the acquiring corporation may elect to apply the preceding sentence to the value of the entire inventories of the distributor or transferor corporation and the acquiring corporation rather than to each particular type of goods.

(2) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. Principal method is the acquiring corporation's carryover method—(i) *Facts.* X Corporation and T Corporation are manufacturers of tennis equipment. Both X Corporation and T Corporation value their inventories at cost but use different methods to capitalize costs under section 263A. X Corporation uses the simplified production method without the historic absorption ratio election provided in §1.263A-2(b)(3). T Corporation uses the simplified production method with the historic absorption ratio election provided in §1.263A-2(b)(4). Further-

more, X Corporation identifies its inventory using the FIFO inventory method, while T Corporation identifies its inventory using the LIFO inventory method.

X Corporation acquires the inventory of T Corporation in a transaction to which section 381(a) applies. The manufacturing businesses are not operated as separate and distinct trades or businesses after the date of the distribution or transfer. Immediately prior to the acquisition, the fair market value of each particular type of goods in X Corporation's inventory exceeds the fair market value of each particular type of goods in T Corporation's inventory.

(ii) *Conclusion.* After the section 381(a) transaction, X Corporation will continue to identify its inventory using the FIFO inventory method, value its inventory at cost, and use the simplified production method without the historic absorption ratio election because the FIFO inventory method is the principal method for identifying inventory, cost is the principal method for valuing inventories, and the simplified production method without the historic absorption ratio election is the principal method for allocating costs to ending inventory under section 263A. X Corporation need not secure the Commissioner's consent to use these methods. However, with respect to the inventory acquired from T Corporation, X Corporation will change the method of identifying inventory to the FIFO inventory method, use the simplified production method without the historic absorption ratio election, and take into account the applicable section 481(a) adjustment as provided in paragraph (d)(1) of this section. If X Corporation chooses, it may request the Commissioner's consent to change to another permissible method as provided in paragraph (d)(2) of this section.

Example 2. Principal method is the distributor or transferor corporation's carryover method—(i) *Facts.* The facts are the same as in *Example 1* except that the fair market value of each particular type of goods in T Corporation's inventory is in excess of the fair market value of each particular type of goods in X Corporation's inventory.

(ii) *Conclusion.* After the section 381(a) transaction, X Corporation will identify its inventory using the LIFO inventory method used by T Corporation, value its inventories at cost, and use the simplified production method with the historic absorption ratio election, because the LIFO inventory method used by T Corporation is the principal method for identifying inventory, cost is the principal method for valuing inventories, and the simplified production method with the historic absorption ratio election is the principal method for allocating costs to ending inventory under section 263A. X Corporation need not secure the consent of the Commissioner to use these methods. However, with respect to the inventory manufactured by X Corporation prior to the section 381(a) transaction, X Corporation will change its methods as needed by using the procedures of paragraph (d)(1) of this section. Specifically, X Corporation will change its method of identifying inventory to the LIFO inventory method using a cut-off basis and change its cost capitalization method to the simplified production method with the historic absorption ratio election by taking into account the applicable section 481(a) adjustment. If X Corporation chooses, it may request the Commissioner's consent to change to another permissible method as provided in paragraph (d)(2) of this section.

Example 3. Principal method is the acquiring corporation's carryover method—(i) Facts. The facts are the same as in *Example 1* except that the fair market values of the inventories of X Corporation and T Corporation are identical.

(ii) *Conclusion.* After the section 381(a) transaction, X Corporation will continue to identify its inventory using the FIFO inventory method, value its inventory at cost, and use the simplified production method without the historic absorption ratio election because the FIFO inventory method is the principal method for identifying inventory, cost is the principal method for valuing inventories, and the simplified production method without the historic absorption ratio election is the principal method for allocating costs to ending inventory under section 263A. X Corporation need not secure the Commissioner's consent to use these methods. However, with respect to the inventory acquired from T Corporation, X Corporation will change the method of identifying inventory to the FIFO inventory method, use the simplified production method without the historic absorption ratio election, and take into account the applicable section 481(a) adjustment as provided in paragraph (d)(1) of this section. If X Corporation chooses, it may request the Commissioner's consent to change to another permissible method as provided in paragraph (d)(2) of this section.

Example 4. Inventory convention elected—(i) Facts. X Corporation manufactures planes and T Corporation manufactures planes and pool tables. X Corporation identifies its inventory using the FIFO inventory method and values it at cost or market, whichever is lower, while T Corporation identifies its inventory using the LIFO inventory method and values it at cost. Both X Corporation and T Corporation use the same method to capitalize costs under section 263A.

X Corporation acquires the inventory of T Corporation in a transaction to which section 381(a) applies. The manufacturing businesses are not operated as separate and distinct trades or businesses after the date of the distribution or transfer. In lieu of determining the fair market value of each particular type of goods held on the date of distribution or transfer, X Corporation elects to value the entire inventories held by itself and T Corporation. Immediately prior to the acquisition, the fair market value of T Corporation's inventory exceeds the fair market value of X Corporation's inventory.

(ii) *Conclusion.* After the section 381(a) transaction, X Corporation will identify its inventory using the LIFO inventory method used by T Corporation and value this inventory at cost because the LIFO inventory method used by T Corporation is the principal method for identifying inventory and cost is the principal method for valuing inventories. X Corporation need not secure the consent of the Commissioner to use these methods. However, with respect to the inventory manufactured by X Corporation prior to the section 381(a) transaction, X Corporation will change the method of identifying inventory to the LIFO inventory method on a cut-off basis and will take into account the change in the inventory amount resulting from the valuing of the inventory at cost as required under section 472(d) as provided in paragraph (d)(1) of this section. The method used prior to the section 381(a) transaction to capitalize costs under section 263A continues after the transaction. If X Cor-

poration chooses, it may request the Commissioner's consent to change to another permissible method as provided in paragraph (d)(2) of this section.

(d) *Procedures for changing accounting methods—(1) Change made to principal method—(i) Section 481(a) adjustment—(A) In general.* The acquiring corporation does not need to secure the Commissioner's consent to use a principal method. To the extent use of a principal method constitutes a change in an accounting method, the change in accounting method is treated as a change initiated by the acquiring corporation for purposes of section 481(a)(2). Any change to a principal method under paragraph (c) of this section, whether the change relates to the trade or business of the acquiring corporation or the trade or business of the distributor or transferor corporation, must be reflected on the acquiring corporation's federal income tax return for the taxable year that includes the date of distribution or transfer. The amount of the section 481(a) adjustment and the adjustment period, if any, necessary to implement this accounting method change are determined under §1.446-1(e) and the applicable administrative procedures that govern voluntary changes in accounting methods under section 446(e). The appropriate section 481(a) adjustment as determined above is included in the taxable income of the acquiring corporation for the taxable year that includes the date of distribution or transfer and subsequent taxable year(s), as necessary. Thus, if the administrative procedures require that an accounting method change be implemented on a cut-off basis, the acquiring corporation must implement the change, on a cut-off basis as of the date of distribution or transfer, on its federal income tax return for the taxable year that includes the date of distribution or transfer. If the administrative procedures require a section 481(a) adjustment, the acquiring corporation must determine the section 481(a) adjustment and include the appropriate amount of the section 481(a) adjustment on its federal income tax return for the taxable year that includes the section 381(a) transaction and subsequent taxable year(s), as necessary. This adjustment is determined by the acquiring corporation as of the beginning of the day that is immediately after the day on which the section 381(a) transaction occurs.

(B) *Example.* The following example illustrates the rules of this paragraph (d)(1)(i):

Example. X Corporation uses the FIFO inventory method while T Corporation uses the LIFO inventory method. X Corporation acquires the assets of T Corporation in a transaction to which section 381(a) applies on July 15th. X Corporation determines that under the rules of paragraph (c)(1) of this section, X Corporation must change the inventory method for the business acquired from T Corporation to the FIFO inventory method. X Corporation will determine the section 481(a) adjustment pertaining to the change to the FIFO inventory method (whether the amounts thereof represent increases or decreases in income) as of the beginning of July 16th. This adjustment, or an appropriate part thereof, will be included in X Corporation's federal income tax return for the taxable year that includes July 15th.

(ii) *Audit protection.* Notwithstanding any other provision in any other regulation or administrative procedure, no audit protection is provided for any change in accounting method under paragraph (d)(1)(i) of this section.

(iii) *Other terms and conditions.* Except as otherwise provided in this section, other terms and conditions provided in §1.446-1(e) and the applicable administrative procedures that govern voluntary changes in accounting methods under section 446(e) apply to a change in accounting method under this section. Thus, for example, if the administrative procedures that govern a particular accounting method change have a term and condition that provides for the acceleration of the section 481(a) adjustment period, this term and condition applies to changes made under this paragraph (d)(1). Similarly, if the administrative procedures provide as a term and condition that an identical accounting method change is barred for a period of years, this term and condition applies to changes made under this paragraph (d)(1) to bar future changes of that accounting method, if identical, for the same period, but not changes to the principal method under this section.

(2) *Change made to an accounting method other than the principal method or a carryover method.* A party to a section 381(a) transaction that desires to change to an accounting method other than the principal method as determined under paragraph (c) of this section, or a carryover method within the meaning of paragraph (a)(2)(i) of this section, must follow the provisions of §1.446-1(e) that govern the accounting method change, ex-

cept that for an accounting method change requiring advance consent—

(i) Under the authority of §1.446-1(e)(3)(ii), the application for accounting method change (for example, Form 3115) must be filed with the IRS on or before the later of—

(A) The due date for filing a Form 3115 as specified in §1.446-1(e), for example, the last day of the taxable year in which the distribution or transfer occurred, or

(B) The earlier of—

(1) The day that is 180 days after the date of the distribution or transfer, or

(2) The day on which the acquiring corporation files its federal income tax return for the taxable year in which the distribution or transfer occurred; and

(ii) An application on Form 3115 filed with the IRS should be labeled “Filed under section 381(c)(5)” at the top.

(e) *Rules and procedures*—(1) *Inventory method selected for a particular type of goods.* If other sections of the Code or Income Tax Regulations allow a taxpayer to elect an inventory method for a particular type of goods, the method elected with respect to those goods is the established inventory method only for those goods. For example, an election to use the LIFO inventory method to identify specified goods in inventory, such as certain products in finished goods, is the inventory method only for those products.

(2) *No accounting method.* If a party to a section 381(a) transaction is not using an inventory method, does not have a particular type of goods immediately prior to the date of distribution or transfer, or came into existence as a result of the transaction, the party will not be treated as having an inventory accounting method different from that used by the other parties to the section 381(a) transaction.

(3) *Elections and adoptions allowed.* An acquiring corporation is not precluded by section 381(c)(5) or these regulations from making any election for the taxable year that includes the date of distribution or transfer that does not require the Commissioner’s consent and that is otherwise permissible. Similarly, an acquiring corporation may adopt any accounting method in that year that is otherwise permissible. For example, an acquiring corporation may elect to identify its inventory using the LIFO inventory method in the year of the distribution or transfer.

(4) *Elections continue after section 381(a) transaction.* The acquiring corporation is not required to renew any election previously made by it or by a distributor or transferor corporation with respect to a carryover method or principal method if the acquiring corporation uses the method after a section 381(a) transaction. Furthermore, an election previously made by an acquiring corporation or by a distributor or transferor corporation with respect to a method that is in effect immediately prior to the date of distribution or transfer continues to the same extent as though the distribution or transfer had not occurred. For example, when the acquiring corporation has elected to use the LIFO inventory method under section 472 prior to the date of the section 381(a) transaction and the method continues after the transaction, the acquiring corporation need not renew this inventory election and is bound by it after the date of the transaction.

(5) *Adopting the LIFO inventory method.* A party to a section 381(a) transaction will be deemed to be using the LIFO inventory method with respect to a particular type of goods on the date of distribution or transfer if such party elects under section 472 to adopt that inventory method with respect to those goods for its taxable year within which the date of distribution or transfer occurs. See section 472 for the requirements to adopt the LIFO inventory method.

(6) *Inventory layers treatment*—(i) *Adjustments required after a section 381(a) transaction.* An acquiring corporation that determines the principal method of taking an inventory after a section 381(a) transaction under paragraph (c) of this section may need to integrate inventories and make appropriate adjustments as provided in paragraphs (e)(6)(ii) and (iii) of this section.

(ii) *LIFO inventory method used after the section 381(a) transaction*—(A) *LIFO inventory method used by the distributor or transferor corporation*—(1) *Dollar-value method.* If an acquiring corporation is required to use the LIFO dollar-value method of pricing inventories (dollar-value method) for a particular type of goods for its taxable year that includes the date of the section 381(a) transaction, and immediately prior to the distribution or transfer the distributor or transferor corporation used the specific goods method of

pricing inventories for that particular type of goods, the inventory of the distributor or transferor corporation shall be placed on the dollar-value method as provided in §1.472-8(f), and then the inventory shall be integrated with the inventory of the acquiring corporation. If pools of each corporation are required to be combined, the pools shall be combined as provided in §1.472-8(g)(2). For purposes of combining pools, all base-year inventories or layers of increment that occur in taxable years including the same December 31 shall be combined. A base-year inventory or layer of increment occurring in any short taxable year not including a December 31, or in the final taxable year of a distributor or transferor corporation, shall be merged with and considered a layer of increment of its immediately preceding taxable year.

(2) *Specific goods method.* If an acquiring corporation is required to use the specific goods method of pricing inventories for a particular type of goods for its taxable year that includes the date of the section 381(a) transaction, and immediately prior to the distribution or transfer the distributor or transferor corporation used the LIFO inventory method for that particular type of goods, the inventory shall be treated by the acquiring corporation as having the acquisition dates and costs of the distributor or transferor corporation.

(B) *LIFO inventory method not used by the distributor or transferor corporation.* If an acquiring corporation is required to use the LIFO inventory method for a particular type of goods for its taxable year that includes the date of the section 381(a) transaction, and immediately prior to the distribution or transfer the distributor or transferor corporation did not use the LIFO inventory method for that particular type of goods, the inventory shall be treated by the acquiring corporation as having been acquired at their average unit cost in a single transaction on the date of the distribution or transfer. Thus, if an inventory of a particular type of goods is combined in an existing dollar-value pool, the goods shall be treated as if they were purchased by the acquiring corporation at the average unit cost on the date of the distribution or transfer with respect to such pool. Alternatively, if the goods are not combined in an existing pool, the goods will be treated as if they were purchased by the acquiring

corporation at the average unit cost on the date of the distribution or transfer with respect to a new pool, with the base-year being the year of the section 381(a) transaction. Adjustments resulting from a restoration to cost of any write-down to market value of the inventories of a distributor or transferor corporation shall be taken into account by the distributor or transferor corporation in its final taxable year ending on the date of the distribution or transfer. See section 472(d).

(iii) *FIFO inventory method used after the section 381(a) transaction*—(A) *FIFO inventory method used by the distributor or transferor corporation.* If an acquiring corporation is required to use the FIFO inventory method for a particular type of goods for its taxable year that includes the date of the section 381(a) transaction, and immediately prior to the distribution or transfer the distributor or transferor corporation used the FIFO inventory method for that particular type of goods, the inventory of that type of goods shall be treated by the acquiring corporation as having the same acquisition dates and costs as the distributor or transferor corporation. However, if the acquiring corporation values its inventories at cost or market, whichever is lower, the acquiring corporation shall treat the inventories of the distributor or transferor corporation as having been acquired at cost or market, whichever is lower.

(B) *FIFO inventory method not used by the distributor or transferor corporation.* If an acquiring corporation is required to use the FIFO inventory method for a particular type of goods for its taxable year that includes the date of the section 381(a) transaction, and immediately prior to the distribution or transfer the distributor or transferor corporation did not use the FIFO inventory method for that particular type of goods, the inventory of the distributor or transferor corporation shall be treated by the acquiring corporation as having the same acquisition dates and costs that the inventory would have had if the distributor or transferor corporation had been using the FIFO inventory method for its taxable year ending on the date of distribution or transfer. However, if the acquiring corporation values its inventories at cost or market, whichever is lower, the acquiring corporation shall treat the acquired inventories as having been acquired at cost or market, whichever is lower.

(7) *Appropriate times for determining the method used and trade or business character*—(i) *Determining the accounting method.* The accounting method existing at the time of a section 381(a) transaction is the method used immediately prior to the date of distribution or transfer by the parties to the transaction.

(ii) *Determining whether there are separate trades or businesses after a section 381(a) transaction.* Whether an acquiring corporation will operate the trades or businesses of the parties to a section 381(a) transaction as separate and distinct trades or businesses after the distribution or transfer will be determined at the time of the transaction based upon the facts and circumstances. Intent to combine books and records of the trades or businesses may be demonstrated by contemporaneous records and documents or by other objective evidence that reflects the acquiring corporation's ultimate plan of operation, even though the actual combination of the books and records may extend beyond the end of the taxable year in which the section 381(a) transaction occurs.

(8) *Establishing an accounting method for taking an inventory.* Notwithstanding any other provision in any other regulation or administrative procedure, an accounting method used by the distributor or transferor corporation immediately prior to the date of distribution or transfer that continues to be used by the acquiring corporation in the taxable year that includes the date of distribution or transfer is an established method of accounting for purposes of section 446(e).

(9) *Other applicable provisions.* Section 381(c)(5) and these regulations do not preempt any other section of the Code or regulations that is applicable to the acquiring corporation's circumstances. Section 381(c)(5) and this §1.381(c)(5)–1 determine only the inventory method to be used after a section 381(a) transaction. Specifically, section 381(c)(5) and this §1.381(c)(5)–1 do not apply to assets other than inventory that an acquiring corporation obtains in a transaction to which section 381(a) applies.

(10) *Use of the cash receipts and disbursements method.* If a party to a section 381(a) transaction uses the cash receipts and disbursements method within the meaning of section 446(c)(1) and §1.446–1(c)(1)(i), or is not required to

use inventory accounting methods for its goods, immediately prior to the date of distribution or transfer, section 381(c)(5) and §1.381(c)(5)–1 do not apply. Section 381(c)(4) and §1.381(c)(4)–1 must be applied to determine the accounting methods that continue after the transaction.

(11) *Character of items of income and deduction.* Items of income and deduction have the same character in the hands of the acquiring corporation as they would have had in the hands of the distributor or transferor corporation if no distribution or transfer had occurred.

(12) *Prohibited methods.* An acquiring corporation may not use the accounting method determined under paragraph (a)(2) of this section if the method fails to reflect clearly the acquiring corporation's income within the meaning of section 446(b). Thus, section 381(c)(5) and these regulations do not limit, restrict, or otherwise prevent the Commissioner from requiring the use of another accounting method.

(f) *Effective/applicability date.* The rules of this section apply to corporate reorganizations and tax-free liquidations described in section 381(a) that occur on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Par. 5. Section 1.446–1 is amended by:

1. Revising the first sentence in paragraph (e)(3)(i) and adding a second new sentence.
2. Revising the first sentence in paragraph (e)(4)(i).
3. Adding paragraph (e)(4)(iii).

The revisions and addition read as follows:

§1.446–1 General rule for methods of accounting.

* * * * *

(e) * * *

(3) * * *(i) Except as otherwise provided under the authority of paragraph (e)(3)(ii) of this section, to secure the Commissioner's consent to a taxpayer's change in method of accounting, the taxpayer generally must file an application on Form 3115 with the Commissioner during the taxable year in which the taxpayer desires to make the change in method of accounting. See §§1.381(c)(4)–1(d)(2) and 1.381(c)(5)–1(d)(2) for rules allowing

additional time, in some circumstances, for the filing of an application on Form 3115 with respect to a transaction to which section 381(a) applies.

* * * * *

(4) * * *(i) *In general.* Except as provided in paragraphs (e)(3)(iii), (e)(4)(ii) and (e)(4)(iii) of this section, paragraph (e) of this section applies on or after December 30, 2003.

* * * * *

(iii) *Effective/applicability date for paragraph (e)(3)(i).* The rules of paragraph (e)(3)(i) of this section apply to corporate reorganizations and tax-free liquidations described in section 381(a) that occur on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on November 15, 2007, 8:45 a.m., and published in the issue of the Federal Register for November 16, 2007, 72 F.R. 64545)

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Information Reporting on Employer-Owned Life Insurance Contracts

REG-115910-07

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: Elsewhere in this issue of the Bulletin, the IRS is issuing temporary regulations concerning information reporting on employer-owned life insurance contracts under section 6039I of the Internal Revenue Code (Code). The temporary regulations generally apply to taxpayers that are engaged in a trade or business

and that are directly or indirectly a beneficiary of a life insurance contract covering the life of an insured who is an employee of the trade or business on the date the contract is issued. The text of those temporary regulations (T.D. 9364) also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by January 14, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-115910-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-115910-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC, or sent the Federal eRulemaking Portal at www.regulations.gov (IRS REG-115910-07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda K. Boyd, 202-622-3970; concerning submissions and requests for a public hearing, contact Kelly Banks, 202-622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The Pension Protection Act of 2006, Public Law No. 109-280, 120 Stat. 780 (2006), added sections 101(j) and 6039I to the Internal Revenue Code concerning employer-owned life insurance contracts.

Section 101(j)(1) provides that in the case of an employer-owned life insurance contract, the amount of death benefits excluded from gross income under section 101(a) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract. Section 101(j)(2), however, sets forth exceptions to this rule for certain contracts for which notice and consent and other requirements are met. Section 6039I requires information reporting with respect to certain employer-owned life insurance contracts at such time and in such manner as the Secretary shall by regulations prescribe.

Temporary regulations in this issue of the Bulletin provide that the Commissioner may prescribe the form and manner of satisfying the reporting requirements imposed by section 6039I. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

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

The Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to this proposed regulation because the regulation does not impose a collection of information on small entities. Even though a substantial number of small businesses may be subject to the requirements of section 6039I, it is anticipated that whatever requirements the Commissioner may prescribe pursuant to this regulation will not impose a "significant economic impact" because the information requested will already be available to taxpayers and the burden of compliance will be minimal.

Pursuant to section 7805(f) of the Internal Revenue Code, this Regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

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

The IRS and Treasury Department are aware that guidance may be needed under section 101(j) and request comments on that provision as well. In particular, comments are requested on the need for guidance concerning (1) determination of the status of insured individuals as “highly compensated employees” or “highly compensated individuals;” (2) requirements a taxpayer must meet to satisfy the notice and consent requirements of section 101(j)(4); and (3) the consequences of a section 1035 exchange of an employer-owned life insurance contract. The IRS and Treasury Department anticipate that future guidance, if any, under section 101(j) will not be applied retroactively to the detriment of taxpayers who make a good faith effort to comply with section 101(j) based on a reasonable interpretation of that provision.

Drafting Information

The principal author of these regulations is Linda K. Boyd, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.6039I-1 also issued under 26 U.S.C. 6039I. * * *

Par. 2. Section 1.6039I-1 is added to read as follows:

§1.6039I-1 Reporting of certain employer-owned life insurance contracts.

[The text of this proposed section is the same as the text of §1.6039I-1T published elsewhere in this issue of the bulletin].

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

(Filed by the Office of the Federal Register on November 9, 2007, 8:45 a.m., and published in the issue of the Federal Register for November 13, 2007, 72 F.R. 63838)

Suspension of Tax-Exempt Status of an Organization Identified With Terrorism

Announcement 2007-113

I. Purpose

This announcement is a public notice of the suspension under section 501(p) of the Internal Revenue Code of the federal tax exemption of a certain organization that has been designated as supporting or engaging in terrorist activity or supporting terrorism. Contributions made to an organization during the period that the organization's tax-exempt status is suspended are not deductible for federal tax purposes.

II. Background

The federal government has designated a number of organizations as supporting or engaging in terrorist activity or supporting terrorism under the Immigration and Nationality Act, the International Emergency Economic Powers Act, and the United Nations Participation Act of 1945. Federal law prohibits most contributions to organizations that have been so designated.

Section 501(p) of the Code was enacted as part of the Military Family Tax Relief Act of 2003 (P. L. 108-121), effective November 11, 2003. Section 501(p)(1) suspends the exemption from tax under section 501(a) of any organization described in section 501(p)(2). An organization is described in section 501(p)(2) if the organization is designated or otherwise individually identified (1) under certain provisions of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization; (2) in or pursuant to an Executive Order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction; or (3) in or pursuant to an Executive Order issued under the authority of any federal

law, if the organization is designated or otherwise individually identified in or pursuant to the Executive Order as supporting or engaging in terrorist activity (as defined in the Immigration and Nationality Act) or supporting terrorism (as defined in the Foreign Relations Authorization Act) and the Executive Order refers to section 501(p)(2).

Under section 501(p)(3) of the Code, suspension of an organization's tax exemption begins on the date of the first publication of a designation or identification with respect to the organization, as described above, or the date on which section 501(p) was enacted, whichever is later. This suspension continues until all designations and identifications of the organization are rescinded under the law or Executive Order under which such designation or identification was made.

Under section 501(p)(4) of the Code, no deduction is allowed under any provision of the Internal Revenue Code for any contribution to an organization during any period in which the organization's tax exemption is suspended under section 501(p). Thus, for example, no charitable contribution deduction is allowed under section 170 (relating to the income tax), section 545(b)(2) (relating to undistributed personal holding company income), section 556(b)(2) (relating to undistributed foreign personal holding company income), section 642(c) (relating to charitable set asides), section 2055 (relating to the estate tax), section 2106(a)(2) (relating to the estate tax for nonresident aliens) and section 2522 (relating to the gift tax) for contributions made to the organization during the suspension period.

On November 15, 2007, the organization listed below was designated under Executive Order 13224, entitled “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.”

III. Notice of Suspension and Non-deductibility of Contributions

The organization whose tax exemption has been suspended under section 501(p) and the effective date of such suspension are listed below. Contributions made to this organization during the period of suspension are not deductible for federal tax purposes.

Tamils Rehabilitation Organization Inc.
Cumberland, MD
Effective date: 11-15-07

IV. Federal Tax Filings

An organization whose exempt status has been suspended under section 501(p) does not file Form 990 and is required to file the appropriate Federal income tax returns for the taxable periods beginning on the date of the suspension. The organization must continue to file all other appropriate federal tax returns, including employment tax returns, and may also have to file federal unemployment tax returns.

V. Contact Information

For additional information regarding the designation or identification of an organization described in section 501(p)(2), contact the Compliance Division at the Office of Foreign Assets Control of the U.S. Treasury Department at 202-622-2490. Additional information is also available for download from the Office's Internet Home Page at www.treas.gov/offices/eotffc/ofac/index.html

For additional information regarding the suspension of the federal tax exemption of an organization under section 501(p), contact Ward L. Thomas at (202) 283-8913 at the Internal Revenue Service.

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

Announcement 2007-115

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

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 December 17, 2007, 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.

Somolian Women's Association
Hopkins, MN
The Charitable ASP Family Foundation
Sun City, AZ
Prisma Zona Explorotia De Puerto Rico
San Juan, PR
Design Coalition, Inc.
Madison, WI
RVing Women
Apache Junction, AZ
Black Heritage Society, Inc.
Houston, TX
Affordable Housing USA, Inc.
Camarillo, CA
Consumer Credit Education
and Counseling, Inc.
Huntsville, AL
United Debt Counseling, Inc.
Fort Lauderdale, FL
Chicago Principals and Administrators
Chicago, IL

Withholding Procedure Under Section 1441 for Certain Distributions to Which Section 302 Applies; Correction

Announcement 2007-116

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to proposed regulations (REG-140206-06, 2007-46 I.R.B. 1006) that were published in the **Federal Register** on Wednesday, October 17, 2007 (72 FR 58781) regarding a withholding agent's obligation to withhold and report tax under Chapter 3 of the Internal Revenue Code when there is a distribution in redemption of stock of a corporation that is actively traded on an established financial market.

FOR FURTHER INFORMATION CONTACT: Kathryn Holman at (202) 622-3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG-140206-06) that is the subject of this correction is under section 1441 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking (REG-140206-06) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG-140206-06) that was the subject of FR. Doc. E7-20504 is corrected as follows:

On page 58781, column 3, in the preamble, under the caption "FOR FURTHER INFORMATION CONTACT:", line 2, the language "Kathryn Holman, (202) 622-3440 (not a)" is corrected to read "Kathryn Holman, (202) 622-3840 (not a)".

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

(Filed by the Office of the Federal Register on November 7, 2007, 8:45 a.m., and published in the issue of the Federal Register for November 8, 2007, 72 F.R. 63143)

Foundations Status of Certain Organizations

Announcement 2007-117

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

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

African Alliance of Aid for Development,
Oak Park, MI
Arch Way Housing Program, Inc.,
Kennesaw, GA
Arkansas Hope Incorporation,
Little Rock, AR

Bereavement Care Foundation,
Orange, NJ
B L House of Refuge Outreach, Inc.,
Selma, AL
Bless the Beasts and the Children
Foundation, Henderson, NV
Blessed & Highly Favoured Corporation,
Cincinnati, OH
Blue Solutions, Austin, TX
By My Side Ltd., Philadelphia, PA
Chester Youth Development Foundation,
Columbia, SC
Cindy M. Beaudoin Scholarship Fund,
Plainfield, CT
Community Transportation Service, Inc.,
Idaho Falls, ID
Computer Knowledge 4 Kids,
Arlington, TX
Cornerstone Ministries, Inc.,
McKinney, TX
Deliverance House, Inc., Atlanta, GA
Fordney Foundation, Anaheim, CA
Friends for Life Corporation,
Moreno Valley, CA
Friends of the Fairview Bridge,
Fairview, MT
Gethsemane Betterment Foundation,
Vallejo, CA
Hair for Humanity, Los Angeles, CA
Heavenly Good Catering Community
Development Corporation,
Chesapeake, VA
H E R S Alliance and Resource Center,
Inc., Coconut Creek, FL
J Maxwell & Associates, Inc.,
Londonderry, NH
Joshua Generation Child & Family
Development Corporation, Durham, NC
Kiobvi Soul Society, Inc.,
Springfield Gardens, NY
Loja Health Specialist, Inc.,
Sykesville, MD
Lower Little River Watershed Coalition,
Ashdown, AR

Mater Tech Workforce Development
Center, Milwaukee, WI
New York Institute for Cognitive and
Behavioral Therapies, Brooklyn, NY
Non Profit Assistance, Inc.,
Burnsville, MN
Our Forgotten Heritage, Inc., Bremen, OH
Peachcrest, Inc., Atlanta, GA
Project New Ground, Inc., Brooklyn, NY
Self Motivated Individuals,
Philadelphia, PA
Shinyanga Health Aide and Medical
Assistance, Inc., Houston, TX
Skin Cancer Awareness Foundation,
Minden, NV
Unity Hope Centers, Inc., Detroit, MI
Wisconsin Education for Children
and Adults Food Programs, Inc.,
Madison, WI
Workplace Education Institute, Inc.,
North Canton, OH
Yanks Air Museum Foundation,
Baldwin Park, CA
Youths Working for Change,
Long Beach, CA

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

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

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