

## **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. 9412, page 687.**

**REG-146895-05, page 700.**

Temporary and proposed regulations under section 179C of the Code provide guidance on making an election to deduct 50 percent of the costs of certain refineries and guidance related to the associated reporting requirements. A public hearing on the proposed regulations is scheduled for November 20, 2008.

**T.D. 9417, page 693.**

**REG-161695-04, page 699.**

Final, temporary, and proposed regulations under section 1301 of the Code provide rules under the American Jobs Creation Act of 2004 relating to the averaging of farm and fishing income.

**REG-103146-08, page 701.**

Proposed regulations provide guidance under section 6039 of the Code, which requires corporations to file an information return with the IRS and furnish a written statement to each employee regarding: (i) the corporation's transfer of stock pursuant to the employee's exercise of an incentive stock option described in section 422(b); and (ii) transfers of stock by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). The time and manner for filing a return and furnishing statements to employees, as well as the information to be contained in the return and furnished to employees, are addressed in these proposed regulations.

### **EMPLOYEE PLANS**

**REG-103146-08, page 701.**

Proposed regulations provide guidance under section 6039 of the Code, which requires corporations to file an information

return with the IRS and furnish a written statement to each employee regarding: (i) the corporation's transfer of stock pursuant to the employee's exercise of an incentive stock option described in section 422(b); and (ii) transfers of stock by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). The time and manner for filing a return and furnishing statements to employees, as well as the information to be contained in the return and furnished to employees, are addressed in these proposed regulations.

### **EXEMPT ORGANIZATIONS**

**Announcement 2008-80, page 706.**

The IRS has revoked its determination that After Bankruptcy Foundation of Fishers, IN; The K.L.T. Foundation of Missoula, MT; Debt Advocates of America of Killeen, TX; Gene & Myrna Heilman Foundation of Madison, WI; Darwin Facility of Suisun, CA; Credit Counseling Centers of America, Inc., of Fort Lauderdale, FL; David Aschkenazy Memorial Loan Fund of Brooklyn, NY; Helping Hand Corporation of Gillette, WY; and Cherokee Place Foundation of Lenoir, NC, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

**Announcement 2008-81, page 706.**

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

**Announcement of Declaratory Judgment Proceedings Under Section 7428 begins on page 708.**

**Announcements of Disbarments and Suspensions begin on page 709.**

**Finding Lists begin on page ii.**



# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

## Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

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

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

## Section 179C.—Election to Expense Certain Refineries

26 CFR 1.179C-1T: Election to expense certain refineries (temporary).

T.D. 9412

### DEPARTMENT OF TREASURY Internal Revenue Service 26 CFR Part 1 and 602

#### Election to Expense Certain Refineries

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code, and affects taxpayers who own refineries located in the United States. These temporary regulations reflect changes to the law made by the Energy Policy Act of 2005. The text of these temporary regulations also serves as the text of the proposed regulations (REG-146895-05) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

**DATES:** *Effective Date:* These regulations are effective July 9, 2008.

*Applicability Date:* For dates of applicability, see §1.179C-1T(g).

**FOR FURTHER INFORMATION CONTACT:** Philip Tiegerman (202) 622-3110 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public

comments, approved by the Office of Management and Budget under control number (1545-2103). Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin.

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

#### Background

This document contains proposed amendments to 26 CFR part 1 to provide regulations under section 179C of the Internal Revenue Code (Code). Section 179C was added to the Code by section 1323(a) of the Energy Policy Act of 2005, Public Law 109-58 (119 Stat. 594) to encourage the construction of new refineries and the expansion of existing refineries to enhance the nation's refinery capacity.

Section 179C(a) allows a taxpayer to elect to deduct 50 percent of the cost of any qualified refinery property. The remaining 50 percent of the taxpayer's qualifying expenditures are generally recovered under section 168 and section 179B, if applicable. The provisions of section 179C apply to qualified refinery property placed in service by a taxpayer after August 8, 2005, and before January 1, 2012. All costs properly capitalized into qualified refinery property are includable in the cost of the qualified refinery property.

#### Explanation of Provisions

##### Scope

The temporary regulations restate the provisions of section 179C and provide guidance on certain issues related to electing and determining the deduction allowable under section 179C(a). Specifically, the temporary regulations provide guidance on making elections under section 179C(a) and (g), and the associated reporting requirements contained in section 179C(h). Further, the temporary regulations provide guidance on determining and substantiating the production capacity requirement, as well as guidance addressing the availability of the deduction in certain sale-leaseback transactions. The temporary regulations generally interpret the statute in a manner consistent with existing statutory and regulatory principles and recognize that taxpayers have had to address section 179C issues for prior tax years in the absence of regulations. While these temporary regulations generally apply to taxable years ending on or after July 9, 2008 and terminate three years after the date they are published in the Federal Register, the temporary regulations may be applied by taxpayers to taxable years ending prior to July 9, 2008. These temporary regulations also provide procedures for claiming the section 179C(a) deduction for taxable years ending prior to July 9, 2008.

##### Property Eligible for the Section 179C Deduction

Under section 179C(c), property must meet several requirements to be considered qualified refinery property eligible for the section 179C(a) deduction. These requirements include the following: (1) the property must be part of a qualified refinery; (2) the original use of the property must commence with the taxpayer; (3) the property must be placed in service within a specified time period; (4) the property must meet certain production capacity requirements; (5) the property must meet all applicable environmental laws; and (6) the property must meet certain construction and written binding contract requirements.

### *Description of Qualified Refinery*

Section 179C(d) provides that a qualified refinery is a refinery located in the United States, whose primary purpose is to process liquid fuel from crude oil or qualified fuels. Section 179C(f) provides that refinery property is ineligible for the section 179C(a) deduction if the primary purpose of the refinery is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility; or if the refinery property is built solely to comply with consent decrees or projects mandated by Federal, state, or local governments.

### *Original Use Requirement*

Pursuant to the requirements under section 179C(c)(1)(A), the temporary regulations provide that the original use of qualified refinery property must commence with the taxpayer. The temporary regulations define original use as the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer, and provide certain exceptions for taxpayers that engage in certain sale-leaseback transactions.

The temporary regulations provide that if a taxpayer incurs capital expenditures to recondition or rebuild property acquired or owned by the taxpayer, those capital expenditures will meet the original use requirement, and may qualify for deduction under section 179C(a). Consistent with the statute, the temporary regulations clarify that reconditioned or rebuilt property acquired by a taxpayer does not satisfy the original use requirement and is not qualified refinery property. The question of whether property is reconditioned or rebuilt property is a question of fact.

Consistent with section 179C(c)(2), the temporary regulations also provide an exception to the original use requirement for certain sale-leaseback transactions. If property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer, and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the original use of that property is considered to have commenced with the taxpayer-lessor.

### *Placed in Service Requirements*

Section 179C(c)(1)(B) provides that qualified refinery property is property that is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012.

Consistent with section 179C(c)(2), the temporary regulations provide that, for certain sale-leaseback transactions, if property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the new property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the sale-leaseback.

### *Production Capacity Requirements*

The production capacity requirement of section 179C(c)(1)(C) and (e) is met if any portion of qualified refinery property: (1) enables an existing qualified refinery to increase its total volume output, determined without regard to asphalt or lube oil, by 5 percent or more on an average daily basis; or (2) enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis. Any reasonable method may be used to determine the appropriate baseline for measuring capacity increases and to demonstrate and substantiate that the capacity of the existing qualified refinery has been sufficiently increased. For example, the average annual output over a number of normal production years may provide a reasonable baseline for measuring an increase in capacity. The temporary regulations confirm that the existing qualified refinery is the refinery prior to the installation of qualified refinery property. The temporary regulations also confirm that the question of whether the qualified refinery property has sufficiently enabled output or throughput increases is properly evaluated as of the placed-in-service date of the qualified refinery property.

### *Any Applicable Environmental Laws Requirement*

Section 179C(c)(1)(D) provides that qualified refinery property must meet all applicable Federal, state, and local environmental laws. However, the environmental compliance requirement applies only with respect to the laws in effect on the date that qualified refinery property is placed in service after August 8, 2005, and before January 1, 2012. Furthermore, a refinery's failure to meet applicable environmental laws with respect to a portion of the refinery that was in service prior to August 8, 2005 will not disqualify the taxpayer from making the election under section 179C(a) with respect to the otherwise qualifying refinery property.

Section 179C(c)(1)(D) and (c)(3) provides that the property must comply with the Clean Air Act, notwithstanding any waiver received by the taxpayer under that Act.

Consistent with section 179C(f)(2), the temporary regulations provide that the section 179C(a) election is not available for identifiable refinery property built solely to comply with state, locally or Federally mandated projects or consent decrees. For example, a taxpayer may not elect to expense the cost of a scrubber necessary for the refinery to comply with the Clean Air Act, even if the scrubber is installed as part of a larger project, if the scrubber itself does not otherwise enable an increase in production capacity.

### *Construction and Written Binding Contract Requirements*

Under section 179C(c)(1), qualified refinery property will include otherwise qualified property that is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012, but only if no written binding contract for the construction of the property was in effect on or before June 14, 2005. Pursuant to section 179C(c)(1)(F), a taxpayer must take some action constituting a construction commitment before January 1, 2008. To meet this test, any of the following three acts is sufficient: (1) entering into a written binding construction contract before January 1, 2008; (2) placing the property in service before January 1, 2008; or (3) in the case of self-constructed property,

starting self-construction after June 14, 2005, and before January 1, 2008.

Consistent with existing section 168(k) principles, in the case of self-constructed property, the temporary regulations provide that construction begins when physical work (not including preliminary activities such as planning or designing, securing financing, exploring, or researching) of a significant nature begins. The determination of when work of a significant nature begins depends on the facts and circumstances. *Cf.* Treas. Regs. §1.168(k)-1(b)(4)(iii)(B). Recognizing that taxpayers have had to make some determinations as to whether self-constructed property could qualify for the section 179C deduction in the absence of regulations, the temporary regulations provide that physical work of a significant nature will be deemed to have begun before January 1, 2008 for purposes of section 179C if the taxpayer performed some physical work before January 1, 2008 (such as clearing a site or excavation) and has performed physical work of a significant nature (as defined in Treas. Regs. §1.168(k)-1(b)(4)(iii)(B)) before October 7, 2008.

### *Elections*

Section 179C provides two elections. The first election is provided under section 179C(a), which allows a taxpayer to elect to deduct an amount equal to 50 percent of the costs paid or incurred by the taxpayer for qualified refinery property in the year the property is placed in service. The election generally must be made by the due date (including extensions) for filing the taxpayer's federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. The taxpayer must make the election by entering the deduction claimed at the appropriate place on the taxpayer's Federal income tax return.

A taxpayer that did not claim the section 179C(a) deduction on a Federal income tax return filed for a taxable year ending prior to July 9, 2008 but wishes to claim the deduction for that taxable year may do so by properly making a section 179C(a) election under these proposed regulations on an amended return filed by December 31, 2008.

In general, once an election is made under section 179C(a), it may not be revoked except with the written consent of the Commissioner. However, these temporary regulations provide that a taxpayer is deemed to have requested and been granted consent to revoke an election under section 179C(a) if the taxpayer revokes the election before the revocation deadline. The revocation deadline is the later of December 31, 2008 or 24 months after the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year for which the election applies. The taxpayer revokes the election by attaching a statement to an amended return for the taxable year for which the election applies. A taxpayer is not permitted to revoke an election under section 179C(a) after the revocation deadline. The revocation deadline may not be extended under §301.9100-1.

The second election is provided in section 179C(g), which allows a taxpayer that is a subchapter T cooperative (cooperative taxpayer) and that has a subchapter T cooperative as one or more of its owners (cooperative owner(s)) to elect to allocate all or a portion of the deduction allowable under section 179C(a) for the taxable year to the cooperative owner(s). If a cooperative taxpayer makes an election under section 179C(g), the temporary regulations provide that this allocation is equal to the cooperative owner's ratable share of the total amount allocated, determined on the basis of the cooperative owner's ownership interest in the cooperative taxpayer at the beginning of the cooperative taxpayer's taxable year. Under the temporary regulations, the section 179C(g) election must be made by the due date (including extensions) for filing the cooperative taxpayer's original Federal income tax return for the taxable year for which the section 179C(a) election is made by the cooperative taxpayer. Under the temporary regulations, a cooperative taxpayer is required to make the election under section 179C(g) by attaching a statement to the cooperative taxpayer's Federal income tax return providing the name and taxpayer identification number of the cooperative taxpayer, the amount of the deduction allowable to the cooperative taxpayer, the name and taxpayer identification number of each cooperative owner, and the amount of the deduction allocated to each

of the cooperative owner(s). Consistent with section 179C(g)(3), the temporary regulations also require the cooperative taxpayer to notify any cooperative owner in writing, and on Form 1099-PATR, "Taxable Distributions Received From Cooperatives," of the amount of the section 179C(a) deduction that is apportioned to that cooperative owner. The written notice must be provided to the cooperative owner(s) before the due date (including extensions) of the cooperative taxpayer's original federal income tax return.

Consistent with section 179C(g)(2), once made, an election under section 179C(g) may not be revoked. Consequently, a taxpayer that has made an irrevocable section 179C(g) election may not elect to revoke its section 179C(a) election.

### *Reporting Requirements*

Section 179C(h) provides that any taxpayer making a section 179C(a) election must submit a statement in order to claim the section 179C(a) deduction. The temporary regulations provide that in order to claim the section 179C(a) deduction on a tax return filed after July 23, 2008, the taxpayer must attach the statement to the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. The taxpayer must identify the name and location of the qualified refinery property and provide an affirmation that the taxpayer's refinery property meets the production capacity requirements of section 179C(e). The taxpayer also must provide the total cost basis of the qualified refinery property and the depreciation treatment of the capitalized portion of the qualified refinery property. If it has not already filed the statement, a taxpayer that has claimed the section 179C(a) deduction on a Federal income tax return filed prior to July 23, 2008, must attach a statement to its next Federal income tax return for each taxable year in which the taxpayer claimed the deduction but did not file a statement.

### *Effective/Applicability Date*

These temporary regulations generally apply to taxable years ending on or after July 9, 2008, and terminate three years after the date they are published in the Federal Register. However, these proposed

regulations may be relied upon by taxpayers for taxable years ending prior to July 9, 2008.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal author of these regulations is Philip Tiegerman, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Adoption of Amendments to the Regulations

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

#### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.179C-1T is added to read as follows:

*§1.179C-1T Election to expense certain refineries (temporary).*

(a) *Scope and definitions*—(1) *Scope*. This section provides the rules for determining the deduction allowable under section 179C(a) for the cost of any qualified refinery property. The provisions of this section apply only to a taxpayer that elects

to apply section 179C in the manner prescribed under paragraph (d) of this section.

(2) *Definitions*. For purposes of section 179C and this section, the following definitions apply:

(i) *Applicable environmental laws* are any applicable Federal, state, or local environmental laws.

(ii) *Qualified fuels* has the meaning set forth in section 45K(c).

(iii) *Cost* is the unadjusted depreciable basis (as defined in §1.168(b)-1(a)(3), but without regard to the reduction in basis for any portion of the basis the taxpayer properly elects to treat as an expense under section 179C and this section) of the property.

(iv) *Throughput* is a volumetric rate measuring the flow of crude oil or qualified fuels processed over a given period of time, typically referenced on the basis of barrels per calendar day.

(v) *Barrels per calendar day* is the amount of fuels that a facility can process under usual operating conditions, expressed in terms of capacity during a 24-hour period and reduced to account for down time and other limitations.

(vi) *United States* has the same meaning as that term is defined in section 7701(a)(9).

(b) *Qualified refinery property*—(1) *In general*. Qualified refinery property is any property that meets the requirements set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Description of qualified refinery property*—(i) *In general*. Property that comprises any portion of a qualified refinery may be qualified refinery property. For purposes of section 179C and this section, a qualified refinery is any refinery located in the United States that is designed to serve the primary purpose of processing crude oil or qualified fuels.

(ii) *Nonqualified refinery property*. Refinery property is not qualified refinery property for purposes of this paragraph (b)(2) if—

(A) The primary purpose of the refinery property is for use as a topping plant, asphalt plant, lube oil facility, crude or product terminal, or blending facility; or

(B) The refinery property is built solely to comply with consent decrees or projects mandated by Federal, state or local governments.

(3) *Original use*—(i) *In general*. For purposes of the deduction allowable under

section 179C(a), refinery property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer. Except as provided in paragraph (b)(3)(ii) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, if a taxpayer incurs capital expenditures to recondition or rebuild property acquired or owned by the taxpayer, only the capital expenditures incurred by the taxpayer to recondition or rebuild the property acquired or owned by the taxpayer satisfy the original use requirement. However, the cost of reconditioned or rebuilt property acquired by a taxpayer does not satisfy the original use requirement. Whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(i), acquired or self-constructed property that contains used parts will be treated as reconditioned or rebuilt only if the cost of the used parts is more than 20 percent of the total cost of the property.

(ii) *Sale-leaseback*. If any new portion of a qualified refinery is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the taxpayer-lessor is considered the original user of the property.

(4) *Placed-in-service date*—(i) *In general*. Refinery property will meet the requirements of this paragraph (b)(4) if the property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012.

(ii) *Sale-leaseback*. If a new portion of refinery property is originally placed in service by a person after August 8, 2005, and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the leaseback.

(5) *Production capacity*—(i) *In general*. Refinery property is considered qualified refinery property if—

(A) It enables the existing qualified refinery to increase the total volume output, determined without regard to asphalt or

lube oil, by at least five percent on an average daily basis; or

(B) It enables the existing qualified refinery to increase the percentage of total throughput attributable to processing qualified fuels to a rate that is at least 25 percent of total throughput on an average daily basis.

(ii) *When production capacity is tested.* The production capacity requirement of this paragraph (b)(5) is determined as of the date the property is placed in service by the taxpayer. Any reasonable method may be used to determine the appropriate baseline for measuring capacity increases and to demonstrate and substantiate that the capacity of the existing qualified refinery has been sufficiently increased.

(iii) *Multi-stage projects.* In the case of multi-stage projects, a taxpayer must satisfy the reporting requirements of paragraph (f)(2) of this section, sufficient to establish that the production capacity requirements of this paragraph (b)(5) will be met as a result of the taxpayer's overall plan.

(6) *Applicable environmental laws—(i) In general.* The environmental compliance requirement applies only with respect to refinery property, or any portion of refinery property, that is placed in service after August 8, 2005. A refinery's failure to meet applicable environmental laws with respect to a portion of the refinery that was in service prior to August 8, 2005 will not disqualify a taxpayer from making the election under section 179C(a) with respect to otherwise qualifying refinery property.

(ii) *Waiver under the Clean Air Act.* Refinery property must comply with the Clean Air Act, notwithstanding any waiver received by the taxpayer under that Act.

(7) *Construction of property—(i) In general.* Qualified property will meet the requirements of this paragraph (b)(7) if—

(A) The property is placed in service by the taxpayer after August 8, 2005, and before January 1, 2012; and

(B) No written binding contract for the construction of the property was in effect before June 14, 2005.

(ii) *Definition of binding contract.* (A) *In general.* A contract is binding only if it is enforceable under state law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages

provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or the predecessor of either party. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions, or if any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding, notwithstanding the fact that insubstantial terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Supply agreements.* A binding contract does not include a supply or similar agreement if the payment amount and design specification of the property to be purchased have not been specified.

(E) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire a component does not satisfy the requirements of this paragraph (b)(7), the component is not qualified refinery property.

(iii) *Self-constructed property—(A) In general.* Except as provided in paragraph (b)(7)(iii)(B) of this section, if a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business (or for the production of income by the taxpayer), the construction of property rules in this paragraph (b)(7) are treated as met for qualified refinery property if the taxpayer began manufacturing, constructing, or producing the property after June 14, 2005, and before January 1, 2008. Property that is manufactured, constructed or produced for the taxpayer by another person under a written binding contract (as defined in paragraph (b)(7)(ii) of this section) that is entered into prior to the manufacture, construction, or production of the property for use by the

taxpayer in its trade or business (or for the production of income) is considered to be manufactured, constructed, or produced by the taxpayer.

(B) *When construction begins.* For purposes of this paragraph (b)(7)(iii), construction of property generally begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. Nevertheless, physical work of a significant nature will be deemed to have begun for purposes of this paragraph (b)(7)(iii)(B), and the construction of the property will be deemed to have met the requirements of paragraph (b)(7)(iii)(A) of this section, if the taxpayer performed some physical work before January 1, 2008 (such as clearing a site or excavation) and has performed physical work of a significant nature (as defined in Treas. Regs. §§1.168(k)-1(b)(4)(iii)(B)) before October 7, 2008.

(C) *Components of self-constructed property—(1) Acquired components.* If a binding contract (as defined in paragraph (b)(7)(ii) of this section) to acquire a component of self-constructed property is in effect on or before June 14, 2005, the component does not satisfy the requirements of paragraph (b)(7)(i) of this section, and is not qualified refinery property. However, if construction of the self-constructed property begins after June 14, 2005, the self-constructed property may be qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section), even though the component is not qualified refinery property. If the construction of self-constructed property begins before June 14, 2005, neither the self-constructed property nor any component related to the self-constructed property is qualified refinery property. If the component was acquired before January 1, 2008, but the construction of the self-constructed property begins after December 31, 2007, the component may qualify as qualified refinery property even if the self-constructed property is not qualified refinery property.

(2) *Self-constructed components.* If the manufacture, construction, or production

of a component fails to meet any of the requirements of paragraph (b)(7)(iii) of this section, the component is not qualified refinery property. However, if the manufacture, construction, or production of a component fails to meet any of the requirements provided in paragraph (b)(7)(iii) of this section, but the construction of the self-constructed property begins after June 14, 2005, the self-constructed property may qualify as qualified refinery property if it meets all other requirements of section 179C and this section (including paragraph (b)(7)(i) of this section). If the construction of the self-constructed property begins before June 14, 2005, neither the self-constructed property nor any components related to the self-constructed property are qualified refinery property. If the component was self-constructed before January 1, 2008, but the construction of the self-constructed property begins after December 31, 2007, the component may qualify as qualified refinery property, although the self-constructed property is not qualified refinery property.

(c) *Computation of expense deduction for qualified refinery property.* In general, the allowable deduction under paragraph (d) of this section for qualified refinery property is determined by multiplying by 50 percent the cost of the qualified refinery property paid or incurred by the taxpayer.

(d) *Election—(1) In general.* A taxpayer may make an election to deduct as an expense 50 percent of the cost of any qualified refinery property. A taxpayer making this election takes the 50 percent deduction for the taxable year in which the qualified refinery property is placed in service.

(2) *Time and Manner for making election—(i) Time for making election.* An election specified in this paragraph (d) generally must be made not later than the due date (including extensions) for filing the original Federal income tax return for the taxable year in which the qualified refinery property is placed in service by the taxpayer. However, a taxpayer that did not claim the section 179C(a) deduction on a Federal income tax return filed for a taxable year ending prior to July 9, 2008 but wishes to claim the deduction for that taxable year may do so by properly making a section 179C(a) election under this paragraph (d) on an amended return filed by December 31, 2008.

(ii) *Manner of making election.* The taxpayer makes an election under section 179C(a) and this paragraph (d) by entering the amount of the deduction at the appropriate place on the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service (or on the amended return, as provided in paragraph (d)(2)(i) of this section), and attaching a report as specified in paragraph (f) of this section to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service (or on the amended return, as provided in paragraph (d)(2)(i) of this section).

(3) *Revocation of Election—(i) In general.* An election made under section 179C(a) and this paragraph (d), and any specification contained in such election, may not be revoked except with the consent of the Commissioner of Internal Revenue.

(ii) *Revocation prior to the revocation deadline.* A taxpayer is deemed to have requested, and to have been granted, consent of the Commissioner to revoke an election under section 179C(a) and this paragraph (d) if the taxpayer revokes the election before the revocation deadline. The revocation deadline is the later of December 31, 2008 or 24 months after the due date (including extensions) for filing the taxpayer's Federal income return for the taxable year for which the election applies. An election under section 179C(a) and this paragraph (d) is revoked by attaching a statement to an amended return for the taxable year for which the election applies. The statement must specify the name and address of the refinery for which the election applies and the amount deducted on the taxpayer's original Federal income tax return for the taxable year for which the election applies.

(iii) *Revocation after the revocation deadline.* An election under section 179C(a) and this paragraph (d) may not be revoked after the revocation deadline. The revocation deadline may not be extended under §301.9100-1.

(iv) *Revocation by cooperative taxpayer.* A taxpayer that has made an election to allocate the section 179C deduction to cooperative owners under section 179C(g) and paragraph (e) of this section

may not revoke its election under section 179C(a).

(e) *Election to allocate section 179C deduction to cooperative owners—(1) In general.* If a cooperative taxpayer makes an election under section 179C(g) and this paragraph (e), the cooperative taxpayer may elect to allocate all, some, or none of the deduction allowable under section 179C(a) for that taxable year to the cooperative owner(s). This allocation is equal to the cooperative owner(s)' ratable share of the total amount allocated, determined on the basis of each cooperative owner's ownership interest in the cooperative taxpayer. For purposes of this section, a cooperative taxpayer is an organization to which part I of subchapter T applies, and in which another organization to which part I of subchapter T applies (cooperative owner) directly holds an ownership interest. No deduction shall be allowed under section 1382 for any amount allocated under this paragraph (e).

(2) *Time and Manner for making election—(i) Time for making election.* A cooperative taxpayer must make the election under section 179C(g) and this paragraph (e) by the due date (including extensions) for filing the cooperative taxpayer's original Federal income tax return for the taxable year to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(ii) *Manner of making election.* An election under this paragraph (e) is made by attaching to the cooperative taxpayer's timely filed Federal income tax return for the taxable year (including extensions) to which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies a statement providing the following information:

(A) The name and taxpayer identification number of the cooperative taxpayer.

(B) The amount of the deduction allowable to the cooperative taxpayer for the taxable year to which the election under section 179C(a) and paragraph (d) of this section applies.

(C) The name and taxpayer identification number of each cooperative owner to which the cooperative taxpayer is allocating all or some of the deduction allowable.

(D) The amount of the allowable deduction that is allocated to each cooperative owner listed in paragraph (e)(2)(ii)(C) of this section.



(3) *Written notice to owners.* If any portion of the deduction allowable under section 179C(a) is allocated to a cooperative owner, the cooperative taxpayer must notify the cooperative owner of the amount of the deduction allocated to the cooperative owner in a written notice, and on Form 1099-PATR, "Taxable Distributions Received From Cooperatives." This notice must be provided on or before the due date (including extensions) of the cooperative taxpayer's original Federal income tax return for the taxable year for which the cooperative taxpayer's election under section 179C(a) and paragraph (d) of this section applies.

(4) *Irrevocable Election.* A section 179C(g) election, once made, is irrevocable.

(f) *Reporting requirement—(1) In general.* A taxpayer may not claim a deduction under section 179C(a) for any taxable year unless the taxpayer files a report with the Secretary containing information with respect to the operation of the taxpayer's refineries.

(2) *Information to be included in the report.* The taxpayer must specify—

(i) The name and address of the refinery;

(ii) Under which production capacity requirement under section 179C(e) and paragraph (b)(5)(i)(A) and (B) of this section the taxpayer's qualified refinery qualifies;

(iii) Whether the refinery is qualified refinery property under section 179C(d) and paragraph (b)(2) of this section, sufficient to establish that the primary purpose of the refinery is to process liquid fuel from crude oil or qualified fuels.

(iv) The total cost basis of the qualified refinery property at issue for the taxpayer's current taxable year; and

(v) The depreciation treatment of the capitalized portion of the qualified refinery property.

(3) *Time and Manner for submitting report—(i) Time for submitting report.* The taxpayer is required to submit the report specified in this paragraph (f) not later than the due date (including extensions) of the taxpayer's Federal income tax return for the taxable year in which the qualified refinery property is placed in service. A taxpayer that has made a section 179C(a) election for a prior taxable year by claiming the section 179C(a) deduction on a Federal income tax return filed prior to July 23, 2008, but has not already filed a report for that year, must attach a report to

its next Federal income tax return for each taxable year the taxpayer claimed the deduction but did not file a report.

(ii) *Manner of submitting report.* The taxpayer must attach the report specified in this paragraph (f) to the taxpayer's timely filed original Federal income tax return for the taxable year in which the qualified refinery property is placed in service.

(g) *Effective/applicability date.* This section is applicable for taxable years ending on or after July 9, 2008.

(h) *Expiration date.* The applicability of this section expires on or before July 1, 2011.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

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

Par. 4. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 OMB control numbers.

\* \* \* \* \*  
(b) \* \* \*

CFR part or section where identified and described	Current OMB Control No.
* * * * *	
1.179C-1T .....	1545-2103
* * * * *	

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

Approved July 3, 2008.

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

(Filed by the Office of the Federal Register on July 3, 2008, 3:33 p.m., and published in the issue of the Federal Register for July 9, 2008, 73 F.R. 39227)

**Section 1301.—Averaging of Farm Income**

26 CFR 1.1301-1: Averaging of farm income.

**T.D. 9417**

**DEPARTMENT OF THE TREASURY  
Internal Revenue Service  
26 CFR Part 1**

**Farmer and Fisherman Income Averaging**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 1301 of the Internal Revenue Code (Code) relating to the averaging of farm and fishing income in computing income tax liability. The regulations reflect changes to the law made by the American Jobs Creation Act of 2004. The regulations provide guidance to individuals engaged in a farming or fishing business who elect to reduce their tax liability by treating all or a portion of the current taxable year's farm or fishing income as if one-third of it had been earned in each of the prior three taxable years. The text of the tem-

porary regulations in this document also serves as the text of proposed regulations (REG-161695-04) set forth in a notice of proposed rulemaking on this subject in this issue of the Bulletin.

**DATES:** *Effective Date:* These regulations are effective on July 22, 2008.

*Applicability Dates:* For dates of applicability, see §§1.1301-1(g) and 1.1301-1T(g).

**FOR FURTHER INFORMATION CONTACT:** Amy Pfalzgraf, (202) 622-4950 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### **Background**

This document contains final and temporary amendments to the Income Tax Regulations (26 CFR part 1) under section 1301. For taxable years beginning after December 31, 1997, section 1301 provides that individual taxpayers engaged in a farming business may elect to compute their income tax liability under section 1 by treating all or a portion of their taxable income from the trade or business of farming as if one-third of it had been earned in each of the prior three taxable years.

Section 314(b) of the American Jobs Creation Act of 2004 (AJCA), Public Law 108-357 (118 Stat. 1468), amended section 1301 to permit fishermen to make a farm income averaging election. Section 1301(b)(1)(A) now provides that the income eligible for averaging includes income attributable to a fishing business. *Fishing business* is defined in section 1301(b)(4) as the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1802.

The Magnuson-Stevens Act defines *commercial fishing* as fishing in which the fish harvested are intended to or do enter commerce through sale, barter, or trade. 16 U.S.C. 1802(4). *Fishing* is defined as the catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; activities that reasonably can be expected to result in the catching, taking, or harvesting of fish; or any operations at sea in support of, or in preparation for, the catching, taking, or harvesting of fish. Fishing does not include any scientific

research activity conducted by a scientific research vessel. 16 U.S.C. 1802(15). *Fish* is defined as finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, other than marine mammals and birds. 16 U.S.C. 1802(12). Under 50 CFR 600.10, the terms *catch, take, or harvest* include activities that result in the killing of fish or the bringing of live fish on board a vessel.

Section 314(a) of the AJCA amended section 55(c) to provide that the farm income averaging election is disregarded in computing the regular tax liability for purposes of calculating the alternative minimum tax (AMT). As a result, the reduction in regular tax liability resulting from a farm income averaging election will not be offset by a corresponding increase in the AMT.

Section 1.1301-1 of the Income Tax Regulations provides guidance on income averaging for farmers under the rules in effect before the AJCA amendments.

### **Explanation of Provisions**

These temporary regulations provide guidance on the AJCA changes to the income averaging rules. In addition, conforming changes are made to the final regulations in §1.1301-1.

#### *Definition of Fishing Business*

Section 1301(b)(4) defines *fishing business* by reference to section 3 of the Magnuson-Stevens Act. The definition of fishing business in these temporary regulations follows the definitions in the Magnuson-Stevens Act and the regulations under that Act. Thus, fishing includes catching, taking, or harvesting activities that result in the killing of fish or the bringing of live fish on board a vessel, but does not include the processing of fish.

#### *Amount of Income Eligible for Averaging*

Section 1301(b)(1)(A) provides that income attributable to any farming business or fishing business is eligible for income averaging. These temporary regulations clarify that the maximum amount of income that an individual may elect to average is the total of the individual's farm and fishing income and gains, reduced by any farm and fishing deductions or losses allowed as a deduction in computing taxable

income. Therefore, a taxpayer engaged in both a farming business and a fishing business must combine income, gains, deductions, and losses from both the farming business and the fishing business to determine the maximum amount of income that is eligible for averaging.

#### *Lessors of Vessels Used for Fishing*

The rental income of a landlord that is based on a share of a tenant's production is subject to fluctuations in the farm economy to the same extent as that of a farmer. Therefore, §1.1301-1(b)(2) provides that a landlord is engaged in a farming business if this arrangement is established in a written agreement before the tenant begins significant activities on the land.

These temporary regulations similarly provide that a lessor of a vessel is engaged in a fishing business within the meaning of section 1301(b)(4) if the payment due to the lessor under the lease is based on a share of the lessee's catch (or a share of the proceeds from the sale of the catch) and the lease is a written agreement entered into before the lessee begins significant fishing activities resulting in the shared catch. A fixed lease payment is not eligible for income averaging.

#### *Crewmembers*

The income of crewmembers on vessels engaged in fishing also is subject to fluctuations in the fishing economy if the crewmembers' compensation is based on a share of the vessel's catch of fish or a share of the proceeds from the sale of the catch. Accordingly, these temporary regulations provide that these crewmembers are engaged in a fishing business, whether or not they are treated as employees for employment tax purposes.

#### *Deposits Into Merchant Marine Capital Construction Fund*

Section 7518(c)(1)(A) provides that certain deposits into a Merchant Marine Capital Construction Fund (CCF) reduce taxable income for purposes of the Code (the CCF reduction). These temporary regulations provide that, for purposes of income averaging computations, the CCF reduction also reduces taxable income. In addition, except to the extent that the amount of the CCF deposit is determined

by reference to income from maritime operations other than fishing, the CCF reduction also reduces the amount of income that is eligible for income averaging.

### Effective/Applicability Date

These temporary regulations apply for taxable years beginning after July 22, 2008. However, taxpayers may apply the temporary regulations in taxable years beginning after December 31, 2003, but before July 23, 2008, if all provisions are consistently applied in each taxable year.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Bulletin. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Drafting Information

The principal author of these regulations is Amy Pfalzgraf of the Office of the Associate Chief Counsel (Income Tax & Accounting). 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 1.1301-1T also issued under 26 U.S.C. 1301(c). \* \* \*

Par. 2. Section 1.1301-1 is amended by:

1. Adding new paragraphs (b)(3) and (d)(4).

2. Revising paragraph (g).

The additions and revision read as follows:

#### *§1.1301-1 Averaging of farm income.*

\* \* \* \* \*

(b) \* \* \*

(3) [Reserved]. For further guidance, see §1.1301-1T(b)(3).

\* \* \* \* \*

(d) \* \* \*

(4) [Reserved]. For further guidance, see §1.1301-1T(d)(4).

\* \* \* \* \*

(g) *Effective/applicability date.* (1) Except as provided in paragraphs (b)(2), (g)(2), and (g)(3) of this section and §1.1301-1T(g)(2), this section applies to taxable years beginning after December 31, 2001.

(2) Paragraphs (a), (b)(1), (c)(1), (d)(3)(ii), (e), (f)(2), and (f)(4) of this section apply only for taxable years beginning before July 23, 2008. For taxable years beginning after July 22, 2008, see §1.1301-1T.

(3) Paragraphs (b)(3) and (d)(4) of this section apply for taxable years beginning after July 22, 2008.

Par. 3. Section 1.1301-1T is added to read as follows:

#### *§1.1301-1T Averaging of farm and fishing income (temporary).*

(a) *Overview.* An individual engaged in a farming or fishing business may make a farm income averaging election to compute current year (election year) income tax liability under section 1 by averaging, over the prior three-year period (base years), all or a portion of the individual's current year electible farm income as defined in paragraph (e) of this section. Electible farm income includes income from both farming and fishing businesses, and the farm income averaging election permits the averaging of both farm and fishing income. An individual that makes a farm income averaging election—

(1) Designates all or a portion of the individual's electible farm income for the election year as elected farm income; and

(2) Determines the election year section 1 tax by determining the sum of—

(i) The section 1 tax that would be imposed for the election year if taxable income for the year were reduced by elected farm income; plus

(ii) For each base year, the amount by which the section 1 tax would be increased if taxable income for the year were increased by one-third of elected farm income.

(b) *Individual engaged in a farming or fishing business—(1) In general—(i) Farming or fishing business.* *Farming business* has the same meaning as provided in section 263A(e)(4) and the regulations under that section. *Fishing business* means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(4)). Accordingly, a fishing business is fishing in which the fish harvested are intended to or do enter commerce through sale, barter, or trade. *Fishing* means the catching, taking, or harvesting of fish; the attempted catching, taking, or harvesting of fish; any activities that reasonably can be expected to result in the catching, taking, or harvesting of fish; or any operations at sea in support of or in preparation for the catching, taking, or harvesting of fish. Fishing does not include any scientific research activity conducted by a scientific research vessel. *Fish* means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, other than marine mammals and birds. *Catching, taking, or harvesting* includes activities that result in the killing of fish or the bringing of live fish on board a vessel.

(ii) *Form of business.* An individual engaged in a farming or fishing business includes a sole proprietor of a farming or fishing business, a partner in a partnership engaged in a farming or fishing business, and a shareholder of an S corporation engaged in a farming or fishing business. Except as provided in paragraph (e)(1)(i) of this section, services performed as an employee are disregarded in determining whether an individual is engaged in a farming or fishing business for purposes of section 1301.

(iii) *Base years.* An individual is not required to have been engaged in a farming or fishing business in any of the base years in order to make a farm income averaging election.

(2) [Reserved]. For further guidance, see §1.1301-1(b)(2).

(3) *Lessors of vessels used in fishing.* A lessor of a vessel is engaged in a fishing business for purposes of section 1301 with respect to payments that are received under the lease and are based on a share of the catch from the lessee's use of the vessel in a fishing business (or a share of the proceeds from the sale of the catch) if this manner of payment is determined under a written lease agreement entered into before the lessee begins any significant fishing activities resulting in the catch. A lessor of a vessel is not engaged in a fishing business for purposes of section 1301 with respect to fixed lease payments or with respect to lease payments based on a share of the lessee's catch (or a share of the proceeds from the sale of the catch) if the share is determined under either an unwritten agreement or a written agreement entered into after the lessee begins significant fishing activities resulting in the catch.

(c) *Making, changing, or revoking an election—(1) In general.* A farm income averaging election is made by filing Schedule J, "Income Averaging for Farmers and Fishermen," with an individual's Federal income tax return for the election year (including a late or amended return if the period of limitation on filing a claim for credit or refund has not expired).

(2) [Reserved]. For further guidance, see §1.1301-1(c)(2).

(d)(1) through (3)(i) [Reserved]. For further guidance, see §1.1301-1(d)(1) through (3)(i).

(ii) *Example.* The rules of this paragraph (d)(3) are illustrated by the following example:

*Example.* (i) T is a fisherman who uses the calendar taxable year. In each of the years 2001, 2002, and 2003, T's taxable income is \$20,000. In 2004, T has taxable income of \$30,000 (prior to any farm income averaging election) and electible farm income of \$10,000. T makes a farm income averaging election with respect to \$9,000 of the electible farm income for 2004. Under paragraph (a)(2)(ii) of this section, \$3,000 of elected farm income is allocated to each of the base years 2001, 2002, and 2003. Under paragraph (a)(2) of this section, T's 2004 tax liability is the sum of the following amounts:

(A) The section 1 tax on \$21,000, which is T's taxable income of \$30,000, minus elected farm income of \$9,000.

(B) For each of the base years 2001, 2002, and 2003, the amount by which section 1 tax would be increased if one-third of elected farm income were allocated to each year. The amount for each year is the section 1 tax on \$23,000 (T's taxable income of \$20,000, plus \$3,000, which is one-third of elected farm income for the 2004 election year), minus the section 1 tax on \$20,000.

(ii) In 2005, T has taxable income of \$50,000 and electible farm income of \$12,000. T makes a farm income averaging election with respect to all \$12,000 of the electible farm income for 2005. Under paragraph (a)(2)(ii) of this section, \$4,000 of elected farm income is allocated to each of the base years 2002, 2003, and 2004. Under paragraph (a)(2) of this section, T's 2005 tax liability is the sum of the following amounts:

(A) The section 1 tax on \$38,000, which is T's taxable income of \$50,000, minus elected farm income of \$12,000.

(B) For each of base years 2002 and 2003, the amount by which section 1 tax would be increased if, after adjustments for previous farm income averaging elections pursuant to paragraph (d)(3)(i) of this section, one-third of elected farm income were allocated to each year. The amount for each year is the section 1 tax on \$27,000 (T's taxable income of \$20,000 increased by \$3,000 for T's 2004 farm income averaging election and further increased by \$4,000, which is one-third of elected farm income for the 2005 election year), minus the section 1 tax on \$23,000 (T's taxable income of \$20,000 increased by \$3,000 for T's 2004 farm income averaging election).

(C) For base year 2004, the amount by which section 1 tax would be increased if, after adjustments for previous farm income averaging elections pursuant to paragraph (d)(3)(i) of this section, one-third of elected farm income were allocated to that year. This amount is the section 1 tax on \$25,000 (T's taxable income of \$30,000 reduced by \$9,000 for T's 2004 farm income averaging election and increased by \$4,000, which is one-third of elected farm income for the 2005 election year), minus the section 1 tax on \$21,000 (T's taxable income of \$30,000 reduced by \$9,000 for T's 2004 farm income averaging election).

(4) *Deposits into Merchant Marine Capital Construction Fund—(i) Reductions to taxable income and electible farm income.* Under section 7518(c)(1)(A), certain deposits to a Merchant Marine Capital Construction Fund (CCF) reduce taxable income for purposes of the Code (the CCF reduction). The amount of the CCF reduction is limited under section 7518(a)(1)(A) to the taxpayer's taxable income (determined without regard to the reduction) attributable to specified maritime operations including operations in fisheries of the United States. The CCF reduction is taken into account in determining the taxable income used in computations under this section. In addition, except to

the extent the amount described in section 7518(a)(1)(A) is not attributable to the individual's fishing business, the CCF reduction is treated in computing electible farm income as an item of deduction attributable to the individual's fishing business.

(ii) *Example.* The rules of this paragraph (d)(4) are illustrated by the following example:

*Example.* (i) T is a fisherman who uses the calendar taxable year. In each of the years 2001, 2002, and 2003, T's taxable income (before taking any CCF reduction into account) is \$20,000. For taxable year 2002, all of T's income is described in section 7518(a)(1)(A) and is attributable to T's fishing business. T makes a \$5,000 deposit into a CCF for taxable year 2002. In 2004, T has taxable income of \$30,000 (before taking any CCF reduction into account). In addition, T's electible farm income for 2004 (before taking the CCF reduction into account) is \$10,000, all of which is described in section 7518(a)(1)(A) and is attributable to T's fishing business. For taxable year 2004, T makes a \$4,000 deposit into a CCF.

(ii) The amount of the 2004 CCF deposit reduces taxable income. Accordingly, T's taxable income for 2004 is \$26,000 (\$30,000 - \$4,000). In addition, the entire amount of the CCF reduction is treated as an item of deduction attributable to T's fishing business. Accordingly, T's electible farm income for 2004 is \$6,000 (\$10,000 - \$4,000). Similarly, the amount of the 2002 CCF deposit reduces T's taxable income for 2002. Accordingly, T's taxable income for 2002 is \$15,000 (\$20,000 - \$5,000).

(iii) T makes an income averaging election with respect to all \$6,000 of the electible farm income for 2004. Under paragraph (a)(2)(ii) of this section, \$2,000 of elected farm income is allocated to each of the base years 2001, 2002, and 2003. Under paragraph (a)(2) of this section, T's 2004 tax liability is the sum of the following amounts:

(A) The section 1 tax on \$20,000, which is T's taxable income of \$26,000 (\$30,000 reduced by the \$4,000 CCF deposit), minus elected farm income of \$6,000.

(B) For each of the base years 2001, 2002, and 2003, the amount by which section 1 tax would be increased if one-third of elected farm income were allocated to each year. The amount for base years 2001 and 2003 is the section 1 tax on \$22,000 (T's taxable income of \$20,000, plus \$2,000, which is one-third of elected farm income for the election year), minus the section 1 tax on \$20,000. The amount for base year 2002 is the section 1 tax on \$17,000 (T's taxable income of \$15,000 (\$20,000 reduced by the \$5,000 CCF deposit), plus \$2,000 (one-third of elected farm income for the election year)), minus the section 1 tax on \$15,000.

(e) *Electible farm income—(1) Identification of items attributable to a farming or fishing business—(i) In general.* Farm and fishing income includes items of income, deduction, gain, and loss attributable to an individual's farming or fishing business. Farm and fishing losses include, to the extent attributable to a farm-

ing or fishing business, any net operating loss carryover or carryback or net capital loss carryover to an election year. Income, gain, or loss from the sale of development rights, grazing rights, and other similar rights is not treated as attributable to a farming business. In general, farm and fishing income does not include compensation received as an employee. However, a shareholder of an S corporation engaged in a farming or fishing business may treat compensation received from the corporation as farm or fishing income if the compensation is paid by the corporation in the conduct of the farming or fishing business. If a crewmember on a vessel engaged in commercial fishing (within the meaning of section 3 of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1802(4)) is compensated by a share of the boat's catch of fish or a share of the proceeds from the sale of the catch, the crewmember is treated for purposes of section 1301 as engaged in a fishing business and the compensation is treated for such purposes as income from a fishing business.

(ii) *Gain or loss on sale or other disposition of property*—(A) *In general.* Gain or loss from the sale or other disposition of property that was regularly used in the individual's farming or fishing business for a substantial period of time is treated as attributable to a farming or fishing business. For this purpose, the term *property* does not include land, but does include structures affixed to land. Property that has always been used solely in the farming or fishing business by the individual is deemed to meet both the regularly used and substantial period tests. Whether property not used solely in the farming or fishing business was regularly used in the farming or fishing business for a substantial period of time depends on all of the facts and circumstances.

(B) *Cessation of a farming or fishing business.* If gain or loss described in paragraph (e)(1)(ii)(A) of this section is realized after cessation of a farming or fishing business, the gain or loss is treated as attributable to a farming or fishing business only if the property is sold within a reasonable time after cessation of the farming or fishing business. A sale or other disposition within one year of cessation of the farming or fishing business is presumed to be within a reasonable time. Whether a

sale or other disposition that occurs more than one year after cessation of the farming or fishing business is within a reasonable time depends on all of the facts and circumstances.

(2) *Determination of amount that may be elected farm income*—(i) *Electible farm income.* (A) The maximum amount of income that an individual may elect to average (electible farm income) is the sum of any farm and fishing income and gains, minus any farm and fishing deductions or losses (including loss carryovers and carrybacks) that are allowed as a deduction in computing the individual's taxable income.

(B) Individuals conducting both a farming business and a fishing business must calculate electible farm income by combining income, gains, deductions, and losses derived from the farming business and the fishing business.

(C) Except as otherwise provided in paragraph (d)(4) of this section, the amount of any CCF reduction is treated as a deduction from income attributable to a fishing business in calculating electible farm income.

(D) Electible farm income may not exceed taxable income, and electible farm income from net capital gain attributable to a farming or fishing business may not exceed total net capital gain. Subject to these limitations, an individual who has both ordinary income and net capital gain from a farming or fishing business may elect to average any combination of the ordinary income and net capital gain.

(ii) *Examples.* The rules of this paragraph (e)(2) of this section are illustrated by the following examples:

*Example 1.* A has ordinary income from a farming business of \$200,000 and deductible expenses from a farming business of \$50,000. A's taxable income is \$150,000 (\$200,000 - \$50,000). Under paragraph (e)(2)(i) of this section, A's electible farm income is \$150,000, all of which is ordinary income.

*Example 2.* B has capital gain of \$20,000 that is not from a farming or fishing business, capital loss from a farming business of \$30,000, and ordinary income from a farming business of \$100,000. Under section 1211(b), B's allowable capital loss is limited to \$23,000. B's taxable income is \$97,000 ((\$20,000 - \$23,000) + \$100,000). B has a capital loss carryover from a farming business of \$7,000 (\$30,000 total loss - \$23,000 allowable loss). Under paragraph (e)(2)(i) of this section, B's electible farm income is \$77,000 (\$100,000 ordinary income from a farming business, minus \$23,000 capital loss from a farming business), all of which is ordinary income.

*Example 3.* C has ordinary income from a fishing business of \$200,000 and ordinary loss from a farming business of \$60,000. C's taxable income is \$140,000 (\$200,000 - \$60,000). Under paragraph (e)(2)(i)(B) of this section, C must deduct the farm loss from the fishing income in determining C's electible farm income. Therefore, C's electible farm income is \$140,000 (\$200,000 - \$60,000), all of which is ordinary income.

*Example 4.* D has ordinary income from a farming business of \$200,000 and ordinary loss of \$50,000 that is not from a farming or fishing business. D's taxable income is \$150,000 (\$200,000 - \$50,000). Under paragraph (e)(2)(i)(D) of this section, electible farm income may not exceed taxable income. Therefore, D's electible farm income is \$150,000, all of which is ordinary income.

*Example 5.* E has capital gain from a farming business of \$50,000, capital loss of \$40,000 that is not from a farming or fishing business, and ordinary income from a farming business of \$60,000. E's taxable income is \$70,000 ((\$50,000 - \$40,000) + \$60,000). Under paragraph (e)(2)(i)(D) of this section, electible farm income may not exceed taxable income, and electible farm income from net capital gain attributable to a farming or fishing business may not exceed total net capital gain. Therefore, E's electible farm income is \$70,000 of which \$10,000 is capital gain and \$60,000 is ordinary income.

(f)(1) [Reserved]. For further guidance, see § 1.1301-1(f)(1).

(2) *Changes in filing status.* An individual is not prohibited from making a farm income averaging election solely because the individual's filing status is not the same in an election year and the base years. For example, an individual who is married and files a joint return in the election year, who filed as single in one or more of the base years, may elect to average farm or fishing income, by using the single filing status to compute the increase in section 1 taxes for the base years in which the individual filed as single.

(f)(3) [Reserved]. For further guidance, see § 1.1301-1(f)(3).

(4) *Alternative minimum tax.* A farm income averaging election is disregarded in computing the tentative minimum tax and the regular tax under section 55 for the election year or any base year. The election is taken into account, however, in determining the regular tax liability under section 53(c) for the election year.

(f)(5) [Reserved]. For further guidance, see § 1.1301-1(f)(5).

(g) *Effective/applicability date.* (1) This section applies for taxable years beginning after July 22, 2008.

(2) Taxpayers may apply the provisions of this section rather than the corresponding provisions of § 1.1301-1 in taxable

years beginning after December 31, 2003, but before July 23, 2008, if all provisions are consistently applied in each taxable year.

(3) This section expires on July 21, 2011.

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

Approved July 7, 2008.

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

(Filed by the Office of the Federal Register on July 21, 2008, 8:45 a.m., and published in the issue of the Federal Register for July 22, 2008, 73 F.R. 42522)

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

#### Farmer and Fisherman Income Averaging

##### REG-161695-04

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing final and temporary regulations (T.D. 9417) under section 1301 of the Internal Revenue Code (Code) relating to the averaging of farm and fishing income in computing income tax liability. The regulations reflect changes to the law made by the American Jobs Creation Act of 2004. The regulations provide guidance to individuals engaged in a farming or fishing business who elect to reduce their tax liability by treating all or a portion of the current taxable year's farm or fishing income as if one-third of it had been earned in each of the prior three taxable years. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by October 20, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-161695-04), Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Taxpayers also may submit comments electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-161695-04).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments or to request a hearing, Richard Hurst at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov); concerning the proposed regulations,

Amy Pfalzgraf, (202) 622-4950 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

Final and temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR Part 1) relating to section 1301 of the Internal Revenue Code (Code). The final and temporary regulations provide rules for averaging taxable income from a farming or fishing business under section 1301. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the final and temporary regulations explains the amendments.

##### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this 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 (either a signed paper original with 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

who 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 Amy Pfalzgraf of the Office of Associate Chief Counsel (Income Tax & Accounting). 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 continues to read in part as follows:

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

Par. 2. In §1.1301-1, paragraphs (a), (b)(1), (b)(3), (c)(1), (d)(3)(ii), (d)(4), (e), (f)(2), and (f)(4) are revised to read as follows:

##### *§1.1301-1 Averaging of farm and fishing income.*

(a) [The text of the proposed amendment to §1.1301-1(a) is the same as the text of §1.1301-1T(a) published elsewhere in this issue of the Bulletin].

(b) \* \* \* (1) [The text of the proposed amendment to §1.1301-1(b)(1) is the same as the text of §1.1301-1T(b)(1) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(3) [The text of the proposed amendment to §1.1301-1(b)(3) is the same as the text of §1.1301-1T(b)(3) published elsewhere in this issue of the Bulletin].

(c) \* \* \* (1) [The text of the proposed amendment to §1.1301-1(c)(1) is the same as the text of §1.1301-1T(c)(1) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(ii) [The text of the proposed amendment to §1.1301-1(d)(3)(ii) is the same as

the text of §1.1301-1T(d)(3)(ii) published elsewhere in this issue of the Bulletin].

(4) [The text of the proposed amendment to §1.1301-1(d)(4) is the same as the text of §1.1301-1T(d)(4) published elsewhere in this issue of the Bulletin].

(e) [The text of the proposed amendment to §1.1301-1(e) is the same as the text of §1.1301-1T(e) published elsewhere in this issue of the Bulletin].

(f) \* \* \*

(2) [The text of the proposed amendment to §1.1301-1(f)(2) is the same as the text of §1.1301-1T(f)(2) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(4) [The text of the proposed amendment to §1.1301-1(f)(4) is the same as the text of §1.1301-1T(f)(4) 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 July 21, 2008, 8:45 a.m., and published in the issue of the Federal Register for July 22, 2008, 73 F.R. 42538)

## Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

### Election to Expense Certain Refineries

#### REG-146895-05

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9412) relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code (Code) and affects taxpayers who own refineries located in the United States. The temporary regulations reflect changes to

the law by the Energy Policy Act of 2005. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing.

**DATES:** Written or electronic comments must be received by September 8, 2008. Outlines of the topics to be discussed at the public hearing scheduled for Thursday, November 20, 2008, at 10 a.m. must be received by Tuesday, October 14, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-146895-05), 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-146895-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-146895-05).

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Philip Tiegerman at (202) 622-3110; concerning submissions of comments, hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 8, 2008. Comments are specifically requested concerning:

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

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

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

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

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

The collection of information in this proposed regulation is in §1.179C-1T(d)(2), §1.179C-1T(d)(3), §1.179C-1T(e)(2), and §1.179C-1T(f). The collections of information in §1.179C-1T(d)(2) and §1.179C-1T(f) are required in order for a taxpayer to make and support an election under section 179C(a) to expense 50 percent of the cost of qualified refinery property. The collection of information in §1.179C-1T(d)(3) is required in order for the taxpayer to revoke an election under section 179C(a). The collection of information in §1.179C-1T(e)(2) is required in order for a taxpayer that is an organization described in section 1381 that has made an election under section 179C(a) to allocate all or a portion of this expense to its owners that are organizations described in section 1381. The collection of information is mandatory. The likely recordkeepers are owners of certain existing refineries.

Estimated total annual recordkeeping burden: 120 hours.

The estimated annual burden per recordkeeper varies depending on individual circumstances, with an estimated average of 10 hours.

Estimated number of recordkeepers: 12.

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

Books or records relating to a collection of information must be retained as long



as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background and Explanation of Provision**

The temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 179C. The temporary regulations define “qualified refinery property” and assist the taxpayer in identifying those costs that may be expensed pursuant to this provision. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. The collections of information in §1.179-1T(d)(2), (e)(2) and (f) are required by section 179C(b), (g) and (h), respectively, and, therefore, are not imposed by these regulations. Accordingly, they are not subject to the Regulatory Flexibility Act. Only the collection of information in §1.179-1T(d)(3), regarding the revocation of an election under section 179C(a), is imposed by these regulations. It is hereby certified that the collection of information contained in §1.179-1T(d)(3) of the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that although most of the 12 taxpayers who potentially could or would make an election under section 179C(a) will be small entities, it is expected that few, if any, of those 12 taxpayers once having made the election will choose to revoke it. Therefore, the collection of information will not affect a substantial number of small entities. The information required to revoke an election under section 179C(a) consists entirely of a portion of the information required to make the election. Consequently, the economic burden for those taxpayers who choose to revoke the election is minimal in nature and the regulations do not impose any burden in addition to the burden associated with making the election.

Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, 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 the proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, November 20, 2008, beginning at 10 a.m. in the IRS auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the Constitution Avenue entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by October 7, 2008, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Tuesday, October 14, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### **Drafting Information**

The principal author of these regulations is Philip Tiegerman of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). 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 as follows:

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

Section 1.179C also issued under 26 U.S.C. 179C. \* \* \*

Par. 2. Section 1.179C-1 is added to read as follows:

*§1.179C-1 Election to expense certain refineries.*

[The text of proposed §1.179C-1 is the same as the text of §1.179C-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 July 3, 2008, 3:33 p.m., and published in the issue of the Federal Register for July 9, 2008, 73 F.R. 39270)

### **Notice of Proposed Rulemaking**

### **Information Reporting Requirements Under Internal Revenue Code Section 6039**

#### **REG-103146-08**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the return and information statement requirements under

section 6039 of the Internal Revenue Code (Code). These regulations reflect changes to section 6039 made by section 403 of the Tax Relief and Health Care Act of 2006. These proposed regulations affect corporations that issue statutory stock options and provide guidance to assist corporations in complying with the return and information statement requirements under section 6039.

**DATES:** Written or electronic comments and requests for a public hearing must be received by October 15, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-103146-08), 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-103146-08), 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-103146-08).

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, Thomas Scholz at (202) 622-6030 (not a toll-free number); concerning submissions of comments and/or to request a hearing, Richard Hurst at [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov).

**SUPPLEMENTARY INFORMATION:**

### **Paperwork Reduction Act**

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

ceived by September 15, 2008. Comments are specifically requested concerning:

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

The accuracy of the estimated burden associated with the proposed collection of information;

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

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

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

The collection of information in these proposed regulations is in §1.6039-1 and §1.6039-2. Section 6039 requires corporations to file an information return with the IRS and furnish a written statement to each employee, in a manner prescribed by the Secretary in regulations, regarding: (i) the corporation's transfer of stock pursuant to the employee's exercise of an incentive stock option described in section 422(b); and (ii) the transfer of stock by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). The information on the statements required to be provided by the corporation will be used by employees to complete their income tax returns in the year of the disposition of the stock acquired pursuant to the statutory stock option. The likely respondents are for-profit corporations.

Estimated total annual reporting burden: 25,000 hours.

Estimated average annual burden hours per respondent: 30 minutes.

Estimated number of respondents: 50,000.

Estimated annual frequency of responses: annually.

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

Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### **Background**

Section 403 of the Tax Relief and Health Care Act of 2006 (Act) amended the information reporting requirements of section 6039. Prior to its amendment, section 6039 required corporations to furnish a written statement to each employee, in a manner prescribed by the Secretary in regulations, regarding: (i) the corporation's transfer of stock pursuant to the employee's exercise of an incentive stock option described in section 422(b); and (ii) the transfer of stock by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c). Corporations must furnish employees with the information statements required by section 6039 on or before January 31 of the year following the year for which the statement is required. Prior to the amendment of section 6039 made by the Act, the regulations under section 6039 were last updated in 2004. See T.D. 9144, 2004-2 C.B. 413 [69 FR 46401].

As amended by the Act, section 6039 requires corporations to file an information return with the IRS, in addition to providing employees with an information statement, following a stock transfer. The time and manner for filing a return with the IRS, as well as the information to be contained in the return and furnished to employees, is addressed in these proposed regulations. Section 6039, as amended by the Act, applies to stock transfers occurring on or after January 1, 2007. However, in Notice 2008-8, 2008-3 I.R.B. 276 (December 19, 2007) (see §601.601(d)(2)(ii)(b)), the IRS waived the obligation to file an information return for 2007 stock transfers governed by section 6039.

### **Explanation of Provisions**

These proposed regulations describe the information that would be required in the return filed with the IRS and the information statement furnished to employees pursuant to section 6039. There are two sections under these proposed regulations: §1.6039-1, Returns required

in connection with certain options; and §1.6039-2, Statements to persons with respect to whom information is reported. In crafting these proposed regulations, one principal objective was to require corporations to furnish employees with sufficient information to enable them to calculate their tax obligations upon disposition of the shares acquired by the exercise of a statutory option. Under these proposed regulations, essentially the same information would be reported with respect to the transfer of stock pursuant to the exercise of an incentive stock option and the transfer of stock acquired pursuant to an employee stock purchase plan.

With respect to a transfer of stock upon the exercise of an incentive stock option, the information required to be furnished to employees pursuant to the existing regulations under §1.6039-1 is sufficient to enable the employee to calculate his or her tax obligations upon disposition of the shares. Therefore, the information that would be required in the information return and the statement furnished to employees under these proposed regulations is generally the same information that is included in the statement furnished to employees pursuant to the existing regulations under §1.6039-1. With respect to an employee's transfer of stock acquired under an employee stock purchase plan, the information required to be furnished to employees pursuant to the existing regulations under §1.6039-1 is not sufficient to enable the employee to calculate his or her tax obligations upon disposition of the shares. Accordingly, these proposed regulations would require that additional information be included in the information return and the statement furnished to employees.

As discussed further in the preamble, the IRS will issue two forms with instructions that corporations must use to satisfy the return and information statement requirements under section 6039.

#### *1. Returns required with respect to incentive stock options*

Section 1.6039-1(a) of these proposed regulations would require every corporation that transfers stock pursuant to an employee's exercise of an incentive stock option described in section 422(b) to file a return with respect to each transfer made

during a particular year. This return would include the following information:

(i) The name, address, and employer identification number of the corporation transferring the stock;

(ii) If other than the corporation identified in (i), the name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The name, address, and identifying number of the person to whom the share or shares of stock were transferred pursuant to the exercise of the option;

(iv) The date the option was granted to the person;

(v) The exercise price per share;

(vi) The date the option was exercised by the person;

(vii) The fair market value of a share of stock on the date the option was exercised by the person; and

(viii) The number of shares of stock transferred to the person pursuant to the exercise of the option.

The information required to be included on the information return pursuant to these proposed regulations is generally the same information that is required to be furnished to employees pursuant to the existing regulations. However, while the existing regulations require that the corporation report the total cost of all shares acquired, these proposed regulations would require instead that the corporation report the exercise price per share. The exercise price per share, rather than the total cost of all shares acquired, is more readily useable by the employee in calculating the tax obligation when the employee later disposes of some or all of the shares.

Returns required by §1.6039-1(a) must be filed on or before January 31 of the year following the calendar year for which the return is made. Such returns must be made on Form 3921, *Exercise of an Incentive Stock Option Under Section 422(b)* (or its designated successor), and filed in the manner provided in the instructions thereto. The IRS expects to release Form 3921 later this year.

#### *2. Returns required with respect to stock purchased under an employee stock purchase plan*

Section 1.6039-1(b) of these proposed regulations would require every corporation which records a transfer of the legal

title of a share of stock acquired by the employee where the stock was acquired pursuant to the exercise of an option described in section 423(c) to file a return with respect to each transfer made during a particular year. This return would include the following information:

(i) The name, address, and identifying number of the transferor;

(ii) The name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The date the option was granted to the transferor;

(iv) The fair market value of the stock on the date the option was granted;

(v) The exercise price per share;

(vi) The date the option was exercised by the transferor;

(vii) The fair market value of the stock on the date the option was exercised by the transferor;

(viii) The date the legal title of the shares was transferred by the transferor; and

(ix) The number of shares to which legal title was transferred by the transferor.

These proposed regulations would require that all of the information required pursuant to the existing regulations be included on the information statement furnished to employees. However, the information required to be furnished to employees pursuant to the existing regulations is not sufficient to enable the employee to calculate his or her tax obligations upon disposition of the shares. Accordingly, items (iii), (iv), (v), (vi) and (vii) in the list in the preceding paragraph would request new information that is not required to be reported under the existing regulations. This additional information, along with the information required under the existing regulations, will enable the employee to determine his or her tax obligations upon the disposition of shares.

Returns required by §1.6039-1(b) must be filed on or before January 31 of the year following the calendar year for which the return is made. Such returns must be made on Form 3922, *Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)* (or its designated successor), and filed in the manner provided in the instructions thereto. The IRS expects to release Form 3922 later this year.

### 3. Information statements required with respect to incentive stock options

Section 1.6039-2(a) of these proposed regulations would require every corporation filing a return under §1.6039-1(a) to furnish to each employee named in such return a written statement with respect to the transfer or transfers made to such employee during such year. Each information statement required by §1.6039-2(a) must be furnished to the employee on or before January 31 of the year following the calendar year for which the return under §1.6039-1(a) is made. Such information statements must be furnished to employees on Form 3921 (or its designated successor) and be delivered in the manner provided in the instructions thereto. Rules regarding electronic furnishing of the information statements and furnishing the information statement by mail (items addressed under §1.6039-1(d) and (f) of the existing regulations) will be set forth in the instructions to Form 3921 (or its designated successor).

### 4. Information statements required with respect to stock purchased under an employee stock purchase plan

Section 1.6039-2(b) of these proposed regulations would require every corporation filing a return under §1.6039-1(b) to furnish to each employee named in such return a written statement with respect to the transfer or transfers made by the employee during such year. Each information statement required by §1.6039-2(b) must be furnished to the employee on or before January 31 of the year following the calendar year for which the return under §1.6039-1(b) is made. Such information statements must be furnished to employees on Form 3922 (or its designated successor) and be delivered in the manner provided in the instructions thereto. Rules regarding electronic furnishing of the information statements and furnishing the information statement by mail (items addressed under §1.6039-1(d) and (f) of the existing regulations) will be set forth in the instructions to Form 3922 (or its designated successor).

### Proposed Effective Date

These regulations under section 6039 are proposed to apply to any stock trans-

fer occurring on or after January 1, 2007. However, corporations are not required to comply with the return requirements of §1.6039-1(a) and (b) for stock transfers that occur during the 2007 and 2008 calendar years. Notwithstanding the waiver of the return requirements for 2007 and 2008 stock transfers, corporations must furnish information statements to employees for such 2007 and 2008 stock transfers. For purposes of furnishing information statements for 2007 and 2008 stock transfers, corporations may rely on §1.6039-1 of the 2004 final regulations (T.D. 9144) or §1.6039-2 of these proposed regulations.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the filing of a return with the IRS and the provision of employee statements required under these proposed regulations will impose a minimal administrative burden on small entities. It is estimated that it will take approximately 30 minutes to prepare and provide the information required by these regulations. Further, the information to be provided is readily available. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. 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 their impact on small business.

### Comments and Request for 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 timely submitted to the IRS. The IRS and the 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 or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of these proposed regulations is Thomas Scholz, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). 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 continues to read in part as follows:

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

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

*§1.6039-1 Returns required in connection with certain options.*

(a) *Requirement of return with respect to incentive stock options under section 6039(a)(1).* (1) Every corporation which in any calendar year transfers to any person a share of stock pursuant to such person's exercise of an incentive stock option shall, for such calendar year, file a return with respect to each transfer made during such year. This return must include the following information—

(i) The name, address, and employer identification number of the corporation transferring the stock;

(ii) If other than the corporation identified in paragraph (a)(1)(i) of this section, the name, address and employer identification number of the corporation whose stock is being transferred;

(iii) The name, address, and identifying number of the person to whom the share or shares of stock were transferred pursuant to the exercise of the option;

(iv) The date the option was granted to the person;

- (v) The exercise price per share;
- (vi) The date the option was exercised by the person;
- (vii) The fair market value of a share of stock on the date the option was exercised by the person; and
- (viii) The number of shares of stock transferred to the person pursuant to the exercise of the option.

(2) Each return required by this paragraph (a) shall be made on Form 3921, *Exercise of an Incentive Stock Option Under Section 422(b)* (or its designated successor), and shall be filed in such manner as provided in the instructions thereto.

(b) *Requirement of return with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation which in any calendar year records, or has by its agent recorded, a transfer of the legal title of a share of stock acquired by the transferor pursuant to the transferor's exercise of an option granted under an employee stock purchase plan and described in section 423(c) (relating to the special rule where the option price is between 85 percent and 100 percent of value of the stock), shall, for such calendar year, file a return with respect to each transfer made during such year. This return must include the following information—

- (i) The name, address, and identifying number of the transferor;
- (ii) The name, address and employer identification number of the corporation whose stock is being transferred;
- (iii) The date the option was granted to the transferor;
- (iv) The fair market value of a share of stock on the date the option was granted;
- (v) The exercise price per share;
- (vi) The date the option was exercised by the transferor;
- (vii) The fair market value of a share of stock on the date the option was exercised by the transferor;
- (viii) The date the legal title of the shares was transferred by the transferor; and
- (ix) The number of shares to which legal title was transferred by the transferor.

(2) Each return required by this paragraph (b) shall be made on Form 3922, *Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)* (or its designated successor),

and shall be filed in such manner as provided in the instructions thereto.

(3) A return is required by reason of a transfer described in section 6039(a)(2) of a share only with respect to the first transfer of such share by the person who exercised the option. Thus, for example, if the owner has record title to a share or shares of stock transferred to a recognized broker or financial institution and the stock is subsequently sold by such broker or institution (on behalf of the owner), the corporation is only required to file a return relating to the transfer of record title to the broker or financial institution. Similarly, a return is required when a share of stock is transferred by the optionee to himself and another person (or persons) as joint tenants, tenants by the entirety or tenants in common. However, when stock is originally issued to the optionee and another person (or persons) as joint tenants, or as tenants by the entirety, the return required by this paragraph shall be filed with respect to the first transfer of the title to such stock by the optionee.

(4) Every corporation which transfers any share of stock pursuant to the exercise of an option described in this paragraph shall identify such stock in a manner sufficient to enable the accurate reporting of the transfer of record title to such shares. Such identification may be accomplished by assigning to the certificates of stock issued pursuant to the exercise of such options a special serial number or color.

(c) *Time for filing returns*—(1) *In general.* Each return required by this section for a calendar year must be filed on or before January 31 of the year following the year for which the return is required.

(2) *Extension of time.* An extension of time to file returns required by this section may be granted in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty provided for failure to file a return under this section, see section 6721.

(e) *Effective/applicability date*—(1) *In general.* Upon the date of publication of the Treasury decision adopting the rules of this section as a final regulation in the **Federal Register**, these rules will apply as of January 1, 2007.

(2) *Transition period.* Taxpayers are not required to comply with the return requirements of paragraphs (a) and (b) of this

section for stock transfers that occur during the 2007 and 2008 calendar years.

Par. 3. A new §1.6039–2 is added to read as follows:

*§1.6039–2 Statements to persons with respect to whom information is reported.*

(a) *Requirement of statement with respect to incentive stock options under section 6039(b).* (1) Every corporation filing a return under §1.6039–1(a) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made to such person during such year. This statement must include the information described in §1.6039–1(a)(1).

(2) Each statement required by this paragraph (a) to be furnished to any person must be furnished to such person on Form 3921, *Exercise of an Incentive Stock Option Under Section 422(b)* (or its designated successor), and be delivered at such time and in such manner as provided in the instructions thereto.

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(b).* (1) Every corporation filing a return under §1.6039–1(b) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made by such person during such year. This statement must include the information described in §1.6039–1(b)(1).

(2) Each statement required by this paragraph (b) to be furnished to any person must be furnished to such person on Form 3922, *Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c)* (or its designated successor), and be delivered at such time and in such manner as provided in the instructions thereto.

(3) If the statement required by this paragraph is made by the authorized transfer agent of the corporation, it is deemed to have been made by the corporation. The term *transfer agent*, as used in this section, means any designee authorized to keep the stock ownership records of a corporation and to record a transfer of title of the stock of such corporation on behalf of such corporation.

(c) *Time for furnishing statements*—(1) *In general.* Each statement required by this

section to be furnished to any person for a calendar year must be furnished to such person on or before January 31 of the year following the year for which the statement is required.

(2) *Extension of time.* An extension of time to furnish statements required by this section may be granted in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6722.

(e) *Effective/applicability date*—(1) *In general.* Upon the date of publication of the Treasury decision adopting the rules of this section as a final regulation in the **Federal Register**, these rules will apply as of January 1, 2007.

(2) *Reliance and transition period.* For stock transfers that are subject to the return requirements under §1.6039-1(a) and (b), and occur during the 2007 and 2008 calendar years, taxpayers may comply with §1.6039-1 of the 2004 final regulations (69 FR 46401) or this section.

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

(Filed by the Office of the Federal Register on July 16, 2008, 8:45 a.m., and published in the issue of the Federal Register for July 17, 2008, 73 F.R. 40999)

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

### Announcement 2008-80

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 September 15, 2008, 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 organizations that were the basis for revocation.

After Bankruptcy Foundation  
Fishers, IN  
The K.L.T. Foundation  
Missoula, MT  
Debt Advocates of America  
Killeen, TX  
Gene & Myrna Heilman Foundation  
Madison, WI  
Darwin Facility  
Suisun, CA  
Credit Counseling Centers of  
America, Inc.  
Fort Lauderdale, FL  
David Aschkenazy Memorial Loan Fund  
Brooklyn, NY  
Helping Hand Corporation  
Gillette, WY  
Cherokee Place Foundation  
Lenoir, NC

## Foundations Status of Certain Organizations

### Announcement 2008-81

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:

2 Extremes, Los Angeles, CA  
Adonai Research and Awareness  
Foundation for Multiple Sclerosis,  
Olney, MD  
African Design Concepts, Inc, Bronx, NY  
All About Dialysis, Inc.,  
Lawrenceville, GA  
Allen Chapel AME Church Center for  
Human Development, Riverside, CA  
Alpha Omega Communities Outreach  
Services, Inc., Fayetteville, NC  
Arlington Shakespeare Society,  
Arlington, TX  
Atkins Residential Care Home,  
Los Angeles, CA  
Auxiliary of the Houston School for Deaf  
Children, Houston, TX  
AWIP, Inc., Conyers, GA  
Berkeley Animal Welfare Fund,  
Berkeley, CA  
Buffalo Eastsiders Standing Together  
Community Association and Crime  
Watch, Inc., Buffalo, NY  
Butts Enterprises, Inc.,  
Lauderdale Lakes, FL  
Care-Ed, Inc., Sarasota, FL  
CCBM Organization for Orphans in  
Liberia, Inc., Charlotte, NC  
Center on Alcohol Drugs and Disability,  
San Mateo, CA  
C'est Ma Vie Homes, Inc.,  
Staten Island, NY

Chief Cornerstone Worldvision,  
Columbia, SC

Christ Exalted Order, Inc.,  
Miami Gardens, FL

Christian Cultural Center Community  
Development Corporation,  
Brooklyn, NY

City Place Neighborhood Development  
Corporation, Bowie, MD

Club Acatlan de Juarez, Compton, CA

Community Development Corporation of  
Columbia, Columbia, SC

Community Threads, Woodinville, WA

Contours Community Development  
Corporation, Frisco, TX

COPLA a NJ Nonprofit Corporation,  
Springlake Heights, NJ

Covenant of Shalom, Inc., Topeka, KS

Coweta Teen Mothers and Babe Service  
Center, Inc., Stone Mountain, GA

Daj' Unlimited, Inc., Fort Lauderdale, FL

Destiny Fullfillment, Inc.,  
Woodbridge, VA

Did You Know fka Exposure,  
Rochester, NY

Dile Foundation, Inc., Baltimore, MD

Doc Stewart's Baseball, Inc.,  
Roseburg, OR

DRG Option Development Corporation,  
Fort Worth, TX

Eden's Gate Foundation, New York, NY

Elder Village Ecological Residence,  
Eugene, OR

Equal Chance Community Development  
Corporation, Griffin, GA

Essential Transitional Services, Inc.,  
Stone Mountain, GA

Extended Hands Community  
Development Corporation,  
Fort Lauderdale, FL

Faith Without Borders, Austin, TX

Family Focus, Port Huron, MI

FeVA Productions, Inc., New York, NY

Fifth Amendment Foundation,  
Malibu, CA

Fire Child Ministries, Inc.,  
Catonsville, MD

Forerunners Ministries, Inglewood, CA

Foundation for People With Disabilities,  
Fulton, NY

Fresh Drink of Water, Los Angeles, CA

Gay Fathers Coalition – Baltimore, Inc.,  
Baltimore, MD

Gifted Elegant Magnificent & Motivated  
Sisters, Incorporated, Atlanta, GA

Global Credit Management, Inc.,  
Boca Raton, FL

Golden West Affordable Housing, Inc.,  
Big Spring, TX

Gracie Jiu-Jitsu Museum, Torrance, CA

Green's Outreach Services,  
Willow Springs, NC

Habitat Research, Inc., Perham, MN

Harvest Ranch, Inc., Cosby, TN

Health Care Alliance Medical Center,  
Inc., Huntington Beach, CA

His Rescue Missions, Studio City, CA

Home of Positive Enlightenment,  
Irvington, NJ

Home School Financial Services  
Association, Brentwood, TN

Homes for You Community Development  
Corporation, Detroit, MI

Horse Hugs, Chapel Hill, NC

House of El Shaddai, Incorporated,  
Evansville, IN

House of Restoration, Lakewood, WA

HPV Foundation, Inc., Bremerton, WA

Huntington Community Services, Inc.,  
Philadelphia, PA

I Still Believe Health and Wellness for  
Young Adults, Los Angeles, CA

Independent Medical Institute,  
Sacramento, CA

Its Harvest Time Ministries International,  
Inc., Orlando, FL

Jacobs Ladder, Summerville, SC

Jasons North Star Ranch, Houston, TX

Joshua Team Benevolence Foundation,  
Groves, TX

Kerwin Phillips Foundation, Red Hill, PA

Kingdom Kids Academy, Inc.,  
Charlotte, NC

LBC Foundation USA, Inc.,  
South San Francisco, CA

Life-Springs Crusades and Ministries,  
Export, PA

Lighthouse Early Learning Center, Inc.,  
Columbia, IL

LOCMA Ministries, Inc., Charlotte, NC

Love the Children, Inc., Titusville, FL

Loving Care Children's Center and Food  
Nutritional Program, Houston, TX

Lutheran Social Service of Syracuse, Inc.,  
Syracuse, NY

MacSwain Senior Association,  
Aransas Pass, TX

Majestic Visions Alliance, Fairburn, GA

Majesty Family Services, Inc.,  
Glendale, AZ

Mandeville Canyon Preservation  
and Conservation Association,  
Los Angeles, CA

Mid-Way Ministries, Canaseraga, NY

Millenium Foundation, Inc.,  
Philadelphia, PA

Minority Home Ownership Council,  
Las Vegas, NV

Mississippi Complex for Outreach and  
Rehabilitation Excellence, Clinton, MS

Missouri Restaurant Association  
Education Foundation, Saint Louis, MO

MMC for Children & Families,  
West Sacramento, CA

National Addiction Therapy Research  
Association, Inc., Salisbury, MD

National Coalition of Blacks for  
Reparations in America Legal Defen,  
Little Rock, AR

Nations of the Drum, Diamond Bar, CA

Native Visions, Prescott, AZ

New Beginnings Faith Center,  
Philadelphia, PA

New Life Outreach Ministry of Pinellas,  
Inc., St. Petersburg, FL

New Millenniums Church, Oakland, CA

Noact, Inc., Lago Vista, TX

Old Homes Restored Community  
Development Corporation, Houston, TX

Operation Reach Community  
Development Corporation, Houston, TX

Organ Buddies, Inc., North Wales, PA

Our Future Vision, Inc., Decatur, GA

Parents Alliance Against Discrimination,  
Inc., Ft. Lauderdale, FL

Parents of Teen Parents, Copley, OH

Peer to Peer International, Inc.,  
Prattville, AL

Pelican House, Incorporated, Houston, TX

Perfect Healing, Inc.,  
North Miami Beach, FL

Place to Go, Newark, DE

Philo-Brotherly Love, Toledo, OH

P. H. P. Ministries Incorporation,  
Nashville, TN

Pony Express Your Self Youth  
Development Program,  
Cape Girardeau, MO

Positive Direction Services, Inc.,  
Alta Loma, CA

Prayer International, Benicia, CA

Project Hope, Inc., Syracuse, NY

Project Self, Inc., Lafayette, LA

Rebuilding Our Communities, Inc.,  
Dorchester, SC

Redeemer Economic & Development  
Ministries, Inc., Temple Hills, MD

Responsible Fathering for Effective  
Change, Inc., Smyrna, GA

Restoration Village Community  
Development Corporation,  
Pikesville, MD

Reuse Center of the Treasure Coast, Inc.,  
Riviera Beach, FL  
RSBC Development and Outreach  
Corporation, Garysburg, NC  
Rural Health International, Vienna, VA  
Rushford Institute for Nanotechnology,  
Rushford, MN  
Russell CEOs, Philadelphia, PA  
S and L Transition House, Orlando, FL  
Sai Hira Ram Trust, Inc., Roseland, NJ  
Sacramento Black Chamber of Commerce  
Foundation, Inc., Sacramento, CA  
Sault Housing Services, Inc.,  
Sault Ste Marie, MI  
Scott's Seafood Cancer Research Fund,  
Sacramento, CA  
Schekinah Mission Center,  
Los Angeles, CA  
Sisters Network, Chicago, IL  
Southwest Health Center, Inc.,  
Bellaire, TX  
Spin Single Parents Integrative Network,  
Sebastopol, CA  
Stephen's Active Adult Day Care,  
Loris, SC  
Strategies 2 Success, Los Angeles, CA  
Success Builders, Inc., Jacksonville, FL  
Tate Outreach Organization, Chicago, IL  
Tax Clinic, Inc., Wayne, PA  
Teach Another Generation, Incorporated,  
Oakland, CA  
Teens for Tomorrow, Austin, TX  
Teen Mothers and Infant Center,  
Itta Bena, MS  
Tomtenhaus Animal Sanctuary,  
Abrams, WI  
Turning Point Life Center, Matteson, IL  
Tuscaloosa Housing Opportunities  
Corporation, Tuscaloosa, AL  
UMOJA Studio, Little Rock, AR  
Urban Educational Resource Center,  
Mobile, AL  
Visions and Dreams Counseling Services,  
Inc., Houston, TX  
Visions of Hope, Louisville, KY  
Volunteer Health Services Foundation,  
Columbus, OH

Walker Holistic Care, Inc., Houston, TX  
W.C. Jones Foundation, Corona, NY  
Westminster Foundation, Inc.,  
Orlando, FL  
Willie R. Davis Scholarship Fund, Inc.,  
Washington, DC  
Women Abuse Resource, Inc.,  
Philadelphia, PA  
Women in Sports and Entertainment,  
Detroit, MI  
Woodstock Foundation, Inc., Canton, GA  
Word of Life Programs, Huntsville, AL  
Workforce Investment Board of Will  
County, Joliet, IL  
World of Voices, Inc., Stockton, CA  
Young Street Ministries Corporation,  
Augusta, GA  
Young Triumph, Inc., Torrance, 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.

---

### **Section 7428(c) Validation of Certain Contributions Made During Pendency of Declaratory Judgment Proceedings**

#### **Announcement 2008-82**

This announcement serves notice to potential donors that the organization listed below has recently filed a timely declara-

tory judgment suit under section 7428 of the Code, challenging revocation of its status as an eligible donee under section 170(c)(2).

Protection under section 7428(c) of the Code begins on the date that the notice of revocation is published in the Internal Revenue Bulletin and ends on the date on which a court first determines that an organization is not described in section 170(c)(2), as more particularly set forth in section 7428(c)(1).

In the case of individual contributors, the maximum amount of contributions protected during this period is limited to \$1,000.00, with a husband and wife being treated as one contributor. This protection is not extended to any individual who was responsible, in whole or in part, for the acts or omissions of the organizations that were the basis for the revocation. This protection also applies (but without limitation as to amount) to organizations described in section 170(c)(2) which are exempt from tax under section 501(a). If the organization ultimately prevails in its declaratory judgment suit, deductibility of contributions would be subject to the normal limitations set forth under section 170.

Chaim Ministries, Inc.  
Los Alamitos, CA  
After Bankruptcy Foundation, Inc.  
Fishers, IN  
Round Rock Band Boosters, Inc.  
Round Rock, TX

---



# Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

## Announcement 2008-83

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

**Disbarred from practice before the IRS**—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

**Suspended from practice before the IRS**—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

**Censured in practice before the IRS**—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

**Monetary penalty**—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

**Disqualification of appraiser**—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement

plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

**Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing**—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

**Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision**—An ALJ, after finding that no answer to OPR's complaint had been filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

**Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal**—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

**Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent**—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR

accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status). An enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

**Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding**—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual's own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (*e.g.*, §10.51) refer to the regulations.

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Alaska</b>				
Juneau	Clark, James F.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from July 28, 2008
<b>California</b>				
Hollywood	Busch, Steven M.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license in Florida)	Indefinite from July 28, 2008
<b>Connecticut</b>				
Greenwich	Russell, Phillip	Attorney	Suspended by default decision in expedited proceeding under §10.82 (conviction under 18 U.S.C. §4, misprison of a felony)	Indefinite from August 1, 2008
<b>Florida</b>				
Atlantic Beach	Berry, Jr., Michael L.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from July 28, 2008
	Busch, Steven M., See California			
Jacksonville	Clance, Wayne D.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from July 28, 2008
<b>Indiana</b>				
Wabash	Smith, Michael J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license in New York)	Indefinite from August 5, 2008
<b>Kentucky</b>				
Pikeville	Linton, Jr., Robert F.	CPA	Suspended by default decision in expedited proceeding under §10.82 (suspension of CPA license)	Indefinite from August 1, 2008

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Kentucky (Continued)</b>				
Louisville	Smith, Jr., Louis M.	Attorney	Suspended by decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from August 1, 2008
<b>Louisiana</b>				
Shreveport	McGinn, Desmond E.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 5, 2008
<b>Maryland</b>				
Catonsville	Antlitz, Ronald E.	CPA	Suspended by consent for admitted violations of §10.51 (failure to timely file Federal income tax returns)	Indefinite from July 25, 2008
<b>Massachusetts</b>				
Needham	Crossen, Gary C.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 5, 2008
Winchester	Curry, Kevin P.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 5, 2008
Cambridge	Peraner, Robert A.	Enrolled Agent	Censured by consent for admitted violations of §10.51 (failure to file Federal income tax returns)	Indefinite from May 12, 2008
Wakefield	Tamagani, Jr., James E.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 5, 2008
Springfield	Viscito, Leonard	CPA	Suspended by decision in expedited proceeding under §10.82 (suspension of CPA license)	Indefinite from August 1, 2008
<b>Michigan</b>				
Marion	Yoder, Daniel L.	Enrolled Agent	Suspended by decision after hearing for violation of §10.51 (failure to file and timely file Federal income tax returns)	May 15, 2008 through May 14, 2010

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Minnesota</b>				
Rochester	Djonne, Terry L.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 5, 2008
	Overboe, David J., See North Dakota			
<b>New York</b>				
New York	Cherry, Gwenerva D.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 5, 2008
Flushing	Manela, Rapheal	CPA	Suspended by default decision in expedited proceeding under §10.82 (conviction under New York law, offering a false instrument for filing)	Indefinite from August 1, 2008
Old Brookville	Moshell, Stuart R.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 5, 2008
	Smith, Michael, J., See Indiana			
<b>North Carolina</b>				
Henderson	Alston, D. Bernard	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from August 5, 2008
Cary	O'Rourke, Neil G.	Attorney	Suspended by decision in expedited proceeding under §10.82 (attorney disbarment)	Indefinite from August 1, 2008
<b>North Dakota</b>				
Fargo	Overboe, David A.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license in Minnesota)	Indefinite from August 1, 2008

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

## Abbreviations

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

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

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

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

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

Bulletins 2008–27 through 2008–37

### Announcements:

2008-62, 2008-27 I.R.B. 74  
2008-63, 2008-28 I.R.B. 114  
2008-64, 2008-28 I.R.B. 114  
2008-65, 2008-31 I.R.B. 279  
2008-66, 2008-29 I.R.B. 164  
2008-67, 2008-29 I.R.B. 164  
2008-68, 2008-30 I.R.B. 244  
2008-69, 2008-32 I.R.B. 318  
2008-70, 2008-32 I.R.B. 318  
2008-71, 2008-32 I.R.B. 321  
2008-72, 2008-32 I.R.B. 321  
2008-73, 2008-33 I.R.B. 391  
2008-74, 2008-33 I.R.B. 392  
2008-75, 2008-33 I.R.B. 392  
2008-76, 2008-33 I.R.B. 393  
2008-77, 2008-33 I.R.B. 394  
2008-78, 2008-34 I.R.B. 453  
2008-79, 2008-35 I.R.B. 568  
2008-80, 2008-37 I.R.B. 706  
2008-81, 2008-37 I.R.B. 706  
2008-82, 2008-37 I.R.B. 708  
2008-83, 2008-37 I.R.B. 709

### Notices:

2008-55, 2008-27 I.R.B. 11  
2008-56, 2008-28 I.R.B. 79  
2008-57, 2008-28 I.R.B. 80  
2008-58, 2008-28 I.R.B. 81  
2008-59, 2008-29 I.R.B. 123  
2008-60, 2008-30 I.R.B. 178  
2008-61, 2008-30 I.R.B. 180  
2008-62, 2008-29 I.R.B. 130  
2008-63, 2008-31 I.R.B. 261  
2008-64, 2008-31 I.R.B. 268  
2008-65, 2008-30 I.R.B. 182  
2008-66, 2008-31 I.R.B. 270  
2008-67, 2008-32 I.R.B. 307  
2008-68, 2008-34 I.R.B. 418  
2008-69, 2008-34 I.R.B. 419  
2008-70, 2008-36 I.R.B. 575  
2008-71, 2008-35 I.R.B. 462

### Proposed Regulations:

REG-161695-04, 2008-37 I.R.B. 699  
REG-164965-04, 2008-34 I.R.B. 450  
REG-143453-05, 2008-32 I.R.B. 310  
REG-146895-05, 2008-37 I.R.B. 700  
REG-142680-06, 2008-35 I.R.B. 565  
REG-120476-07, 2008-36 I.R.B. 679  
REG-129243-07, 2008-27 I.R.B. 32  
REG-138355-07, 2008-32 I.R.B. 311

### Proposed Regulations— Continued:

REG-142040-07, 2008-34 I.R.B. 451  
REG-149405-07, 2008-27 I.R.B. 73  
REG-100464-08, 2008-32 I.R.B. 313  
REG-101258-08, 2008-28 I.R.B. 111  
REG-102122-08, 2008-31 I.R.B. 278  
REG-103146-08, 2008-37 I.R.B. 701  
REG-115457-08, 2008-33 I.R.B. 390  
REG-121698-08, 2008-29 I.R.B. 163

### Revenue Procedures:

2008-32, 2008-28 I.R.B. 82  
2008-33, 2008-28 I.R.B. 93  
2008-34, 2008-27 I.R.B. 13  
2008-35, 2008-29 I.R.B. 132  
2008-36, 2008-33 I.R.B. 340  
2008-37, 2008-29 I.R.B. 137  
2008-38, 2008-29 I.R.B. 139  
2008-39, 2008-29 I.R.B. 143  
2008-40, 2008-29 I.R.B. 151  
2008-41, 2008-29 I.R.B. 155  
2008-42, 2008-29 I.R.B. 160  
2008-43, 2008-30 I.R.B. 186  
2008-44, 2008-30 I.R.B. 187  
2008-45, 2008-30 I.R.B. 224  
2008-46, 2008-30 I.R.B. 238  
2008-47, 2008-31 I.R.B. 272  
2008-48, 2008-36 I.R.B. 586  
2008-49, 2008-34 I.R.B. 423  
2008-50, 2008-35 I.R.B. 464  
2008-51, 2008-35 I.R.B. 562  
2008-52, 2008-36 I.R.B. 587  
2008-53, 2008-36 I.R.B. 678

### Revenue Rulings:

2008-32, 2008-27 I.R.B. 6  
2008-33, 2008-27 I.R.B. 8  
2008-34, 2008-28 I.R.B. 76  
2008-35, 2008-29 I.R.B. 116  
2008-36, 2008-30 I.R.B. 165  
2008-37, 2008-28 I.R.B. 77  
2008-38, 2008-31 I.R.B. 249  
2008-39, 2008-31 I.R.B. 252  
2008-40, 2008-30 I.R.B. 166  
2008-41, 2008-30 I.R.B. 170  
2008-42, 2008-30 I.R.B. 175  
2008-43, 2008-31 I.R.B. 258  
2008-44, 2008-32 I.R.B. 292  
2008-45, 2008-34 I.R.B. 403  
2008-46, 2008-36 I.R.B. 572

### Treasury Decisions:

9401, 2008-27 I.R.B. 1  
9402, 2008-31 I.R.B. 254  
9403, 2008-32 I.R.B. 285  
9404, 2008-32 I.R.B. 280

### Treasury Decisions— Continued:

9405, 2008-32 I.R.B. 293  
9406, 2008-32 I.R.B. 287  
9407, 2008-33 I.R.B. 330  
9408, 2008-33 I.R.B. 323  
9409, 2008-29 I.R.B. 118  
9410, 2008-34 I.R.B. 414  
9411, 2008-34 I.R.B. 398  
9412, 2008-37 I.R.B. 687  
9413, 2008-34 I.R.B. 404  
9414, 2008-35 I.R.B. 454  
9415, 2008-36 I.R.B. 570  
9417, 2008-37 I.R.B. 693

<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2008–1 through 2008–26 is in Internal Revenue Bulletin 2008–26, dated June 30, 2008.

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

Bulletins 2008–27 through 2008–37

### Announcements:

#### 2008-64

Corrected by  
Ann. 2008-71, 2008-32 I.R.B. 321

#### 2008-72

Corrected by  
Ann. 2008-78, 2008-34 I.R.B. 453

### Notices:

#### 99-48

Superseded by  
Rev. Proc. 2008-40, 2008-29 I.R.B. 151

#### 2000-9

Obsoleted by  
Rev. Proc. 2008-41, 2008-29 I.R.B. 155

#### 2004-2

Amplified by  
Notice 2008-59, 2008-29 I.R.B. 123

#### 2004-50

Amplified by  
Notice 2008-59, 2008-29 I.R.B. 123

#### 2006-88

Modified and superseded by  
Notice 2008-60, 2008-30 I.R.B. 178

#### 2007-22

Amplified by  
Notice 2008-59, 2008-29 I.R.B. 123

### Proposed Regulations:

#### REG-129243-07

Corrected by  
Ann. 2008-75, 2008-33 I.R.B. 392

#### REG-151135-07

Hearing scheduled by  
Ann. 2008-64, 2008-28 I.R.B. 114

#### REG-101258-08

Corrected by  
Ann. 2008-73, 2008-33 I.R.B. 391

### Revenue Procedures:

#### 92-25

Superseded by  
Rev. Proc. 2008-41, 2008-29 I.R.B. 155

#### 92-83

Obsoleted by  
Rev. Proc. 2008-37, 2008-29 I.R.B. 137

#### 2001-10, section 6.02(1)(a)

Modified and amplified by  
Rev. Proc. 2008-52, 2008-36 I.R.B. 587

### Revenue Procedures— Continued:

#### 2001-42

Superseded by  
Rev. Proc. 2008-39, 2008-29 I.R.B. 143

#### 2002-9

Clarified, modified, amplified, and superseded by  
Rev. Proc. 2008-52, 2008-36 I.R.B. 587  
Modified and amplified by  
Rev. Proc. 2008-43, 2008-30 I.R.B. 186

#### 2002-28, section 7.02(1)(a)

Modified and amplified by  
Rev. Proc. 2008-52, 2008-36 I.R.B. 587

#### 2005-29

Superseded by  
Rev. Proc. 2008-49, 2008-34 I.R.B. 423

#### 2006-27

Modified and superseded by  
Rev. Proc. 2008-50, 2008-35 I.R.B. 464

#### 2006-29

Superseded by  
Rev. Proc. 2008-34, 2008-27 I.R.B. 13

#### 2006-34

Superseded by  
Rev. Proc. 2008-44, 2008-30 I.R.B. 187

#### 2007-14

Superseded by  
Rev. Proc. 2008-52, 2008-36 I.R.B. 587

#### 2007-19

Superseded by  
Rev. Proc. 2008-39, 2008-29 I.R.B. 143

#### 2007-42

Superseded by  
Rev. Proc. 2008-32, 2008-28 I.R.B. 82

#### 2007-43

Superseded by  
Rev. Proc. 2008-33, 2008-28 I.R.B. 93

#### 2007-49

Section 3 modified and superseded by  
Rev. Proc. 2008-50, 2008-35 I.R.B. 464

#### 2007-50

Superseded by  
Rev. Proc. 2008-36, 2008-33 I.R.B. 340

#### 2007-70

Modified by  
Ann. 2008-63, 2008-28 I.R.B. 114

#### 2007-72

Amplified and superseded by  
Rev. Proc. 2008-47, 2008-31 I.R.B. 272

#### 2008-12

Modified and superseded by  
Rev. Proc. 2008-35, 2008-29 I.R.B. 132

### Revenue Procedures— Continued:

#### 2008-43

Modified by  
Rev. Proc. 2008-52, 2008-36 I.R.B. 587

### Revenue Rulings:

#### 67-213

Amplified by  
Rev. Rul. 2008-40, 2008-30 I.R.B. 166

#### 71-234

Modified by  
Rev. Proc. 2008-43, 2008-30 I.R.B. 186

#### 76-273

Obsoleted by  
T.D. 9414, 2008-35 I.R.B. 454

#### 77-480

Modified by  
Rev. Proc. 2008-43, 2008-30 I.R.B. 186

#### 82-105

Obsoleted by  
T.D. 9414, 2008-35 I.R.B. 454

#### 91-17

Amplified by  
Rev. Proc. 2008-41, 2008-29 I.R.B. 155  
Rev. Proc. 2008-42, 2008-29 I.R.B. 160  
Superseded in part by  
Rev. Proc. 2008-40, 2008-29 I.R.B. 151

#### 2005-6

Amplified by  
Rev. Proc. 2008-38, 2008-29 I.R.B. 139

#### 2008-12

Amplified by  
Rev. Rul. 2008-38, 2008-31 I.R.B. 249  
Clarified by  
Ann. 2008-65, 2008-31 I.R.B. 279

### Treasury Decisions:

#### 9391

Corrected by  
Ann. 2008-74, 2008-33 I.R.B. 392

<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2008–1 through 2008–26 is in Internal Revenue Bulletin 2008–26, dated June 30, 2008.











U.S. GOVERNMENT  
PRINTING OFFICE  
KEEPING AMERICA INFORMED

Order Processing Code:  
3465

Easy Secure Internet:  
bookstore.gpo.gov

## Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

Toll Free: 866 512-1800  
DC Area: 202 512-2900  
Fax: 202 512-2350

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

### Publications

Qty.	Stock Number	Title	Price Each	Total Price
	049-004-02467-5	Cum. Bulletin 1999-3	20.40	
	049-004-02462-4	Cum. Bulletin 2001-2 (Jul-Dec)	24.00	
	049-004-02460-2	Cum. Bulletin 2001-3	71.00	
	049-004-02470-5	Cum. Bulletin 2002-2 (Jul-Dec)	28.80	
	049-004-02466-1	Cum. Bulletin 2002-3	54.00	
	049-004-02463-7	Cum. Bulletin 2004-2 (July-Dec)	54.00	
	049-004-02469-8	Cum. Bulletin 2005-2	56.00	
Total for Publications				

### Subscriptions

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

**NOTE:** Price includes regular shipping and handling and is subject to change. International customers please add 40 percent.

**Standing Order Service\***

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

Qty.	Standing Order	Title
	ZRSC	Internal Revenue Cumulative Bulletins

**Authorization**

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:  
(enter account information at right)

VISA  MasterCard  Discover/NOVUS  American Express  
 Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)  
\_\_\_\_\_

Please print or type your name.  
\_\_\_\_\_

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

**SuDocs Deposit Account**

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

**YES!** Open a SOD Deposit Account for me so I can order future publications quickly and easily.  
I am enclosing the \$50 initial deposit.



### Check method of payment:

- Check payable to Superintendent of Documents
- SOD Deposit Account  -
- VISA  MasterCard  Discover/Novus  American Express

(expiration date)

*Thank you for your Order!*

Authorizing signature

0000

Company or personal name

(Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

#### \*Standing Order Service

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

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

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

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

# INTERNAL REVENUE BULLETIN

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

## CUMULATIVE BULLETINS

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

---

## ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

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

---

## INTERNAL REVENUE BULLETINS ON CD-ROM

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

---

## HOW TO ORDER

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

---

## WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

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

---

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

Official Business  
Penalty for Private Use, \$300