

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. 9595, page 71.

Final regulations under section 904 of the Code provide rules concerning the treatment of overall foreign and domestic losses, as well as separate limitation losses, under sections 904(f) and (g).

EMPLOYEE PLANS

Notice 2012-46, page 86.

This notice provides guidance in the form of questions and answers with respect to the notice requirements of section 101(j) of the Employee Retirement Income Security Act of 1974 (ERISA), which requires that notice be provided to participants and beneficiaries relating to certain limitations on benefits in pension plans imposed under section 206(g) of ERISA.

EXCISE TAX

T.D. 9596, page 84.

REG-125570-11, page 93.

Final, temporary, and proposed regulations under section 7701 of the Code provide that qualified subchapter S subsidiaries and single-owner eligible entities that are treated as disregarded entities for federal tax purposes are treated as separate entities for purposes of the indoor tanning services excise tax imposed by section 5000B.

ADMINISTRATIVE

T.D. 9596, page 84.

REG-125570-11, page 93.

Final, temporary, and proposed regulations under section 7701 of the Code provide that qualified subchapter S subsidiaries and single-owner eligible entities that are treated as disregarded entities for federal tax purposes are treated as separate entities for purposes of the indoor tanning services excise tax imposed by section 5000B.

Finding Lists begin on page ii.



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

force the law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 904.—Limitations on Credit

26 CFR 1.904(j)-1: Overall foreign loss and the overall foreign loss account.

T.D. 9595

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Treatment of Overall Foreign and Domestic Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations with respect to a provision of the Internal Revenue Code (Code) relating to the recapture of overall domestic losses that was enacted as part of the American Jobs Creation Act of 2004 (AJCA). These regulations provide guidance regarding these changes, as well as updated guidance with respect to overall foreign losses and separate limitation losses, and affect individuals and corporations claiming foreign tax credits.

DATES: *Effective Date:* These regulations are effective on June 22, 2012.

Applicability Dates: For dates of applicability, see §§1.904(f)-1(g), 1.904(f)-2(e), 1.904(f)-7(f), 1.904(f)-8(c), 1.904(g)-1(f), 1.904(g)-2(d), 1.904(g)-3(k), and 1.1502-9(e).

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Parry, (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 21, 2007, a notice of proposed rulemaking by cross-reference to

temporary regulations (REG-141399-07, 2008-1 C.B. 470) under section 904 of the Code and temporary regulations (T.D. 9371, 2008-1 C.B. 447) (2007 temporary regulations) were published in the **Federal Register** at [72 FR 72645] and [72 FR 72592], respectively. No written comments were received. A public hearing was not requested and none was held. This Treasury decision adopts the proposed regulation with the changes discussed in this preamble.

Explanation of Changes

I. Dispositions of Property under Section 904(f)(3)

Section 904(f)(3) provides that if a taxpayer disposes of certain property used or held for use predominantly without the United States in a trade or business, gain is recognized on that disposition and treated as foreign source income, regardless of whether the gain would otherwise be recognized, to the extent of any overall foreign loss account in the separate category of foreign source taxable income generated by the property. Section 1.904(f)-2(d) provides separate rules for dispositions in which gain is recognized irrespective of section 904(f)(3) and dispositions in which the gain would not otherwise be recognized.

A question has arisen regarding dispositions in which gain is recognized irrespective of section 904(f)(3) and the recognized gain is otherwise treated as U.S. source income under the Code. The Treasury Department and the IRS believe that the language of section 904(f)(3)(A) is clear that gain on such dispositions is recharacterized as foreign source income only to the extent of the applicable section 904(f)(3) recapture amount. Consistent with the statutory language, the regulations clarify that this limit on recharacterization applies. The amount of gain recharacterized as foreign source is equal to the lesser of the total recognized gain or the balance in the overall foreign loss account remaining after any other overall foreign loss recapture pursuant to section 904(f)(1) has been made.

II. Adjustments for capital gains and losses and qualified dividend income

The 2007 temporary regulations provide rules coordinating the application of section 904(b), which addresses the effect of capital gains and losses on the foreign tax credit limitation, and section 904(g), which addresses overall domestic losses and the recapture of such losses. Section 1.904(g)-1T(c)(2), which defines the term domestic loss, provides that if a taxpayer has any capital gains or losses, the amount of the domestic loss is determined by taking into account adjustments under section 904(b)(2) and §1.904(b)-1. If the taxpayer has capital gains or losses, §1.904(g)-1T(d)(3) provides that the amount by which an overall domestic loss reduces foreign source income in a taxable year is determined in accordance with §1.904(b)-1(h)(1)(i) and (h)(1)(iii).

The 2007 temporary regulations followed the approach of the coordination rules in §1.904(b)-1(h), which generally provide that adjustments under section 904(b) to capital gains and losses and qualified dividend income (section 904(b) adjustments) are taken into account first before applying the overall foreign loss provisions of section 904(f). These final regulations retain that basic approach; however, they revise several provisions of the 2007 temporary regulations and add new provisions to implement the mechanics of this coordination rule.

First, §1.904(g)-1(c)(2) and (d)(3) are revised regarding the calculation of an overall domestic loss. These revisions reflect the fact that the regulations under section 904(b) do not provide specific adjustments to determine U.S. source loss on a stand-alone basis, but rather define the amount of U.S. source loss that offsets foreign source taxable income under section 904(f)(5)(D) as adjusted foreign taxable income, less adjusted worldwide taxable income. The calculation of the overall domestic loss is therefore expressly coordinated with the calculation of the section 904(f)(5)(D) amount as determined under §1.904(b)-1(h)(1)(iii).

Second, §1.904(g)-2(b) is revised to clarify that section 904(b) adjustments

must be made for capital gains and losses and qualified dividend income before determining how much U.S. source taxable income is available to recapture an overall domestic loss account. Because the regulations under section 904(b) do not provide specific adjustments to determine U.S. source taxable income on a stand-alone basis, §1.904(g)-2(b) provides that U.S. source taxable income available to recapture an overall domestic loss account is determined following the principles of §1.904(b)-1(h)(1)(i), which provides rules on making the section 904(b) adjustments in determining foreign source taxable income.

Third, a new step is added to the ordering rules in §1.904(g)-3 to provide that any section 904(b) adjustments for capital gains and losses and qualified dividend income are made after determining the amount of net operating loss carryover, if any, in Step One, but before allocating losses or recapturing loss accounts in steps 3 through 7.

Finally, the regulations have been revised to clarify that coordination with the section 904(b) provisions requires adjustments not only to capital gains and losses but to qualified dividend income as well.

III. Miscellaneous revisions

Other revisions have been made to the 2007 temporary regulations that have no intended substantive effect beyond improving the readability of the provisions. These include clarifying the term “section 904(f)(1) recapture amount” in §1.904(f)-2(c)(1) and simplifying the definitions of “separate limitation loss” and “separate limitation loss account” in §1.904(f)-7(b)(3) and (c). The explanation for the taxable year in which an overall domestic loss is sustained in §1.904(g)-1(a)(2) is clarified as well.

Section 1.904(g)-3(i) is reserved. The Treasury Department and the IRS will promulgate guidance addressing adjustments required under section 904(f)(3) with respect to disposition of property.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined

that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the 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, the notice of proposed rule-making preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Jeffrey L. Parry of the Office of Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.904(g)-3 also issued under 26 U.S.C. 904(g)(4). * * *

Par. 2. Section 1.904(f)-0 is amended as follows:

1. In §1.904(f)-1, entries for paragraphs (a)(2), (d)(4) and (g) are added.

2. In §1.904(f)-2, entries for paragraphs (c), (c)(1), (d)(3)(i), (d)(3)(ii) and (e) are added.

3. In §§1.904(f)-7 and 1.904(f)-8, paragraph entries are added.

The additions and revisions read as follows:

§1.904(f)-0 Outline of regulation provisions.

* * * * *

§1.904(f)-1 Overall foreign loss and the overall foreign loss account.

(a) * * *

(2) Application to post-1986 taxable years.

* * * * *

(d) * * *

(4) Adjustments for capital gains and losses.

* * * * *

(g) Effective/applicability date.

§1.904(f)-2 Recapture of overall foreign losses.

* * * * *

(c) Section 904(f)(1) recapture.

(1) In general.

* * * * *

(d) * * *

(3) * * *

(i) Foreign source gain.

(ii) U.S. source gain.

* * * * *

(e) Effective/applicability.

§1.904(f)-7 Separate limitation loss and the separate limitation loss account.

(a) Overview of regulations.

(b) Definitions.

(1) Separate category.

(2) Separate limitation income.

(3) Separate limitation loss.

(c) Separate limitation loss account.

(d) Additions to separate limitation loss accounts.

(1) General rule.

(2) Separate limitation losses of another taxpayer.

(3) Additions to separate limitation loss account created by loss carryovers.

(e) Reductions of separate limitation loss accounts.

(1) Pre-recapture reduction for amounts allocated to other taxpayers.

(2) Reduction for offsetting loss accounts.

(3) Reduction for amounts recaptured.

(f) Effective/applicability date.

§1.904(f)-8 Recapture of separate limitation loss accounts.

(a) In general.

(b) Effect of recharacterization of separate limitation income on associated taxes.

(c) Effective/applicability date.

Par. 3. Section 1.904(f)-0T is removed.

Par. 4. In §1.904(f)-1, paragraphs (a)(2), (d)(4), and (g) are revised to read as follows:

§1.904(f)-1 Overall foreign loss and the overall foreign loss account.

(a) * * *

(2) *Application to post-1986 taxable years.* The principles of §§1.904(f)-1 through 1.904(f)-5 shall apply to any overall foreign loss sustained in taxable years beginning after December 31, 1986, modified so as to take into account the effect of statutory amendments.

* * * * *

(d) * * *

(4) *Adjustments for capital gains and losses and qualified dividend income.* If a taxpayer has capital gains or losses or qualified dividend income, as defined in section 1(h)(11), the taxpayer shall make adjustments to such capital gains and losses and qualified dividend income to the extent required under section 904(b)(2) and §1.904(b)-1 before applying the provisions of §1.904(f)-1. See §1.904(b)-1(h).

* * * * *

(g) *Effective/applicability date.* Paragraphs (a)(2) and (d)(4) of this section shall apply to taxable years beginning on or after January 1, 2012. Taxpayers may choose to apply paragraphs (a)(2) and (d)(4) of this section to other taxable years beginning after December 21, 2007, including periods covered by 26 CFR §1.904(f)-1T (revised as of April 1, 2010).

Par. 5. Section 1.904(f)-1T is removed.

Par. 6. In §1.904(f)-2, paragraphs (c)(1), (c)(5) *Example 4*, (d)(1), (d)(3) and (e) are revised to read as follows:

§1.904(f)-2 Recapture of overall foreign losses.

* * * * *

(c) * * * (1) *In general.* In a taxable year in which a taxpayer elects the benefits of section 901 or section 30A, the section 904(f)(1) recapture amount is the amount of foreign source taxable income subject to recharacterization in a taxable year in which recapture of an overall foreign loss is required under paragraph (a) of this section. The section 904(f)(1) recapture amount equals the lesser of the aggregate amount of maximum potential recapture in all overall foreign loss accounts or fifty percent of the taxpayer's total foreign source taxable income. If the aggregate

amount of maximum potential recapture in all overall foreign loss accounts exceeds fifty percent of the taxpayer's total foreign source taxable income, foreign source taxable income in each separate category with an overall foreign loss account is recharacterized in an amount equal to the section 904(f)(1) recapture amount, multiplied by the maximum potential recapture in the overall foreign loss account, divided by the aggregate amount of maximum potential recapture in all overall foreign loss accounts. The maximum potential recapture in an overall foreign loss account in a separate category is the lesser of the balance in that overall foreign loss account or the foreign source taxable income for the year in the same separate category as the loss account. If, in any taxable year, in accordance with sections 164(a) and 275(a)(4)(A), a taxpayer deducts rather than credits its foreign taxes, recapture is applied to the extent of the lesser of—

(i) The balance in the overall foreign loss account in each separate category; or

(ii) Foreign source taxable income (net of foreign taxes) in each separate category.

* * * * *

(5) * * *

Example 4. Y Corporation is a domestic corporation that does business in the United States and abroad. On December 31, 2007, the balance in Y's general category overall foreign loss account is \$500, all of which is attributable to a loss incurred in 2007. Y has no other loss accounts subject to recapture. For 2008, Y has U.S. source taxable income of \$400 and foreign source taxable income of \$300 in the general category and \$900 in the passive category. Under paragraph (c)(1) of this section, the amount of Y's general category income subject to recharacterization is the lesser of the aggregate maximum potential recapture or 50% of the total foreign source taxable income. In this case, Y's aggregate maximum potential recapture is \$300 (the lesser of the \$500 balance in the general category overall foreign loss account or \$300 foreign source income in the general category for the year), which is less than 50% of Y's total foreign source taxable income (\$1200 x 50% = \$600). Therefore, pursuant to paragraph (c) of this section, \$300 of foreign source income in the general category is recharacterized as U.S. source income. The balance in Y's general category overall foreign loss account is reduced to \$200 in accordance with §1.904(f)-1(e)(2).

* * * * *

(d) * * *

(1) *In general.* If a taxpayer disposes of property used or held for use predominantly without the United States in a trade or business during a taxable year and that property generates foreign source taxable

income subject to a separate limitation to which paragraph (a) of this section applies, the applicable overall foreign loss account shall be recaptured as provided in paragraphs (d)(2), (d)(3), and (d)(4) of this section. See paragraph (d)(5) of this section for definitions. See the ordering rules under §1.904(g)-3(f) and (i) for coordination with other loss recapture under section 904(f) and (g).

* * * * *

(3) *Dispositions where gain is recognized irrespective of section 904(f)(3)—(i) Foreign source gain.* If a taxpayer recognizes foreign source gain in a separate category on the disposition of property described in paragraph (d)(1) of this section, and there is a balance in a taxpayer's overall foreign loss account that is attributable to a loss in such separate category after applying paragraph (c) of this section, an additional portion of such balance shall be recaptured in accordance with paragraphs (a) and (b) of this section. The amount recaptured shall be the lesser of such balance or the full amount of the foreign source gain recognized on the disposition that was not previously recharacterized.

(ii) *U.S. source gain.* If a taxpayer recognizes U.S. source gain on the disposition of property described in paragraph (d)(1) of this section, and there is a balance in a taxpayer's overall foreign loss account that is attributable to a loss in the separate category to which the income generated by such property is assigned after applying paragraph (c) of this section, an amount of the gain shall be treated as foreign source and an additional portion of such balance equal to that amount shall be recaptured in accordance with paragraphs (a) and (b) of this section. The amount of gain treated as foreign source and the amount of overall foreign loss recaptured shall be the lesser of the balance in the overall foreign loss account or the full amount of the gain recognized on the disposition.

* * * * *

(e) *Effective/applicability date.* Paragraphs (c)(1), (c)(5) *Example 4*, (d)(1) and (d)(3) of this section shall apply to taxable years beginning on or after January 1, 2012. Taxpayers may choose to apply paragraphs (c)(1), (c)(5) *Example 4*, (d)(1), and (d)(3) of this section to other taxable years beginning after December 21, 2007, including periods

covered by 26 CFR §1.904(f)-2T (revised as of April 1, 2010).

Par. 7. Section 1.904(f)-2T is removed.

Par. 8. Section 1.904(f)-7 is revised to read as follows:

§1.904(f)-7 Separate limitation loss and the separate limitation loss account.

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's separate limitation losses, for establishing separate limitation loss accounts, and for making additions to and reducing such accounts for purposes of section 904(f). Section 1.904(f)-8 provides rules for recharacterizing the balance in any separate limitation loss account under the general recharacterization rule of section 904(f)(5)(C).

(b) *Definitions.* The definitions in paragraphs (b)(1) through (b)(4) of this section apply for purposes of this section and §§1.904(f)-8 and 1.904(g)-3.

(1) *Separate category* means each separate category of income described in section 904(d) and any other category of income described in §1.904-4(m). For example, income subject to section 901(j) or section 904(h)(10) is income in a separate category.

(2) *Separate limitation income* means, with respect to any separate category, the taxable income from sources outside the United States, separately computed for that category for the taxable year. Separate limitation income shall be determined by taking into account any adjustments for capital gains and losses and qualified dividend income, as defined in section 1(h)(11), under section 904(b)(2) and §1.904(b)-1. See §1.904(b)-1(h)(1)(i).

(3) *Separate limitation loss* means, with respect to any separate category, the amount by which the foreign source gross income in that category is exceeded by the sum of expenses, losses and other deductions (not including any net operating loss deduction under section 172(a) or any expropriation loss or casualty loss described in section 907(c)(4)(D)(iii)) properly apportioned or allocated to that separate category for the taxable year. Separate limitation losses shall be determined by taking into account any adjustments for capital gains and losses and qualified dividend income under section 904(b)(2) and §1.904(b)-1. See §1.904(b)-1(h)(1)(i).

(c) *Separate limitation loss account.* Any taxpayer that sustains a separate limitation loss that is allocated to reduce separate limitation income in one or more other separate categories of the taxpayer under the rules of §1.904(g)-3 must establish a separate limitation loss account for the loss with respect to each such other separate category. The balance in any separate limitation loss account represents the amount of such separate limitation loss that is subject to recapture in a given taxable year pursuant to §1.904(f)-8 and section 904(f)(5)(F). From year to year, amounts may be added to or subtracted from the balance in such loss accounts, as provided in paragraphs (d) and (e) of this section.

(d) *Additions to separate limitation loss accounts—(1) General rule.* A taxpayer's separate limitation loss as defined in paragraph (b)(3) of this section shall be added to the applicable separate limitation loss accounts at the end of its taxable year to the extent that the separate limitation loss reduces separate limitation income in one or more other separate categories in that taxable year or in a year to which the loss has been carried back. For rules with respect to net operating loss carryovers, see paragraph (d)(3) of this section and §1.904(g)-3.

(2) *Separate limitation losses of another taxpayer.* If any portion of any separate limitation loss account of another taxpayer is allocated to the taxpayer in accordance with §1.1502-9 (relating to consolidated separate limitation losses) the taxpayer shall add such amount to its applicable separate limitation loss account.

(3) *Additions to separate limitation loss account created by loss carryovers.* The taxpayer shall add to each separate limitation loss account all net operating loss carryovers to the current taxable year to the extent that separate limitation losses included in the net operating loss carryovers reduced foreign source income in one or more other separate categories for the taxable year.

(e) *Reductions of separate limitation loss accounts.* The taxpayer shall subtract the following amounts from its separate limitation loss accounts at the end of its taxable year in the following order as applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* A separate limitation loss account is reduced by the amount of any separate limitation loss account that is allocated to another taxpayer in accordance with §1.1502-9 (relating to consolidated separate limitation losses).

(2) *Reduction for offsetting loss accounts.* A separate limitation loss account is reduced to take into account any netting of separate limitation loss accounts under §1.904(g)-3(d)(1).

(3) *Reduction for amounts recaptured.* A separate limitation loss account is reduced by the amount of any separate limitation income that is earned in the same separate category as the separate limitation loss and that is recharacterized in accordance with §1.904(f)-8 (relating to recapture of separate limitation losses) or section 904(f)(5)(F) (relating to recapture of separate limitation loss accounts out of gain realized from certain dispositions).

(f) *Effective/applicability date.* This section applies to taxpayers that sustain separate limitation losses in taxable years beginning on or after January 1, 2012. Taxpayers may choose to apply this section to separate limitation losses sustained in other taxable years beginning after December 21, 2007, including periods covered by 26 CFR §1.904(f)-7T (revised as of April 1, 2010). For rules relating to taxable years beginning after December 31, 1986, and on or before December 21, 2007, see section 904(f)(5).

Par. 8. Section 1.904(f)-7T is removed.

Par. 9. Section 1.904(f)-8 is revised to read as follows:

§1.904(f)-8 Recapture of separate limitation loss accounts.

(a) *In general.* A taxpayer shall recapture a separate limitation loss account as provided in this section. If the taxpayer has a separate limitation loss account or accounts in any separate category (the "loss category") and the loss category has income in a subsequent taxable year, the income shall be recharacterized as income in that other category or categories. The amount of income recharacterized shall not exceed the aggregate balance in all separate limitation loss accounts for the loss category as determined under §1.904(f)-7. If the taxpayer has more than

one separate limitation loss account in a loss category, and there is not enough income in the loss category to recapture all of the loss accounts, then separate limitation income in the loss category shall be recharacterized as separate limitation income in the other separate categories on a proportionate basis. This is determined by multiplying the total separate limitation income subject to recharacterization by a fraction, the numerator of which is the amount in a particular separate limitation loss account and the denominator of which is the total amount in all separate limitation loss accounts for the loss category.

(b) *Effect of recharacterization of separate limitation income on associated taxes.* Recharacterization of income under paragraph (a) of this section shall not result in the recharacterization of any tax. The rules of §1.904-6, including the rules that the taxes are allocated on an annual basis and that foreign taxes paid on U.S. source income shall be allocated to the separate category that includes that U.S. source income (see §1.904-6(a)), shall apply for purposes of allocating taxes to separate categories. Allocation of taxes pursuant to §1.904-6 shall be made before the recapture of any separate limitation loss accounts of the taxpayer pursuant to the rules of this section.

(c) *Effective/applicability date.* This section applies to taxpayers that sustain separate limitation losses in taxable years beginning on or after January 1, 2012. Taxpayers may choose to apply this section to separate limitation losses sustained in other taxable years beginning after December 21, 2007, including periods covered by 26 CFR §1.904(f)-8T (revised as of April 1, 2010). For rules relating to taxable years beginning after December 31, 1986, and on or before December 21, 2007, see section 904(f)(5).

Par. 10. Section 1.904(f)-8T is removed.

Par. 11. Section 1.904(g)-0 is amended by adding the entries for §§1.904(g)-1, 1.904(g)-2, and 1.904(g)-3 to read as follows:

§1.904(g)-0 Outline of regulation provisions.

* * * * *

§1.904(g)-1 Overall domestic loss and the overall domestic loss account.

- (a) Overview of regulations.
- (b) Overall domestic loss accounts.
 - (1) In general.
 - (2) Taxable year in which overall domestic loss is sustained.
 - (c) Determination of a taxpayer's overall domestic loss.
 - (1) Overall domestic loss defined.
 - (2) Domestic loss defined.
 - (3) Qualified taxable year defined.
 - (4) Method of allocation and apportionment of deductions.
 - (d) Additions to overall domestic loss accounts.
 - (1) General rule.
 - (2) Overall domestic loss of another taxpayer.
 - (3) Adjustments for capital gains and losses.
 - (e) Reductions of overall domestic loss accounts.
 - (1) Pre-recapture reduction for amounts allocated to other taxpayers.
 - (2) Reduction for amounts recaptured.
 - (f) Effective/applicability date.

§1.904(g)-2 Recapture of overall domestic losses.

- (a) In general.
- (b) Determination of U.S. source taxable income for purposes of recapture.
- (c) Section 904(g)(1) recapture.
- (d) Effective/applicability date.

§1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for the recapture of separate limitation losses, overall foreign losses, and overall domestic losses.

- (a) In general.
- (b) Step One: Allocation of net operating loss and net capital loss carryovers.
 - (1) In general.
 - (2) Full net operating loss carryover.
 - (3) Partial net operating loss carryover.
 - (4) Net capital loss carryovers.
- (c) Step Two: Section 904(b) adjustments.
- (d) Step Three: Allocation of separate limitation losses.
- (e) Step Four: Allocation of U.S. source losses.

(f) Step Five: Recapture of overall foreign loss accounts.

(g) Step Six: Recapture of separate limitation loss accounts.

(h) Step Seven: Recapture of overall domestic loss accounts.

(i) [Reserved].

(j) Examples.

(k) Effective/applicability date.

Par. 12. Section 1.904(g)-0T is removed.

Par. 13. Section 1.904(g)-1 is revised to read as follows:

§1.904(g)-1 Overall domestic loss and the overall domestic loss account.

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's overall domestic losses, for establishing overall domestic loss accounts, and for making additions to and reducing such accounts for purposes of section 904(g). Section 1.904(g)-2 provides rules for recapturing the balance in any overall domestic loss account under the general recharacterization rule of section 904(g)(1). Section 1.904(g)-3 provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and the recapture of separate limitation losses, overall foreign losses and overall domestic losses.

(b) *Overall domestic loss accounts—(1) In general.* Any taxpayer that sustains an overall domestic loss under paragraph (c) of this section must establish an overall domestic loss account for such loss with respect to each separate category, as defined in §1.904(f)-7(b)(1), of the taxpayer in which foreign source income is offset by the domestic loss. The balance in each overall domestic loss account represents the amount of such overall domestic loss subject to recapture in a given taxable year. From year to year, amounts may be added to or subtracted from the balances in such loss accounts as provided in paragraphs (d) and (e) of this section.

(2) *Taxable year in which overall domestic loss is sustained.* When a domestic loss is carried back or carried forward as part of a net operating loss, and offsets foreign source income in a carryover year, the resulting overall domestic loss is treated as sustained in the later of the year in which the domestic loss was incurred

or the year to which the loss was carried. Accordingly, when a taxpayer incurs a domestic loss that is carried back as part of a net operating loss to offset foreign source income in a qualified taxable year, as defined in paragraph (c)(3) of this section, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss was incurred and not in the earlier year in which the loss offset foreign source income. In addition, when a taxpayer incurs a domestic loss that is carried forward as part of a net operating loss and applied to offset foreign source income in a later taxable year, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss offsets foreign source income and not in the earlier year in which the loss was incurred. For example, if a taxpayer incurs a domestic loss in the 2007 taxable year that is carried back to the 2006 qualified taxable year and offsets foreign source income in 2006, the resulting overall domestic loss is treated as sustained in the 2007 taxable year. If a taxpayer incurs a domestic loss in a pre-2007 taxable year that is carried forward to a post-2006 qualified taxable year and offsets foreign source income in the post-2006 year, the resulting overall domestic loss is treated as sustained in the post-2006 year. An overall domestic loss account is established, or increased under paragraph (d) of this section, at the end of the taxable year in which the overall domestic loss is treated as sustained and will be recaptured from U.S. source income arising in subsequent taxable years.

(c) *Determination of a taxpayer's overall domestic loss*—(1) *Overall domestic loss defined.* For taxable years beginning after December 31, 2006, a taxpayer sustains an overall domestic loss—

(i) In any qualified taxable year in which its domestic loss for such taxable year offsets foreign source taxable income for the taxable year or for any preceding qualified taxable year by reason of a carryback; and

(ii) In any other taxable year in which the domestic loss for such taxable year offsets foreign source taxable income for any preceding qualified taxable year by reason of a carryback.

(2) *Domestic loss defined.* For purposes of this section and §§1.904(g)-2 and 1.904(g)-3, the term *domestic loss* means

the amount by which the U.S. source gross income for the taxable year is exceeded by the sum of the expenses, losses, and other deductions properly apportioned or allocated to such income, taking into account any net operating loss carried forward from a prior taxable year, but not any loss carried back. If a taxpayer has any capital gains or losses or qualified dividend income, as defined in section 1(h)(11), the amount of the taxpayer's domestic loss that offsets foreign source income must be determined taking into account adjustments under section 904(b)(2). See §1.904(g)-1(d)(3) for further guidance.

(3) *Qualified taxable year defined.* For purposes of this section and §§1.904(g)-2 and 1.904(g)-3, the term *qualified taxable year* means any taxable year for which the taxpayer chooses the benefits of section 901.

(4) *Method of allocation and apportionment of deductions.* In determining its overall domestic loss, a taxpayer shall allocate and apportion expenses, losses, and other deductions to U.S. source gross income in accordance with sections 861(b) and 865 and the regulations thereunder, including §§1.861-8 through 1.861-14T.

(d) *Additions to overall domestic loss accounts*—(1) *General rule.* A taxpayer's overall domestic loss as determined under paragraph (c) of this section shall be added to the applicable overall domestic loss account at the end of its taxable year to the extent that the overall domestic loss either reduces foreign source income for the year (but only if such year is a qualified taxable year) or reduces foreign source income for a qualified taxable year to which the loss has been carried back.

(2) *Overall domestic loss of another taxpayer.* If any portion of any overall domestic loss of another taxpayer is allocated to the taxpayer in accordance with §1.1502-9 (relating to consolidated overall domestic losses) the taxpayer shall add such amount to its applicable overall domestic loss account.

(3) *Adjustments for capital gains and losses.* If the taxpayer has capital gains or losses or qualified dividend income, the amount by which a domestic loss is considered to reduce foreign source income in a taxable year shall equal the section 904(f)(5)(D) amount determined under §1.904(b)-1(h)(1)(iii), regardless of the amount of domestic loss that was deter-

mined before taking any section 904(b)(2) adjustments into account.

(e) *Reductions of overall domestic loss accounts.* The taxpayer shall subtract the following amounts from its overall domestic loss accounts at the end of its taxable year in the following order, as applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* An overall domestic loss account is reduced by the amount of any overall domestic loss which is allocated to another taxpayer in accordance with §1.1502-9 (relating to consolidated overall domestic losses).

(2) *Reduction for amounts recaptured.* An overall domestic loss account is reduced by the amount of any U.S. source income that is recharacterized in accordance with §1.904(g)-2(c) (relating to recapture under section 904(g)(1)).

(f) *Effective/applicability date.* This section applies to taxpayers that sustain an overall domestic loss for a taxable year beginning on or after January 1, 2012. Taxpayers may choose to apply this section to overall domestic losses sustained in other taxable years beginning after December 31, 2006, including periods covered by 26 CFR §1.904(g)-1T (revised as of April 1, 2010).

Par. 14. Section 1.904(g)-1T is removed.

Par. 15. Section 1.904(g)-2 is revised to read as follows:

§1.904(g)-2 Recapture of overall domestic losses.

(a) *In general.* A taxpayer shall recapture an overall domestic loss as provided in this section. Recapture is accomplished by treating a portion of the taxpayer's U.S. source taxable income as foreign source income. The recharacterized income is allocated among and increases foreign source income in separate categories in proportion to the balances of the overall domestic loss accounts with respect to those separate categories. As a result, if the taxpayer chooses the benefits of section 901, the taxpayer's foreign tax credit limitation is increased. As provided in §1.904(g)-1(e)(2), the balance in a taxpayer's overall domestic loss account with respect to a separate category is reduced at the end of each taxable year by the amount of loss recaptured during that taxable year. Recapture continues until the amount of

U.S. source income recharacterized as foreign source income equals the amount in the overall domestic loss account.

(b) *Determination of U.S. source taxable income for purposes of recapture.* For purposes of determining the amount of an overall domestic loss subject to recapture, the taxpayer's taxable income from U.S. sources shall be computed in accordance with the rules set forth in §1.904(g)-1(c)(4). U.S. source taxable income shall be determined by taking into account adjustments for capital gains and losses and qualified dividend income in a similar manner to the adjustments made to foreign source taxable income under section 904(b)(2) and §1.904(b)-1, following the principles of §1.904(b)-1(h)(1)(i).

(c) *Section 904(g)(1) recapture.* The amount of any U.S. source taxable income subject to recharacterization in a taxable year in which paragraph (a) of this section applies is the lesser of the aggregate balance of the taxpayer's overall domestic loss accounts or 50 percent of the taxpayer's U.S. source taxable income (as determined under paragraph (b) of this section).

(d) *Effective/applicability date.* This section applies to taxpayers that sustain an overall domestic loss for a taxable year beginning on or after January 1, 2012. Taxpayers may choose to apply this section to overall domestic losses sustained in other taxable years beginning after December 31, 2006, including periods covered by 26 CFR §1.904(g)-2T (revised as of April 1, 2010).

Par. 16. Section 1.904(g)-2T is removed.

Par. 17. Section 1.904(g)-3 is revised to read as follows:

§1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for the recapture of separate limitation losses, overall foreign losses, and overall domestic losses.

(a) *In general.* This section provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for the recapture of separate limitation losses, overall foreign losses, and overall domestic losses. The rules

must be applied in the order set forth in paragraphs (b) through (i) of this section.

(b) *Step One: Allocation of net operating loss and net capital loss carryovers—(1) In general.* Net operating losses from a current taxable year are carried forward or back to a taxable year in the following manner. Net operating losses that are carried forward pursuant to section 172 are combined with income or loss in the carryover year in the manner described in this paragraph (b). The combined amounts are then subject to the ordering rules provided in paragraphs (c) through (i) of this section. Net operating losses that are carried back to a prior taxable year pursuant to section 172 are allocated to income in the carryback year in the manner set forth in paragraphs (b)(2), (b)(3), (c), (d), and (e) of this section. The income in the carryback year to which the net operating loss is allocated is the foreign source income in each separate category and the U.S. source income after the application of sections 904(f) and 904(g) to income and loss in that previous year, including as a result of net operating loss carryovers or carrybacks from taxable years prior to the current taxable year.

(2) *Full net operating loss carryover.* If the full net operating loss (that remains after carryovers to other taxable years) is less than or equal to the taxable income in a particular taxable year (carryover year), and so can be carried forward in its entirety to such carryover year, U.S. source losses and foreign source losses in separate categories that are part of a net operating loss from a particular taxable year that is carried forward in its entirety shall be combined with the U.S. source income or loss and the foreign source income or loss in the same separate categories in the carryover year.

(3) *Partial net operating loss carryover.* If the full net operating loss (that remains after carryovers to other taxable years) exceeds the taxable income in a carryover year, and so cannot be carried forward in its entirety to such carryover year, the following rules apply:

(i) Any U.S. source loss (not to exceed the net operating loss carryover) shall be carried over to the extent of any U.S. source income in the carryover year.

(ii) If the net operating loss carryover exceeds the U.S. source loss carryover determined under paragraph (b)(3)(i) of this section, then separate limitation losses that

are part of the net operating loss shall be tentatively carried over to the extent of separate limitation income in the same separate category in the carryover year. If the sum of the potential separate limitation loss carryovers determined under the preceding sentence exceeds the amount of the net operating loss carryover reduced by any U.S. source loss carried over under paragraph (b)(3)(i) of this section, then the potential separate limitation loss carryovers shall be reduced *pro rata* so that their sum equals such amount.

(iii) If the net operating loss carryover exceeds the sum of the U.S. and separate limitation loss carryovers determined under paragraphs (b)(3)(i) and (b)(3)(ii) of this section, then a proportionate part of the remaining loss from each separate category shall be carried over to the extent of such excess and combined with the foreign source loss, if any, in the same separate categories in the carryover year.

(iv) If the net operating loss carryover exceeds the sum of all the loss carryovers determined under paragraphs (b)(3)(i), (b)(3)(ii), and (b)(3)(iii) of this section, then any U.S. source loss not carried over under paragraph (b)(3)(i) of this section shall be carried over to the extent of such excess and combined with the U.S. source loss, if any, in the carryover year.

(4) *Net capital loss carryovers.* Rules similar to the rules of paragraphs (b)(1) through (3) of this section apply for purposes of determining the components of a net capital loss carryover to a taxable year.

(c) *Step Two: Section 904(b) adjustments.* The taxpayer shall make any required adjustments to capital gains and losses and qualified dividend income under section 904(b)(2).

(d) *Step Three: Allocation of separate limitation losses.* The taxpayer shall allocate separate limitation losses sustained during the taxable year (increased, if appropriate, by any losses carried over under paragraph (b) of this section), in the following manner—

(1) The taxpayer shall allocate its separate limitation losses for the taxable year to reduce its separate limitation income in other separate categories on a proportionate basis, and increase its separate limitation loss accounts appropriately. To the extent a separate limitation loss in one separate category is allocated to reduce separate limitation income in a second separate

rate category, and the second category has a separate limitation loss account from a prior taxable year with respect to the first category, the two separate limitation loss accounts shall be netted against each other.

(2) If the taxpayer's separate limitation losses for the taxable year exceed the taxpayer's separate limitation income for the year, so that the taxpayer has separate limitation losses remaining after the application of paragraph (d)(1) of this section, the taxpayer shall allocate those losses to its U.S. source income for the taxable year, to the extent thereof, and shall increase its overall foreign loss accounts to that extent in accordance with §1.904(f)-1.

(e) *Step Four: Allocation of U.S. source losses.* The taxpayer shall allocate U.S. source losses sustained during the taxable year (increased, if appropriate, by any losses carried over under paragraph (b) of this section) to separate limitation income on a proportionate basis, and shall increase its overall domestic loss accounts to the extent of such allocation in accordance with §1.904(g)-1.

(f) *Step Five: Recapture of overall foreign loss accounts.* If the taxpayer's separate limitation income for the taxable year (reduced by any losses carried over under paragraph (b) of this section) exceeds the sum of the taxpayer's U.S. source loss and separate limitation losses for the year, so that the taxpayer has separate limitation income remaining after the application of paragraphs (d)(1) and (e) of this section, then the taxpayer shall recapture prior year overall foreign losses, if any, and reduce overall foreign loss accounts in accordance with §1.904(f)-2.

(g) *Step Six: Recapture of separate limitation loss accounts.* To the extent the taxpayer has remaining separate limitation income for the year after the application of paragraph (f) of this section, then the taxpayer shall recapture prior year separate limitation losses, if any, in accordance with §1.904(f)-8 and reduce separate limitation loss accounts in accordance with §1.904(f)-7.

(h) *Step Seven: Recapture of overall domestic loss accounts.* If the taxpayer's

U.S. source income for the year (reduced by any losses carried over under paragraph (b) of this section or allocated under paragraph (d) of this section, but not increased by any recapture of overall foreign loss accounts under paragraph (f) of this section) exceeds the taxpayer's separate limitation losses for the year, so that the taxpayer has U.S. source income remaining after the application of paragraph (d)(2) of this section, then the taxpayer shall recapture its prior year overall domestic losses, if any, and reduce overall domestic loss accounts in accordance with §1.904(g)-2.

(i) [Reserved]

(j) *Examples.* The following examples illustrate the rules of this section. Unless otherwise noted, all corporations use the calendar year as the U.S. taxable year.

Example 1. (i) *Facts.* (A) Z Corporation is a domestic corporation with foreign branch operations in Country B. For 2009, Z has a net operating loss of (\$500), determined as follows:

<u>General</u>	<u>Passive</u>	<u>US</u>
(\$300)	\$0	(\$200)

(B) For 2008, Z had the following taxable income and losses after application of section 904(f) and (g) to income and loss in 2008:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$400	\$200	\$110

(ii) *Net operating loss allocation.* Because Z's taxable income for 2008 exceeds its total net operating loss for 2009, the full net operating loss is carried

back. Under Step 1, each component of the net operating loss is carried back and combined with its same category in 2008. See paragraph (b)(2) of this sec-

tion. After allocation of the net operating loss, Z has the following taxable income and losses for 2008:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$100	\$200	(\$90)

(iii) *Loss allocation.* Under Step 4, the (\$90) of U.S. loss is allocated proportionately to reduce the general category and passive category income. Accordingly, \$30 ($\$90 \times \$100/\300) of the U.S. loss is allocated to general category income and \$60 ($\90

$\times \$200/\300) of the U.S. loss is allocated to passive category income, with a corresponding creation or increase to Z's overall domestic loss accounts.

in Country C. As of January 1, 2007, X has no loss accounts subject to recapture. For 2007, X has a net operating loss of (\$1400), determined as follows:

Example 2. (i) *Facts.* (A) X Corporation is a domestic corporation with foreign branch operations

<u>General</u>	<u>Passive</u>	<u>US</u>
(\$400)	(\$200)	(\$800)

(B) X has no taxable income in 2005 or 2006 available for offset by a net operating loss carryback.

For 2008, X has the following taxable income and losses:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$500	(\$100)	\$1200

(ii) *Net operating loss allocation.* Under Step 1, because X's total taxable income for 2008 of \$1600 (\$1200 + \$500 - \$100) exceeds the total 2007 net

operating loss, the full \$1400 net operating loss is carried forward. Under paragraph (b)(2) of this section, each component of the net operating loss is car-

ried forward and combined with its same category in 2008. After allocation of the net operating loss, X has the following taxable income and losses:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$100	(\$300)	\$400

(iii) *Loss allocation.* Under Step 3, \$100 of the passive category loss offsets the \$100 of general category income, resulting in a passive category separate limitation loss account with respect to general cate-

gory income, and the other \$200 of passive category loss offsets \$200 of the U.S. source taxable income, resulting in the creation of an overall foreign loss account in the passive category.

Example 3. (i) Facts. Assume the same facts as in Example 2, except that in 2008, X had the following taxable income and losses:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$200	(\$100)	\$1200

(ii) *Net operating loss allocation.* Under Step 1, because the total net operating loss for 2007 of (\$1400) exceeds total taxable income for 2008 of \$1300 (\$1200 + \$200 - \$100), X has a partial net operating loss carryover to 2008 of \$1300. Under paragraph (b)(3)(i) of this section, first, the \$800 U.S. source component of the net operating loss is allocated to U.S. income for 2008. The tentative general category carryover under paragraph (b)(3)(ii) of this section (\$200) does not exceed the remaining net

operating loss carryover amount (\$500). Therefore, \$200 of the general category component of the net operating loss is next allocated to the general category income for 2008. Under paragraph (b)(3)(iii) of this section, the remaining \$300 of net operating loss carryover (\$1300 - \$800 - \$200) is carried over proportionally from the remaining net operating loss components in the general category (\$200, or \$400 total general category loss - \$200 general category loss already allocated) and passive category

(\$200). Therefore, \$150 ($\$300 \times \$200/\$400$) of the remaining net operating loss carryover is carried over from the general category for 2007 and combined with the general category for 2008, and \$150 ($\$300 \times \$200/\400) of the remaining net operating loss carryover is carried over from the passive category for 2007 and combined with the passive category for 2008. After allocation of the net operating loss carryover from 2007 to the appropriate categories for 2008, X has the following taxable income and losses:

<u>General</u>	<u>Passive</u>	<u>US</u>
(\$150)	(\$250)	\$400

(iii) *Loss allocation.* Under Step 3, the losses in the general and passive categories fully offset the U.S. source income, resulting in the creation of general

category and passive category overall foreign loss accounts.

Example 4. (i) Facts. Assume the same facts as in Example 2, except that in 2008, X has the following taxable income and losses:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$200	\$200	(\$200)

(ii) *Net operating loss allocation.* Under Step 1, because the total net operating loss of (\$1400) exceeds total taxable income for 2008 of \$200 ($\$200 + \$200 - \200), X has a partial net operating loss carryover to 2008 of \$200. Because X has no U.S. source income in 2008, under paragraph (b)(3)(i) of this section no portion of the U.S. source component of the net operating loss is initially carried into 2008. Be-

cause the total tentative carryover under paragraph (b)(3)(ii) of this section of \$400 (\$200 in each of the general and passive categories) exceeds the net operating loss carryover amount, the tentative carryover from each separate category is reduced proportionately by \$100 ($\$200 \times \$200/\400). Accordingly, \$100 ($\$200 - \100) of the general category component of the net operating loss is carried forward and

\$100 ($\$200 - \100) of the passive category component of the net operating loss is carried forward and combined with income in the same respective categories for 2008. After allocation of the net operating loss carryover from 2007, X has the following taxable income and losses:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$100	\$100	(\$200)

(iii) *Loss allocation.* Under Step 4, the \$200 U.S. source loss offsets the remaining \$100 of general category income and \$100 of passive category income,

resulting in the creation of overall domestic loss accounts with respect to the general and passive categories.

Example 5. (i) Facts. Assume the same facts as in Example 2, except that in 2008, X has the following taxable income and losses:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$800	(\$100)	\$100

(ii) *Net operating loss allocation.* Under Step 1, because X's total net operating loss in 2007 of (\$1400) exceeds its total taxable income for 2008 of \$800 (\$100 + \$800 - \$100), X has a partial net operating loss carryover to 2008 of \$800. Under paragraph (b)(3)(i) of this section, \$100 of the U.S. source component of the net operating loss is allocated to U.S. income for 2008. The tentative general category carryover under paragraph (b)(3)(ii) of this section does

not exceed the remaining net operating loss carryover amount. Therefore, \$400 of the general category component of the net operating loss is allocated to reduce general category income in 2008. Under paragraph (b)(3)(iii) of this section, of the remaining \$300 of net operating loss carryover (\$800 - \$100 - \$400), \$200 is carried forward from the passive category component of the net operating loss and combined with the passive category for 2008. Under para-

graph (b)(3)(iv) of this section, the remaining \$100 (\$300 - \$200) of net operating loss carryover is carried forward from the U.S. source component of the net operating loss and combined with the U.S. source income (loss) for 2008. After allocation of the net operating loss carryover from 2007, X has the following taxable income and losses:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$400	(\$300)	(\$100)

(iii) *Loss allocation.* (A) Under Step 3, the \$300 passive category loss offsets the \$300 of income in the general category, resulting in the creation of a passive category separate limitation loss account with respect to the general category.

(B) Under Step 4, the \$100 U.S. source loss offsets the remaining \$100 of the general category income, resulting in the creation of an overall domestic loss account with respect to the general category.

Example 6. (i) *Facts.* (A) Y Corporation is a domestic corporation with foreign branch operations in Country D. Y has no net operating losses and does not make an election to recapture more than the required amount of overall foreign losses. As of January 1, 2007, Y has a (\$200) general category overall foreign loss (OFL) account and a (\$200) general category separate limitation loss (SLL) account with respect to the passive category. For 2007, Y has \$400

of passive category income that is fully offset by a (\$400) domestic loss in that taxable year, giving rise to the creation of an overall domestic loss (ODL) account with respect to the passive category. As of January 1, 2008, Y has the following balances in its OFL, SLL, and ODL accounts:

<u>OFL</u>	<u>General</u>	<u>SSL (Passive)</u>	<u>US</u>
\$200		\$200	ODL (Passive) \$400

(B) In 2008, Y has the following taxable income and losses:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$400	(\$100)	\$600

(ii) *Loss allocation.* Under Step 3, the \$100 of passive category loss offsets \$100 of the general category income, creating a passive category SLL account of \$100 with respect to the general category. Because there is an offsetting general category SLL account of \$200 with respect to the passive category from a prior taxable year, the two accounts are netted against each other so that all that remains is a \$100 general category SLL account with respect to the passive category.

(iii) *OFL account recapture.* Under Step 5, 50% of the remaining \$300, or \$150, of income in the general category is subject to recharacterization as U.S.

source income as a recapture of part of the OFL account in the general category.

(iv) *SLL account recapture.* Under Step 6, \$100 of the remaining \$150 of income in the general category is recharacterized as passive category income as a recapture of the general category SLL account with respect to the passive category.

(v) *ODL account recapture.* Under Step 7, 50% of the \$600, or \$300, of U.S. source income is subject to recharacterization as foreign source passive category income as a recapture of a part of the ODL account with respect to the passive category. None of the \$150 of general category income that was recharacterized

as U.S. source income under Step 5 is included here as income subject to recharacterization in connection with recapture of the overall domestic loss account.

(vi) *Results.* (A) After the allocation of loss and recapture of loss accounts, X has the following taxable income and losses for 2008:

<u>General</u>	<u>Passive</u>	<u>US</u>
\$50	\$400	\$450

(B) As of January 1, 2009, Y has the following balances in its OFL, SLL and ODL accounts:

<u>General</u>		<u>Passive</u>	<u>US</u>
<u>OFL</u>	<u>SSL (Passive)</u>	<u>SSL (General)</u>	<u>ODL (Passive)</u>
\$50	\$0	\$0	\$100

(k) *Effective/applicability date.* This section applies to taxable years beginning on or after January 1, 2012. Taxpayers may choose to apply this section to other taxable years beginning after December 31, 2006, including periods covered by 26 CFR §1.904(g)-3T (revised as of April 1, 2010).

Par. 18. Section 1.904(g)-3T is removed.

Par. 19. Section 1.1502-9 is revised to read as follows:

§1.1502-9 Consolidated overall foreign losses, separate limitation losses, and overall domestic losses.

(a) *In general.* This section provides rules for applying section 904(f) and (g) (including its definitions and nomenclature) to a group and its members. Generally, section 904(f) concerns rules relating to overall foreign losses (OFLs) and separate limitation losses (SLLs) and the consequences of such losses. Under section 904(f)(5), losses are computed separately in each category of income described in section 904(d)(1) or §1.904-4(m) (separate category). Section 904(g) concerns rules relating to overall domestic losses (ODLs) and the consequences of such losses. Paragraph (b) of this section defines terms and provides computational and accounting rules, including rules regarding recapture. Paragraph (c) of this section provides rules that apply to OFLs, SLLs, and ODLs when a member becomes or ceases to be a member of a group. Paragraph (d) of this section provides a predecessor and successor rule. Paragraph (e) of this section provides effective dates.

(b) *Consolidated application of section 904(f) and (g).* A group applies section 904(f) and (g) for a consolidated return year in accordance with that section, subject to the following rules:

(1) *Computation of CSLI or CSLL and consolidated U.S.-source taxable income or CDL.* The group computes its consolidated separate limitation income (CSLI) or consolidated separate limitation loss (CSLL) for each separate category under the principles of §1.1502-11 by aggregating each member's foreign-source taxable income or loss in such separate category computed under the principles of §1.1502-12, and taking into account the foreign portion of the consolidated items described in §1.1502-11(a)(2) through (a)(8) for such separate category. The group computes its consolidated U.S.-source taxable income or consolidated domestic loss (CDL) under similar principles.

(2) *Netting CSLLs, CSLIs, and consolidated U.S.-source taxable income.* The group applies section 904(f)(5) to determine the extent to which a CSLL for a separate category reduces CSLI for another separate category or consolidated U.S.-source taxable income.

(3) *Netting CDL and CSLI.* The group applies section 904(g)(2) to determine the extent to which a CDL reduces CSLI.

(4) *CSLL, COFL, and CODL accounts.* To the extent provided in section 904(f), the amount by which a CSLL for a separate category (the loss category) reduces CSLI for another separate category (the income category) will result in the creation of (or addition to) a CSLL account for the loss category with respect to the income category. Likewise, the amount by which a CSLL for a loss category reduces consolidated U.S.-source taxable income will create (or add to) a consolidated overall foreign loss account (a COFL account). To the extent provided in section 904(g), the amount by which a CDL reduces CSLI will result in the creation of (or addition to) a consolidated overall domestic loss

(CODL) account for the income category reduced by the CDL.

(5) *Recapture of COFL, CSLL, and CODL accounts.* In the case of a COFL account for a loss category, section 904(f)(1) and section 904(f)(3) recharacterize some or all of the foreign-source income in the loss category as U.S.-source income. In the case of a CSLL account for a loss category with respect to an income category, section 904(f)(5)(C) and section 904(f)(5)(F) recharacterize some or all of the foreign-source income in the loss category as foreign-source income in the income category. In the case of a CODL account, section 904(g)(3) recharacterizes some of the U.S.-source income as foreign-source income in the separate category that was offset by the CDL. The COFL account, CSLL account, or CODL account is reduced to the extent income is recharacterized with respect to such account.

(6) *Intercompany transactions—(i) Nonapplication of section 904(f) disposition rules.* Neither section 904(f)(3) (in the case of a COFL account) nor section 904(f)(5)(F) (in the case of a CSLL account) applies at the time of a disposition that is an intercompany transaction to which §1.1502-13 applies. Instead, section 904(f)(3) and section 904(f)(5)(F) apply only at such time and only to the extent that the group is required under §1.1502-13 (without regard to section 904(f)(3) and section 904(f)(5)(F)) to take into account any intercompany items resulting from the disposition, based on the COFL or CSLL account existing at the end of the consolidated return year during which the group takes the intercompany items into account.

(ii) *Examples.* Paragraph (b)(6)(i) of this section is illustrated by the following examples. The identity of the par-

ties and the basic assumptions set forth in §1.1502-13(c)(7)(i) apply to the examples. Except as otherwise stated, assume further that the consolidated group recognizes no foreign source income other than as a result of the transactions described. The examples are as follows:

Example 1. (i) On June 10, year 1, S transfers nondepreciable property with a basis of \$100 and a fair market value of \$250 to B in a transaction to which section 351 applies. The property was predominantly used without the United States in a trade or business within the meaning of section 904(f)(3). B continues to use the property without the United States. The group has a COFL account in the relevant loss category of \$120 as of December 31, year 1.

(ii) Because the contribution from S to B is an intercompany transaction, section 904(f)(3) does not apply to result in any gain recognition in year 1. See paragraph (b)(5)(i) of this section.

(iii) On January 10, year 4, B ceases to be a member of the group. Because S did not recognize gain in year 1 under section 351, no gain is taken into account in year 4 under §1.1502-13. Thus, no portion of the group's COFL account is recaptured in year 4. For rules requiring apportionment of a portion of the COFL account to B, see paragraph (c)(2) of this section.

Example 2. (i) The facts are the same as in paragraph (i) of *Example 1*. On January 10, year 4, B sells the property to X for \$300. As of December 31, year 4, the group's COFL account is \$40. (The COFL account was reduced between year 1 and year 4 due to unrelated foreign-source income taken into account by the group.)

(ii) B takes into account gain of \$200 in year 4. The \$40 COFL account in year 4 recharacterizes \$40 of the gain as U.S. source. See section 904(f)(3).

Example 3. (i) On June 10, year 1, S sells nondepreciable property with a basis of \$100 and a fair market value of \$250 to B for \$250 cash. The property was predominantly used without the United States in a trade or business within the meaning of section 904(f)(3). The group has a COFL account in the relevant loss category of \$120 as of December 31, year 1. B predominantly uses the property in a trade or business without the United States.

(ii) Because the sale is an intercompany transaction, section 904(f)(3) does not require the group to take into account any gain in year 1. Thus, under paragraph (b)(5)(i) of this section, the COFL account is not reduced in year 1.

(iii) On January 10, year 4, B sells the property to X for \$300. As of December 31, year 4, the group's COFL account is \$60. (The COFL account was reduced between year 1 and year 4 due to unrelated foreign-source income taken into account by the group.)

(iv) In year 4, S's \$150 intercompany gain and B's \$50 corresponding gain are taken into account to produce the same effect on consolidated taxable income as if S and B were divisions of a single corporation. See §1.1502-13(c). All of B's \$50 corresponding gain is recharacterized under section 904(f)(3). If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's \$100 basis in the property and would have \$200 of gain (\$60 of which

would be recharacterized under section 904(f)(3)), instead of a \$50 gain. Consequently, S's \$150 intercompany gain and B's \$50 corresponding gain are taken into account, and \$10 of S's gain is recharacterized under section 904(f)(3) as U.S. source income to reflect the \$10 difference between B's \$50 recharacterized gain and the \$60 recomputed gain that would have been recharacterized.

(c) *Becoming or ceasing to be a member of a group—*(1) *Adding separate accounts on becoming a member.* At the time that a corporation becomes a member of a group (a new member), the group adds to the balance of its COFL, CSLL or CODL account the balance of the new member's corresponding OFL account, SLL account or ODL account. A new member's OFL account corresponds to a COFL account if the account is for the same loss category. A new member's SLL account corresponds to a CSLL account if the account is for the same loss category and with respect to the same income category. A new member's ODL account corresponds to a CODL account if the account is with respect to the same income category. If the group does not have a COFL, CSLL or CODL account corresponding to the new member's account, it creates a COFL, CSLL or CODL account with a balance equal to the balance of the member's account.

(2) *Apportionment of consolidated account to departing member—*(i) *In general.* A group apportions to a member that ceases to be a member (a departing member) a portion of each COFL, CSLL and CODL account as of the end of the year during which the member ceases to be a member and after the group makes the additions or reductions to such account required under paragraphs (b)(4), (b)(5) and (c)(1) of this section (other than an addition under paragraph (c)(1) of this section attributable to a member becoming a member). The group computes such portion under paragraph (c)(2)(ii) of this section, as limited by paragraph (c)(2)(iii) of this section. The departing member carries such portion to its first separate return year after it ceases to be a member. Also, the group reduces each account by such portion and carries such reduced amount to its first consolidated return year beginning after the year in which the member ceases to be a member. If two or more members cease to be members in the same year, the group computes the portion allocable to each such member (and reduces its ac-

counts by such portion) in the order that the members cease to be members.

(ii) *Departing member's portion of group's account.* A departing member's portion of a group's COFL, CSLL or CODL account for a loss category is computed based upon the member's share of the group's assets that generate income subject to recapture at the time that the member ceases to be a member. Under the characterization principles of §§1.861-9T(g)(3) and 1.861-12T, the group identifies the assets of the departing member and the remaining members that generate U.S.-source income (domestic assets) and foreign-source income (foreign assets) in each separate category. The assets are characterized based upon the income that the assets are reasonably expected to generate after the member ceases to be a member. The member's portion of a group's COFL or CSLL account for a loss category is the group's COFL or CSLL account, respectively, multiplied by a fraction, the numerator of which is the value of the member's foreign assets for the loss category and the denominator of which is the value of the foreign assets of the group (including the departing member) for the loss category. The member's portion of a group's CODL account for each income category is the group's CODL account multiplied by a fraction, the numerator of which is the value of the member's domestic assets and the denominator of which is the value of the domestic assets of the group (including the departing member). The value of the domestic and foreign assets is determined under the asset valuation rules of §1.861-9T(g)(1) and (g)(2) using either tax book value, fair market value, or alternative tax book value under the method chosen by the group for purposes of interest apportionment as provided in §1.861-9T(g)(1)(ii). For purposes of this paragraph (c)(2)(ii), §1.861-9T(g)(2)(iv) (assets in intercompany transactions) shall apply, but §1.861-9T(g)(2)(iii) (adjustments for directly allocated interest) shall not apply. If the group uses the tax book value method, the member's portions of COFL, CSLL, and CODL accounts are limited by paragraph (c)(2)(iii) of this section. In addition, for purposes of this paragraph (c)(2)(ii), the tax book value of assets transferred in intercompany transactions shall be determined without regard

to previously deferred gain or loss that is taken into account by the group as a result of the transaction in which the member ceases to be a member. The assets should be valued at the time the member ceases to be a member, but values on other dates may be used unless this creates substantial distortions. For example, if a member ceases to be a member in the middle of the group's consolidated return year, an average of the values of assets at the beginning and end of the year (as provided in §1.861-9T(g)(2)) may be used or, if a member ceases to be a member in the early part of the group's consolidated return year, values at the beginning of the year may be used, unless this creates substantial distortions.

(iii) *Limitation on member's portion for groups using tax book value method.* If a group uses the tax book value method of valuing assets for purposes of paragraph (c)(2)(ii) of this section and the aggregate of a member's portions of COFL and CSLL accounts for a loss category (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's foreign assets in the loss category, the member's portion of the COFL or CSLL accounts for the loss category shall be reduced (proportionately, in the case of multiple accounts) by such excess. In addition, if the aggregate of a member's portions of CODL accounts (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's domestic assets, the member's portion of the CODL accounts shall be reduced (proportionately, in the case of multiple accounts) by such excess. This rule does not apply in the case of COFL or CSLL accounts if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the foreign assets in the loss category. In the case of CODL accounts, this rule does not apply if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the domestic assets.

(iv) *Determination of values of domestic and foreign assets binding on departing member.* The group's determination of the value of the member's and the group's

domestic and foreign assets for a loss category is binding on the member, unless the Commissioner concludes that the determination is not appropriate. The common parent of the group must attach a statement to the return for the taxable year that the departing member ceases to be a member of the group that sets forth the name and taxpayer identification number of the departing member, the amount of each COFL and CSLL for each loss category and each CODL that is apportioned to the departing member under this paragraph (c)(2), the method used to determine the value of the member's and the group's domestic and foreign assets in each such loss category, and the value of the member's and the group's domestic and foreign assets in each such loss category. The common parent must also furnish a copy of the statement to the departing member.

(v) *Anti-abuse rule.* If a corporation becomes a member and ceases to be a member, and a principal purpose of the corporation becoming and ceasing to be a member is to transfer the corporation's OFL account, SLL account or ODL account to the group or to transfer the group's COFL, CSLL or CODL account to the corporation, appropriate adjustments will be made to eliminate the benefit of such a transfer of accounts. Similarly, if any member acquires assets or disposes of assets (including a transfer of assets between members of the group and the departing member) with a principal purpose of affecting the apportionment of accounts under paragraph (c)(2)(i) of this section, appropriate adjustments will be made to eliminate the benefit of such acquisition or disposition.

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

Example 1. (i) On November 6, year 1, S, a member of the P group, a consolidated group with a calendar consolidated return year, ceases to be a member of the group. On December 31, year 1, the P group has a \$40 COFL account for the general category, a \$20 CSLL account for the general category (that is, the loss category) with respect to the passive category (that is, the income category), and a \$10 CODL account with respect to the passive category (that is, the income category). No member of the group has foreign-source income or loss in year 1. The group apportions its interest expense according to the tax book value method.

(ii) On November 6, year 1, the group identifies S's assets and the group's assets (including S's assets) expected to produce foreign-source general category income. Use of end-of-the-year values will not create substantial distortions in determining the relative values of S's and the group's relevant assets on Novem-

ber 6, year 1. The group determines that S's relevant assets have a tax book value of \$2,000 and a fair market value of \$2,200. Also, the group's relevant assets (including S's assets) have a tax book value of \$8,000. On November 6, year 1, S has no assets expected to produce U.S. source income.

(iii) Under paragraph (c)(2)(ii) of this section, S takes a \$10 COFL account for the general category (\$40 x \$2000/\$8000) and a \$5 CSLL account for the general category with respect to the passive category (\$20 x \$2000/\$8000). S does not take any portion of the CODL account. The limitation described in paragraph (c)(2)(iii) of this section does not apply because the aggregate of the COFL and CSLL accounts for the general category that are apportioned to S (\$15) is less than 150% of the actual fair market value of S's general category foreign assets (\$2,200 x 150%).

Example 2. (i) Assume the same facts as in *Example 1*, except that the fair market value of S's general category foreign assets is \$4 as of November 6, year 1.

(ii) Under paragraph (c)(2)(iii) of this section, S's COFL and CSLL accounts for the general category must be reduced by \$9, which is the excess of \$15 (the aggregate amount of the accounts apportioned under paragraph (c)(2)(ii) of this section) over \$6 (150% of the \$4 actual fair market value of S's general category foreign assets). S thus takes a \$4 COFL account for the general category (\$10 - (\$9 x \$10/\$15)) and a \$2 CSLL account for the general category with respect to the passive category (\$5 - (\$9 x \$5/\$15)).

Example 3. (i) Assume the same facts as in *Example 1*, except that S also has assets that are expected to produce U.S. source income.

(ii) On November 6, year 1, the group identifies S's assets and the group's assets (including S's assets) expected to produce U.S. source income. Use of end-of-the-year values will not create substantial distortions in determining the relative values of S's and the group's relevant assets on November 6, year 1. The group determines that S's relevant assets have a tax book value of \$3,000 and a fair market value of \$2,500. Also, the group's relevant assets (including S's assets) have a tax book value of \$6,000.

(iii) Under paragraph (c)(2)(ii) of this section, S takes a \$5 CODL account (\$10 x \$3,000/\$6,000), in addition to the COFL and CSLL accounts determined in *Example 1*. The limitation described in paragraph (c)(2)(iii) of this section does not apply because the CODL account that is apportioned to S (\$5) is less than 150% of the actual fair market value of S's U.S. assets (\$2,500 x 150%).

(d) *Predecessor and successor.* A reference to a member includes, as the context may require, a reference to a predecessor or successor of the member. See §1.1502-1(f).

(e) *Effective/applicability date.* This section applies to consolidated return years beginning on or after January 1, 2012, for which the return is due (without extensions) after June 22, 2012. Taxpayers may choose to apply the provisions of this section to other consolidated return years beginning after December 31, 2006, including periods covered by 26 CFR

§1.1502-9T (revised as of April 1, 2010). For rules relating to overall foreign losses and separate limitation losses in consolidated return years beginning on or before December 21, 2007, see 26 CFR 1.1502-9 (revised as of April 1, 2007).

Par. 20. Section 1.1502-9T is removed.

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

Approved June 13, 2012.

Emily S. McMahon,
*Acting Assistant Secretary
of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on June 21, 2012, 8:45 a.m., and published in the issue of the Federal Register for June 22, 2012, 77 F.R. 37576)

Section 7701.—Definitions

26 CFR 301.7701-2: *Business entities; definitions.*

T.D. 9596

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 301

Disregarded Entities and the Indoor Tanning Services Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to disregarded entities (including qualified subchapter S subsidiaries) and the indoor tanning services excise tax. These regulations affect disregarded entities responsible for collecting the indoor tanning services excise tax and owners of those disregarded entities. The text of these temporary regulations serves as the text of proposed regulations (REG-125570-11) published in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on June 25, 2012.

Applicability Date: For dates of applicability, see §§1.1361-4T(a)(8)(iii)(B) and 301.7701-2T(e)(9)(i).

FOR FURTHER INFORMATION CONTACT: Michael H. Beker, (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code (Code) and the Procedure and Administration Regulations (26 CFR part 301) under section 7701 of the Code.

Since January 1, 2008, §§1.1361-4(a)(8) and 301.7701-2(c)(2)(v) have treated a qualified subchapter S subsidiary (QSub) and a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 (collectively, a disregarded entity) as a separate entity for purposes of excise taxes imposed by Chapters 31, 32 (other than section 4181), 33, 34, 35, 36 (other than section 4461), and 38 of the Code, and any floor stocks tax imposed on articles subject to any of these taxes.

Effective July 1, 2010, section 10907 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), added new Chapter 49 to the Code, which imposes an excise tax on amounts paid for indoor tanning services under section 5000B.

Consistent with existing §§1.1361-4(a)(8) and 301.7701-2(c)(2)(v), these temporary regulations add Chapter 49 to the list of excise taxes for which disregarded entities are treated as separate entities. Accordingly, effective for taxes imposed on amounts paid on or after July 1, 2012, these temporary regulations treat a disregarded entity as a separate entity for purposes of the indoor tanning services excise tax under section 5000B. These temporary regulations also treat a single-owner eligible entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 as a corporation with respect to the indoor tanning services excise tax.

The indoor tanning services excise tax is reported on Form 720 “*Quarterly Fed-*

eral Excise Tax Return”. As a result of these temporary regulations, a Form 720 reporting indoor tanning services excise taxes imposed on amounts paid on or after July 1, 2012, must be filed under the name and employer identification number (EIN) of the entity rather than under the name and EIN of the disregarded entity’s owner. Thus, this rule affects returns of this tax that are due on or after October 31, 2012.

For taxes imposed under section 5000B on amounts paid before July 1, 2012, the IRS will treat payments made by a disregarded entity, or other actions taken by a disregarded entity, with respect to the indoor tanning services excise tax as having been made or taken by the owner of that entity. Thus, for such periods, the owner of a disregarded entity will be treated as satisfying its obligations with respect to the indoor tanning services excise tax if those obligations are satisfied either: (i) by the owner itself or (ii) by the disregarded entity on behalf of the owner.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Bulletin. 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.

Drafting Information

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

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAX

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

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

Par. 2. Section 1.1361-4 is amended by adding paragraph (a)(8)(iii) to read as follows:

§1.1361-4 Effect of QSub election.

(a) * * *

(8) * * *

(iii) [Reserved]. For further guidance, see §1.1361-4T(a)(8)(iii).

* * * * *

Par. 3. Section 1.1361-4T is added to read as follows:

§1.1361-4T Effect of QSub election (temporary).

(a)(1) through (a)(8)(ii) [Reserved]. For further guidance, see §1.1361-4(a)(1) through (a)(8)(ii).

(iii) *Rule for Chapter 49 tax liabilities—(A) In general.* A qualified subchapter S subsidiary (QSub) is treated as a separate corporation for purposes of—

(1) Federal tax liabilities imposed by Chapter 49 of the Internal Revenue Code;

(2) Collection of tax imposed by Chapter 49 of the Internal Revenue Code; and

(3) Claims of a credit or refund related to the tax imposed by Chapter 49 of the Internal Revenue Code.

(B) *Effective/applicability date for Chapter 49 liabilities.* Paragraph (a)(8)(iii)(A) of this section applies to taxes imposed on amounts paid on or after July 1, 2012.

(C) *Expiration date.* The applicability of paragraph (a)(8)(iii) of this section expires on June 22, 2015 or such earlier date as may be determined under amendments to the regulations issued after June 22, 2012.

(a)(9) through (d) [Reserved]. For further guidance, see §1.1361-4(a)(9) through (d).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

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

Par. 5. Section 301.7701-2 is amended by adding new paragraphs (c)(2)(vi) and (e)(9), and adding and reserving paragraph (e)(8), to read as follows:

§301.7701-2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(vi) [Reserved]. For further guidance, see §301.7701-2T(c)(2)(vi).

* * * * *

(e) * * *

(8) [Reserved]

(9) [Reserved]. For further guidance, see §301.7701-2T(e)(9).

Par. 6. Section 301.7701-2T is amended as follows:

1. Paragraphs (a) through (e)(4) are revised.

2. Paragraph (e)(9) is added.

The revisions and addition read as follows:

§301.7701-2T Business entities; definitions (temporary).

(a) through (c)(2)(v) [Reserved]. For further guidance, see §301.7701-2(a) through (c)(2)(v).

(vi) *Tax liabilities with respect to the indoor tanning services excise tax—(A) In general.* Notwithstanding any other provision of §301.7701-2, §301.7701-2(c)(2)(i) (relating to certain wholly owned entities) does not apply for purposes of—

(1) Federal tax liabilities imposed by Chapter 49 of the Internal Revenue Code;

(2) Collection of tax imposed by Chapter 49 of the Internal Revenue Code; and

(3) Claims of a credit or refund related to the tax imposed by Chapter 49 of the Internal Revenue Code.

(B) *Treatment of entity.* An entity that is disregarded as an entity separate from its owner for any purpose under §301.7701-2 is treated as a corporation with respect to items described in paragraph (c)(2)(vi)(A) of this section.

(d) through (e)(4) [Reserved]. For further guidance, see §301.7701-2(d) through (e)(4).

* * * * *

(9) *Indoor tanning services excise tax—(i) Effective/applicability date.* Paragraph (c)(2)(vi) of this section applies to taxes imposed on amounts paid on or after July 1, 2012.

(ii) *Expiration date.* The applicability of paragraph (c)(2)(vi) of this section expires on or before June 22, 2015 or such earlier date as may be determined under amendments to the regulations issued after June 22, 2012.

Steven T. Miller,
Deputy Commissioner for
Services and Enforcement.

Approved June 11, 2012.

Emily S. McMahon,
Acting Assistant Secretary
of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on June 22, 2012, 8:45 a.m., and published in the issue of the Federal Register for June 25, 2012, 77 F.R. 37806)

Part III. Administrative, Procedural, and Miscellaneous

Notice Requirements Under Section 101(j) of ERISA for Funding-Related Benefit Limitations in Single-Employer Defined Benefit Pension Plans

Notice 2012-46

I. Purpose

This notice provides guidance in the form of questions and answers with respect to the notice requirements of section 101(j) of the Employee Retirement Income Security Act of 1974 (ERISA), which requires that notice be provided to participants and beneficiaries relating to certain limitations on benefits in pension plans imposed under section 206(g) of ERISA,¹ as added by the Pension Protection Act of 2006 (PPA '06), P.L. 109-280, 120 Stat. 780.

II. Background

Section 101(j) of ERISA requires the plan administrator of a single-employer defined benefit plan to provide a written notice to plan participants and beneficiaries, generally within 30 days after the plan becomes subject to the benefit limitations of section 206(g)(1) or (3) of ERISA (relating to unpredictable contingent event benefits and prohibited payments). In addition, in the case of a plan that becomes subject to the benefit limitations of section 206(g)(4) of ERISA (relating to the cessation of benefit accruals), the section 101(j) notice must be provided within 30 days after the earlier of the valuation date for the plan year for which the plan's adjusted funding target attainment percentage (AFTAP) is less than 60% or the date such percentage is presumed to be less than 60% under the rules of section 206(g)(7) of ERISA. Section 502(c)(4) of ERISA provides that the Secretary of Labor may assess a civil penalty of not more than \$1,000 a day for each violation by any person of the notice requirement under section 101(j) of ERISA.

Section 101(c)(1)(A)(ii) of the Worker, Retiree, and Employer Recovery Act of 2008, Public Law 110-458 (122 Stat.

5092) (WRERA), amended section 101(j) of ERISA to authorize the Secretary of the Treasury, in consultation with the Secretary of Labor, to prescribe rules applicable to the notice requirements under section 101(j) of ERISA.

Section 206 of ERISA (§ 436 of the Code) provides benefit limitations that depend on a plan's funding level, which is measured by the plan's AFTAP, as determined under section 206(g)(9)(B) of ERISA (§ 436(j)(2) of the Code). In general, a plan's AFTAP is based on the plan's funding target attainment percentage (FTAP) under section 303(d)(2) of ERISA (§ 430(d)(2) of the Code) for the plan year. Generally, the plan's FTAP for a plan year is a fraction (expressed as a percentage), the numerator of which is the value of plan assets for the plan year (after subtraction of the plan's funding balances), and the denominator of which is the funding target of the plan for the plan year. The plan's AFTAP for a plan year is determined by adding the aggregate amount of purchases of annuities for employees (other than highly compensated employees, within the meaning of Code § 414(q)) made by the plan during the two preceding plan years to the numerator and the denominator of the fraction used to determine the FTAP.

Under section 206(g)(1) of ERISA (§ 436(b) of the Code), a plan is required to provide that, if a participant is entitled to an unpredictable contingent event benefit payable with respect to any event occurring during a plan year, such benefit may not be paid if the plan's AFTAP for the plan year is less than 60% or would be less than 60% taking into account the occurrence of the unpredictable contingent event benefit. Section 206(g)(1)(C) of ERISA (§ 436(b)(3) of the Code) defines an unpredictable contingent event benefit as any benefit payable solely by reason of a plant shutdown (or similar event, as determined by the Secretary of the Treasury) or an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

Under section 206(g)(2) of ERISA (§ 436(c) of the Code), a plan amendment increasing the liabilities of the plan by reason of an increase in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which a benefit accrual becomes nonforfeitable generally cannot take effect in a plan year if the plan's AFTAP for the plan year is less than 80% or would be less than 80% taking into account such amendment. The notice requirements of section 101(j) of ERISA do not apply as a result of an amendment that causes the plan to become subject to the benefit limitations in section 206(g)(2).

Section 206(g)(3) of ERISA (§ 436(d) of the Code) restricts a plan's ability to make "prohibited payments" if the plan's AFTAP is below 80% or the plan sponsor is a debtor in bankruptcy. Section 206(g)(3)(B) of ERISA (§ 436(d)(5) of the Code) provides that a "prohibited payment" is generally:

1. any payment in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G) of ERISA (§ 411(a)(9) of the Code)) to a participant or beneficiary whose annuity starting date occurs during any period that a limitation under section 206(g)(1)(A) or (B) of ERISA (or § 436(d)(1) or (2) of the Code) is in effect;
2. any payment for the purchase of an irrevocable commitment from an insurer to pay benefits; and
3. any other payment specified by the Secretary of the Treasury by regulations.

However, a prohibited payment does not include a payment of a benefit which under section 203(e) of ERISA (§ 411(a)(11) of the Code) (relating to benefits with a present value that does not exceed \$5,000) may be immediately distributed without the consent of the participant.

¹ Section 436 of the Internal Revenue Code (Code) has provisions that are parallel to the provisions in section 206(g) of ERISA and which are identified in this notice in parentheses following the parallel ERISA provision. Section 401(a)(29) of the Code provides that, in the case of a defined benefit plan (other than a multiemployer plan) to which the minimum funding requirements of § 412 apply, the plan is not a qualified plan unless the plan meets the requirements of § 436.

Under section 206(g)(3)(A) of ERISA (§ 436(d)(1) of the Code), a plan is required to provide that the plan is not permitted to make any prohibited payment for a plan year after the valuation date for the year if the plan's AFTAP for the plan year is less than 60%. Under section 206(g)(3)(C) of ERISA (§ 436(d)(3) of the Code), if a plan's AFTAP is at least 60% but less than 80%, the plan must provide that the plan is not permitted to pay any prohibited payment that is in excess of 50% of the amount of the payment that could be made but for the benefit limitation (or, if less, the present value of the maximum guarantee with respect to the participant under section 4022 of ERISA) (partially prohibited payments).

Under section 206(g)(3)(B) of ERISA (§ 436(d)(2) of the Code), a plan is required to provide that, if the plan sponsor is a debtor in a case under title 11 of the United States Code (or similar Federal or State law), the plan is not permitted to pay any prohibited payment until the plan's enrolled actuary certifies that the plan's AFTAP for the plan year is not less than 100%.

The limitations on prohibited payments under section 206(g)(3) of ERISA (§ 436(d) of the Code) do not apply to a plan for any plan year if the terms of the plan, as in effect for the period beginning on September 1, 2005, and ending with such plan year, provide for no benefit accruals with respect to any participant during that period.

Under section 206(g)(4) of ERISA (§ 436(e) of the Code), a plan is required to provide that, if the plan's AFTAP is below 60% for a plan year, all benefit accruals cease as of the valuation date for the plan year.

Sections 206(g)(1)(B), 206(g)(4)(B), and 206(g)(5) of ERISA (§§ 436(b)(2), 436(e)(2), and 436(f) of the Code) set forth rules relating to special contributions that are permitted to be made in order to avoid benefit limitations (section 436 contributions). Under § 1.436-1(f)(2)(ii)(B) of the Income Tax Regulations, a section 436 contribution must be designated as such at the time it is contributed to the plan. Under section 206(g)(5)(B) of ERISA (§ 436(f)(2) of the Code), a section 436 contribution is an actual contribution that is treated as separate from a minimum required contribution under § 430 and is

disregarded in determining the maximum addition to a prefunding balance under § 430(f)(6). See § 1.436-1(f)(2) generally for rules relating to section 436 contributions. See also section 206(g)(5)(C) of ERISA (§ 436(f)(3) of the Code), which describes situations in which an employer is deemed to have made an election under section 303(f) of ERISA (§ 430(f)(5) of the Code) to reduce the plan's funding standard carryover balance or prefunding balance.

Under section 206(g)(7) of ERISA (§ 436(h) of the Code), special presumptions apply in certain situations for purposes of applying the benefit limitations under section 206(g) of ERISA (§ 436 of the Code). Under section 206(g)(7)(A) of ERISA (§ 436(h)(1) of the Code), if a benefit limitation has been applied in the preceding plan year, then the AFTAP for the current plan year is generally presumed to be equal to the prior year's AFTAP until the plan's enrolled actuary certifies the actual AFTAP for the current plan year. Further, under section 206(g)(7)(B) of ERISA (§ 436(h)(2) of the Code), if no certification is made before the first day of the 10th month of the current plan year, then, for purposes of applying these benefit limitations, that day is deemed to be the valuation date of the plan and the plan's AFTAP is conclusively presumed to be less than 60% as of that date. Under section 206(g)(7)(C) of ERISA (§ 436(h)(3) of the Code), if a benefit limitation did not apply to a plan in the prior plan year but the plan's AFTAP for the prior plan year was not more than 10 percentage points greater than an AFTAP that would have caused the plan to be subject to that benefit limitation, and if the plan's enrolled actuary has not certified the plan's actual AFTAP for the current plan year before the first day of the 4th month of the current plan year, then, until the actuary so certifies, that day is deemed to be the valuation date for the current plan year and the plan's AFTAP is presumed to be equal to a percentage that is 10 percentage points less than the plan's AFTAP for the preceding plan year.

Final regulations under § 436 were published on October 15, 2009 in the **Federal Register** at 74 FR 53004. These regulations also apply for purposes of the parallel rules in section 206(g) of ERISA. The regulations use the term *section 436 measurement date* (defined in § 1.436-1(j)(8))

to identify the dates on which a benefit limitation under § 436 of the Code (section 206(g) of ERISA) may apply or cease to apply. A section 436 measurement date might occur due to a certification of the plan's AFTAP issued by the enrolled actuary for the plan or due to the application of a presumption. See § 1.436-1(a)(4)(ii)(B), (c)(3), (d)(3)(ii)(A)(I), (d)(3)(ii)(C), and (d)(6) for certain optional plan provisions that are permitted with respect to § 436 (and the parallel rules in section 206(g) of ERISA).

III. Questions and Answers

Q-1. What are the general timing requirements for providing a section 101(j) notice?

A-1. Section 101(j) of ERISA provides that notice to participants is required to be provided at the following times:

- a. Within 30 days after the date on which the plan has become subject to a limitation on unpredictable contingent event benefits under section 206(g)(1) of ERISA (§ 436(b) of the Code).
- b. Within 30 days after the date on which the plan has become subject to a limitation on prohibited payments under section 206(g)(3)(A), (B), or (C) of ERISA (§ 436(d)(1), (2), or (3) of the Code).
- c. Within 30 days after the date benefit accruals under the plan are required to have ceased under section 206(g)(4) of ERISA (§ 436(e) of the Code).
- d. At such other time as may be determined by the Secretary of the Treasury.

Q&A-2 through Q&A-6 of this notice provide further guidance on these timing requirements.

Q-2. For purposes of A-1(a) of this notice, when does a plan with an AFTAP of less than 60% become subject to a limitation on unpredictable contingent event benefits under section 206(g)(1) of ERISA (§ 436(b) of the Code)?

A-2. For purposes of A-1(a) of this notice, a plan becomes subject to a limitation on unpredictable contingent event benefits under section 206(g)(1) of ERISA (§ 436(b) of the Code) on the first section 436 measurement date on which the plan's AFTAP is certified or presumed to be less

than 60% (if the plan provides for unpredictable contingent event benefits that it would not be permitted to pay). The section 101(j) notice must be provided within 30 days after that section 436 measurement date. The following example illustrates this rule:

Example. Plan X, a calendar year plan, provides for an unpredictable contingent event benefit upon shutdown of a plant at a specified location. Plan X's AFTAP has always been at least 60%. On March 18, 2013, Plan X's AFTAP is certified to be less than 60% for the 2013 plan year. The section 101(j) notice must be provided, with respect to the plan's plant shutdown benefit, by April 17, 2013, which is the 30th day following the March 18, 2013, section 436 measurement date, even if the plant has not shut down and is not expected to be shut down.

Q-3. For purposes of A-1(a) of this notice, when does a plan with an AFTAP of 60% or more become subject to a limitation on unpredictable contingent event benefits under section 206(g)(1) of ERISA (§ 436(b) of the Code)?

A-3. For purposes of A-1(a) of this notice, unless a plan's AFTAP is already certified or presumed to be less than 60%, the plan becomes subject to a limitation on unpredictable contingent event benefits on the date of the occurrence of an unpredictable contingent event that would make the AFTAP less than 60% (aggregating benefits applicable to similarly situated participants). In this case, a section 101(j) notice must be provided, with respect to any unpredictable contingent event benefit, within 30 days after the occurrence of the unpredictable contingent event (unless Q&A-6(a) of this notice requires earlier notice with respect to that unpredictable contingent event).

Q-4. For purposes of A-1(b) of this notice, when does a plan become subject to a limitation on prohibited payments under section 206(g)(3) of ERISA (§ 436(d) of the Code)?

A-4. (a) *General requirements relating to limitations on prohibited payments.* For purposes of A-1(b) of this notice, the date on which a plan becomes subject to a limitation on prohibited payments under section 206(g)(3)(A), (B), or (C) of ERISA (§ 436(d)(1), (2), or (3) of the Code) is the first day on which the plan is required to operate in accordance with the benefit limitation. This date is determined without regard to whether any participant or beneficiary is eligible to elect or has actually elected to receive payment in the form of

a prohibited payment. Thus, for example, if a plan's AFTAP is certified or presumed to be less than 80% (but not less than 60%) on a section 436 measurement date, so that the plan becomes subject to a limitation on prohibited payments under section 206(g)(3)(C) of ERISA (§ 436(d)(3) of the Code) on that date, then a section 101(j) notice must be provided within 30 days after that section 436 measurement date. If the plan's AFTAP is later certified or presumed to be less than 60% on a section 436 measurement date, so that the plan becomes subject to a limitation on prohibited payments under section 206(g)(3)(A) of ERISA (§ 436(d)(1) of the Code) on that date, then a section 101(j) notice must also be provided within 30 days after that later section 436 measurement date.

(b) *Rules of application.* (1) A-4(a) of this notice applies separately to the benefit limitations imposed by each of the following provisions:

- Section 206(g)(3)(A) of ERISA (§ 436(d)(1) of the Code) (relating to a plan with an AFTAP that is less than 60%);
- Section 206(g)(3)(B) of ERISA (§ 436(d)(2) of the Code) (relating to the plan sponsor being a debtor in a case under title 11 of the United States Code or similar Federal or State law); and
- Section 206(g)(3)(C) of ERISA (§ 436(d)(3) of the Code) (relating to limited payments for a plan with an AFTAP of less than 80% but not less than 60%).

Thus, for example, if a plan's AFTAP was below 60% in a prior period and is subsequently certified to be at least 60% but less than 80% on a section 436 measurement date (so that the plan is no longer subject to the limitation on prohibited payments under section 206(g)(3)(A) of ERISA (§ 436(d)(1) of the Code) but becomes subject to the limitation on prohibited payments under section 206(g)(3)(C) of ERISA (§ 436(d)(3) of the Code), then a section 101(j) notice describing the benefit limitation under section 206(g)(3)(C) of ERISA (§ 436(d)(3) of the Code) must be provided within 30 days after that later section 436 measurement date.

(2) Notwithstanding A-4(b)(1) of this notice, if a section 101(j) notice was

required as a result of the plan becoming subject to a limitation on prohibited payments under one of either (i) section 206(g)(3)(A) of ERISA (§ 436(d)(1) of the Code) or (ii) section 206(g)(3)(B) of ERISA (§ 436(d)(2) of the Code), and the plan also becomes subject to the other such limitation, then no section 101(j) notice is required to be provided describing that other limitation. In addition, if the plan subsequently ceases to be subject to one of the limitations but remains subject to the other limitation, then no additional section 101(j) notice is required to be provided describing either limitation.

Q-5. For purposes of A-1(c) of this notice, when does a plan become subject to a limitation on benefit accruals under section 206(g)(4) of ERISA (§ 436(e) of the Code)?

A-5. For purposes of A-1(c) of this notice, the date on which a plan becomes subject to a limitation on benefit accruals under section 206(g)(4) is the first section 436 measurement date on which the AFTAP is less than 60% and, thus, the date on which benefit accruals under the plan are required to have ceased pursuant to section 206(g)(4) of ERISA (§ 436(e) of the Code). The date on which a section 101(j) notice must be provided is 30 days after the first section 436 measurement date on which benefit accruals under the plan are required to have ceased pursuant to section 206(g)(4) of ERISA (§ 436(e) of the Code).

Q-6. Has the Secretary of the Treasury (or his delegate) determined, pursuant to section 101(j)(3) of ERISA, that a section 101(j) notice is required to be provided at any times other than those described in Q&A-2 through Q&A-5 of this notice?

A-6. (a) *Special rule for the date on which a limitation on unpredictable contingent event benefits applies for plans with an AFTAP of 60% or more.* Yes. In the case of a plan with an AFTAP of 60% or more, A-3 of this notice generally provides that a section 101(j) notice with respect to an unpredictable contingent event benefit must be provided within 30 days after the occurrence of the unpredictable contingent event. The Commissioner has determined that a section 101(j) notice must also be provided with respect to the unpredictable contingent event benefit on or before the latest of the following dates: (1) if the employer is covered by the

Worker Adjustment and Retraining Notification Act (WARN Act) (P.L. 100-379) and the related unpredictable contingent event is an event for which a WARN Act notice must be provided, the date on which the WARN Act notice is provided; (2) 60 days before the actual occurrence of the related unpredictable contingent event; and (3) 30 days after the date the employer makes a decision to cause the related unpredictable contingent event to occur (for example, a decision to shut down a plant). No additional section 101(j) notice is required with respect to the unpredictable contingent event benefit under A-3 of this notice if this A-6(a) requires a section 101(j) notice with respect to that unpredictable contingent event benefit earlier than the date that a section 101(j) notice would be required under A-3 of this notice.

(b) *Special rule requiring a section 101(j) notice for plans that permit new annuity starting dates.* In addition, if (i) a plan becomes subject to a limitation on prohibited payments under section 206(g)(3)(A), 206(g)(3)(B), or 206(g)(3)(C) of ERISA (§ 436(d)(1), 436(d)(2), or 436(d)(3) of the Code), (ii) that limitation subsequently ceases to apply, and (iii) the plan permits those participants or beneficiaries whose benefits commenced during the period the limitation applied to elect (after the limitation ceases to apply) to receive their remaining benefits in the form of a prohibited payment (see § 1.436-1(a)(4)(ii)), then a section 101(j) notice is required to be provided within 30 days after the date on which the limitation ceases to apply. For rules addressing the content requirements for a section 101(j) notice relating to new annuity starting dates, see A-9(b) of this notice.

Q-7. How do the notice requirements under section 204(h) of ERISA (section 4980F of the Code) interact with the notice requirements under section 101(j) of ERISA?

A-7. If a plan that is subject to the requirements of section 206(g) of ERISA (§ 436 of the Code) is amended to cease all benefit accruals independent of the benefit limitations imposed under section 206(g)(4) of ERISA (§ 436(e) of the Code), a section 101(j) notice is not required to be provided to participants and beneficiaries as a result of that amendment

(because no participants or beneficiaries would be affected by the benefit limitation under section 206(g)(4) of ERISA (§ 436(e) of the Code)). However, a notice is required under section 204(h) of ERISA (§ 4980F of the Code) as a result of that amendment. Further, even though accruals have ceased, a section 101(j) notice is nevertheless required under A-2 of this notice if the plan is unable to pay unpredictable contingent event benefits under section 206(g)(1) of ERISA (§ 436(b) of the Code) and is required under A-4(a) of this notice if the plan is unable to pay prohibited payments under section 206(g)(3)(A) or (B) of ERISA (§ 436(d)(2) or (3) of the Code). Similarly, if a plan that ceases accruals pursuant to section 206(g)(4) of ERISA (§ 436(e) of the Code) is later amended to implement a permanent freeze on accruals or otherwise significantly reduce the rate of future benefit accruals (so that the cessation would remain in effect even if the benefit limitation under section 206(g)(4) of ERISA (§ 436(e) of the Code) no longer were to apply, the plan would be required to provide a notice of the amendment under section 204(h) of ERISA (§ 4980F of the Code). See § 54.4980F-1, A-9(g)(3)(i) and (g)(3)(ii)(B) for special rules that apply for purposes of section 204(h) of ERISA and § 4980F of the Code with respect to a plan amendment reflecting section 206(g)(4) of ERISA (§ 436(e) of the Code). See also A-8(c) of this notice for a related rule.

The following example illustrates the rules in this A-7:

Example. For the 2013 calendar plan year, Plan X's AFTAP is certified on May 15, 2013, to be less than 60%. In accordance with section 206(g)(4) of ERISA (§ 436(e) of the Code), the plan is required to cease all benefit accruals as of May 15, 2013. Plan X provides a section 101(j) notice to plan participants on May 30, 2013 (within 30 days after the section 436 measurement date). On October 1, 2013, Plan X is amended to freeze the plan permanently as of January 1, 2014. With respect to the plan amendment, a section 101(j) notice is not required. However, a section 204(h) notice is required to be provided to affected individuals within the period required under § 54.4980F-1, Q&A-9.

Q-8. Which persons must be provided with a section 101(j) notice?

A-8. (a) *General rule.* A section 101(j) notice is generally required to be provided to each participant covered under the plan and to each beneficiary entitled to benefits under the plan on the first date that the plan

becomes subject to the applicable benefit limitation or limitations. However, a notice is not required to be provided to any participant or beneficiary with respect to whom it is reasonably anticipated that the relevant limitation could not apply on or after the date on which the limitation becomes applicable. The notice is only required to be provided to participants and beneficiaries to whom the relevant limitation applies or could apply. A limitation applies or could apply to a participant or beneficiary only if the participant or beneficiary is or could be adversely affected by the limitation, as described further in this A-8(a).

(1) *Limit on unpredictable contingent event benefits.* In the case of the limitation on unpredictable contingent event benefits under section 206(g)(1) of ERISA (§ 436(b) of the Code), the limitation applies to any participant or beneficiary who on the date the limitation becomes applicable could be entitled to those benefits, currently or at a future date, in the event the contingency on which the benefits are based were to occur.

The following example illustrates this rule:

Example. Plan X provides for an unpredictable contingent event benefit in the form of an early retirement subsidy for participants whose employment ends after age 55 but before normal retirement age due to involuntary termination in connection with a plant shutdown. For the 2013 calendar plan year, Plan X's AFTAP is certified on February 1, 2013, to be less than 60%. In accordance with section 206(g)(1) of ERISA (§ 436(b) of the Code), the plan is required to provide that unpredictable contingent event benefits may not be paid. A section 101(j) notice must be provided to each participant who is employed at that plant, other than employees who have attained normal retirement age (and who thus could never become eligible for the early retirement subsidy).

(2) *Limit on prohibited payments.* In the case of a limitation on prohibited payments imposed under section 206(g)(3) of ERISA (§ 436(d) of the Code), the limitation applies to an individual who is a participant or beneficiary on the date the limitation becomes applicable and who could be eligible to elect to receive a prohibited payment under the plan (at any time on or after the date the limitation becomes applicable) if the limitation did not apply. Thus, for example, a participant who is receiving pension payments and who would not be eligible to elect a prohibited payment even if the plan were not subject to the limitation is not adversely affected by the limi-

tation on prohibited payments. Therefore, a section 101(j) notice is not required to be provided to such a participant as a result of a limitation on prohibited payments under section 206(g)(3) of ERISA (§ 436(d) of the Code). As another example, if a plan does not offer payment in any form of prohibited payment, then no section 101(j) notice is required to be provided to any participant or beneficiary as a result of a limitation on prohibited payments under section 206(g)(3) of ERISA (§ 436(d) of the Code). Thus, if a plan only offers single-sum payments when a participant's or beneficiary's benefit has a present value of less than the dollar amount for which consent is required under section 203(e) of ERISA (§ 411(a)(11) of the Code) (and if participants and beneficiaries do not have the right to elect distribution in any other form of prohibited payment), then no section 101(j) notice is required as a result of section 206(g)(3) of ERISA (§ 436(d) of the Code) applying to the plan. However, a limitation under section 206(g)(3) of ERISA (§ 436(d) of the Code) applies to any participant or beneficiary who could be eligible to elect a prohibited payment at any date on or after the limitation applies to the plan (if he or she were to separate from service after attaining any age or service condition for eligibility to elect that form of payment). Therefore, a section 101(j) notice is required to be provided to such participant or beneficiary.

(3) *Limitation on benefit accruals.* With respect to the limitation under section 206(g)(4) of ERISA (§ 436(e) of the Code) requiring accruals to cease, the limitation applies to any participant who would otherwise be benefiting under the plan, within the meaning of § 1.410(b)-3(a), on the date on which the limitation first applies to the plan. Therefore, a section 101(j) notice must be provided to each such participant, but would not be required to be provided to former employees or beneficiaries (assuming that they would not otherwise be eligible to accrue benefits under the plan).

(b) *Special rule for plans that permit new annuity starting dates.* A section 101(j) notice must be provided to each participant or beneficiary described in A-6(b) of this notice to whom an election to receive a prohibited payment becomes available as a result of the applicable limitation ceasing to apply.

(c) *Application to frozen plans.* In the case of a plan that provides for no benefit accruals with respect to any participant, whether or not section 206(g)(4) of ERISA (§ 436(e) of the Code) applies to the plan, a section 101(j) notice must nevertheless be provided if the plan provides for any unpredictable contingent event benefits or any prohibited payments and the plan becomes subject to a limitation under section 206(g)(1) or (3) of ERISA (§ 436(b) or (d) of the Code). If a frozen plan that does not provide for any unpredictable contingent event benefits or prohibited payments is certified or presumed to have an AFTAP that is less than 60%, no section 101(j) notice is required to be provided because there would be no participant who would otherwise be benefiting under the plan (as described in paragraph (a)(3) of this A-8) and no participant who is or could be affected by a limitation on unpredictable contingent event benefits or prohibited payments. However, if such a frozen plan is subsequently amended to resume benefit accruals and, at a later date, benefit accruals are not permitted under the plan because of section 206(g)(4) of ERISA (§ 436(e) of the Code), then a section 101(j) notice would be required to be provided within 30 days after the first date benefit accruals under the plan are required to cease as a result of section 206(g)(4) of ERISA (§ 436(e) of the Code).

(d) *Special rule where limitation ceases to apply before the latest date for providing a section 101(j) notice.* If a plan becomes subject to a benefit limitation and then ceases to be subject to the benefit limitation before the latest date for providing a section 101(j) notice, the plan is required to provide a section 101(j) notice only to those participants and beneficiaries who were affected by the benefit limitation during the period after the plan becomes subject to the benefit limitation and before the plan then ceases to be subject to the benefit limitation. Thus, no section 101(j) notice is required to be provided if there is no participant or beneficiary who was affected by the benefit limitation during that period. For purposes of this A-8, the circumstances under which a participant or beneficiary might not be affected by a benefit limitation during a period include: (1) the employer makes a section 436 contribution before the section 101(j) notice is required to be provided; (2) in the case of a limita-

tion on prohibited payments under section 206(g)(3)(C) of ERISA (§ 436(d)(3) of the Code) relating to partially prohibited payments, either no participant or beneficiary commences benefits during that period or the plan permits any participant or beneficiary whose benefits commenced during that period to elect to receive his or her remaining benefits in the form of a prohibited payment promptly after the limitation ceases to apply; and (3) benefits that would have accrued during a cessation of accruals under section 206(g)(4) of ERISA (§ 436(e) of the Code) are restored (as described in § 1.436-1(c)(2) or (3)) before the section 101(j) notice is required to be provided.

Q-9. What information is required to be in a section 101(j) notice?

A-9. (a) *General rule.* In the case of a section 101(j) notice required to be provided because the plan has become subject to a limitation described in section 206(g)(1), 206(g)(3), or 206(g)(4) of ERISA (§ 436(b), 436(d), or 436(e) of the Code), the following information is required to be in the notice:

(1) The name of the plan, the plan's employer identification number (EIN) assigned by the Internal Revenue Service, and the plan number assigned by the plan sponsor.

(2) A general description of the limitation, such as (i) in the case of a limitation on unpredictable contingent event benefits or prohibited payments under sections 206(g)(1) and 206(g)(3) of ERISA (§§ 436(b) and 436(d) of the Code), a description of the benefits that are not permitted to be paid, and (ii) in the case of the limitation under section 206(g)(4) of ERISA (§ 436(e) of the Code), a statement that benefit accruals have stopped.

(3) In the case of a limitation on unpredictable contingent event benefits under section 206(g)(1) of ERISA (§ 436(b) of the Code), a prohibited payment limitation under section 206(g)(3)(A) or (C) of ERISA (§ 436(d)(1) or (3) of the Code), or benefit accruals having ceased under section 206(g)(4) of ERISA (§ 436(e) of the Code), a statement that the limitation applies because of the level of the plan's AFTAP, which may be described as the plan's "funded percentage," including identification of the specific percentage that constitutes the plan's AFTAP. The notice must state whether the AFTAP that

applies at the time a benefit limitation becomes applicable is a result of a certification issued by the plan's enrolled actuary or is the result of application of a presumption under section 206(g)(7) of ERISA (§ 436(h) of the Code).

(4) In the case of a limitation imposed under section 206(g)(3)(B) of ERISA (§ 436(d)(2) of the Code) relating to bankruptcy, a statement that the limitation applies because of the relevant legal process (under which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law) and because the plan's AFTAP has not been certified to be at least 100%.

(5) In the case of a limitation on unpredictable contingent event benefits under section 206(g)(1) of ERISA (§ 436(b) of the Code), a description of the unpredictable contingent event benefits written in sufficient detail so that the notice is calculated to make evident the difference between the plan's benefits that would be payable if the limitation had not applied and those that are payable after application of the limitation.

(6) In the case of a limitation on prohibited payments under section 206(g)(3) of ERISA (§ 436(d) of the Code), a description of the prohibited payments written in sufficient detail so that the notice describes the difference between the plan's benefits that would be payable if the limitation did not apply and those that are payable after application of the limitation. If a limitation on prohibited payments under section 206(g)(3) of ERISA (§ 436(d) of the Code) applies with respect to forms of payment that may be payable for the participant's lifetime (such as a social security leveling option), the description is not required to provide more detail than a statement that benefits under any such form of payment may be limited, depending on relevant factors. For example, in the case of a social security leveling option, the information provided must include an explanation that a restriction is more likely to apply in certain cases in which the present value of the increased benefits is more than half of the present value of the total benefits payable.

(7) A description of the conditions under which the limitation will cease to apply to the plan (such as "when the plan's funded percentage is at least 80%") and a description of plan provisions that are applicable after the limitation ceases to apply, such as a provision on how benefits under the plan are restored after a benefit limitation no longer applies. For plans that provide new annuity starting dates as described in A-6(b) of this notice, the notice must state that any participant or beneficiary to whom an election to receive a prohibited payment becomes available as a result of the limitation ceasing to apply will receive notice within 30 days after the date that the limitation ceases to apply.

(8) The effective date of the limitation.

(9) The class of participants or beneficiaries affected.

(10) The name, address, and telephone number of the plan administrator, trustee, or other contact person from whom more information may be obtained.

(b) *Special rule for plans that permit new annuity starting dates.* In the case of a section 101(j) notice required under paragraph A-6(b) of this notice, the following information is required to be in the notice:

(1) The name of the plan, the plan's employer identification number (EIN) assigned by the Internal Revenue Service, and the plan number assigned by the plan sponsor.

(2) A statement that the limitation that had been imposed on the form of distribution that constituted a prohibited payment no longer applies.

(3) A statement that the participant or beneficiary is eligible to elect the applicable form of distribution that constituted a prohibited payment, including any deadlines and application procedures that apply for that purpose.

(4) The name, address, and telephone number of the plan administrator, trustee, or other contact person to obtain more information.

(c) *Style and format.* A section 101(j) notice must be written in a manner calculated to be understood by the average plan participant. In addition, a section 101(j)

notice must be written in such a manner that the participant or beneficiary will understand the significance of the required information in the notice relating to the benefit limitation. While a section 101(j) notice may include any additional information that is necessary or helpful for recipients to understand the required information in the notice, the notice should not have the effect of misleading or misinforming recipients or of distracting recipients from the required information in the notice. A single combined notice can be provided if a plan is subject to more than one limitation (for example, if the plan's AFTAP is certified to be below 60% or is presumed to be below 60%, so that the plan is subject to the limitations in sections 206(g)(1), 206(g)(3)(A), and 206(g)(4) of ERISA (§§ 436(b), 436(d)(1), and 436(e) of the Code)).

(d) *Illustrative example.* The following example illustrates information that satisfies the requirements of paragraph (a) of this A-9 with respect to a pension plan (Pension Plan A) with a valuation date at the beginning of the plan year for which the AFTAP for the 2013 calendar plan year is certified, on July 6, 2013, to be 75%. Pension Plan A is a single-employer defined benefit plan to which section 206(g)(1) of ERISA (§ 436(b) of the Code) applies and the terms of the plan, as in effect since September 1, 2005, have provided for benefit accruals with respect to one or more participants. Pension Plan A allows commencement of benefits at any time between termination of employment and normal retirement age (65). The plan generally permits payment of a participant's entire benefit in various life annuities that do not constitute prohibited payments, plus a single-sum payment form and a social security leveling form. However, Pension Plan A requires payment to be made in an immediate single-sum distribution if the present value of the benefit does not exceed \$5,000. Pension Plan A provides that, if a limitation under section 206(g)(3)(C) of ERISA (§ 436(d)(3) of the Code) applies to the plan, participants and beneficiaries who elect a single-sum payment or a social security leveling form of payment for the maximum amount permitted and who commence the remainder of their benefits in a form of payment that is not a prohibited payment can elect to convert that form of payment to a single-sum payment or full social security leveling form of payment within a specified period after the limitation ceases to apply. The notice is provided, by August 5, 2013, to all participants and beneficiaries who have not commenced benefits before July 6, 2013.

Notice Regarding [Insert Name of the Plan]

[Insert name of the plan, the plan's employer identification number (EIN) assigned by the Internal Revenue Service, and the plan number assigned by the plan sponsor.]

Federal law requires a change in the way your benefits may be paid from your pension plan. Beginning on July 6, 2013, the plan is no longer permitted to offer full payment in a lump-sum payment form for a participant or beneficiary whose benefit is worth more than \$5,000. However, the plan is permitted to pay up to half of the pension in the form of a lump-sum payment. (A special limit may apply to lump-sum payments that exceed a dollar amount which is published by the government at <http://www.pbgc.gov/practitioners/miscellaneous-tables/pvmg.html>.)

Beginning on July 6, 2013, the plan may also be required to limit the amount paid in the social security leveling form in certain specific cases (where the value of the extra amount payable before your presumed social security retirement age under the plan is more than half of the value of the total benefits payable under the plan).

This limit on lump-sum payments and on payments in the social security leveling form is imposed under federal law because the plan's funded percentage for the current plan year (at January 1, 2013) is 75%, as determined by the plan's actuary. The limit will cease to apply when it has been determined that the plan's funding status has improved so that the funded percentage is at least 80%.

This limit only applies if your total benefit is worth more than \$5,000 and does not place any restriction on payment in the form of a life annuity, so that each optional form of payment offered under the plan other than the lump-sum or social security leveling forms continues to be available. If you retire or otherwise terminate employment and are eligible to commence benefits, you may choose among the following:

- Elect payment of your entire benefit in a non-accelerated form of payment. You can elect to receive 100% of your pension in any life annuity or other optional form of payment offered under the plan other than a lump-sum payment or social security leveling form.
- Elect payment of half your benefit in a lump-sum payment, with the remainder in a non-accelerated form. You can elect to receive up to 50% of your pension in the form of a lump-sum payment, with the remaining 50% paid

in any other form of payment available under the plan. Later, if the plan's funding status has improved so that the plan is permitted to offer full lump-sum payments, you will be notified of the change in status at that time and then can elect to receive a lump-sum payment for the remaining portion of your benefit.

- Elect payment of half your benefit in a social security leveling form, with the remainder in a non-accelerated form. You can elect to receive up to 50% of your pension in installments until your presumed social security retirement date under the plan, with the remaining 50% paid in an immediate life annuity or any other non-accelerated form of payment available under the plan. If you choose this payment option, you can elect to receive the remaining portion of your benefit in the social security leveling form if the plan is again permitted to offer such payments in full. If you choose this half social security leveling form, you will be notified if the plan's funding status has improved enough so that full payments in the form of social security leveling are permitted.
- Elect to receive your benefit later. You can defer receipt of your entire pension to any later date (but not later than age 65), when the limit might not apply.

If you are married, you cannot elect payment in any form other than a joint and survivor annuity with your spouse as the survivor, with at least a 50% surviving spouse's annuity, unless your spouse consents.

If you have any questions, contact [insert name, address, and telephone number for contact information].

Q-10. What are the acceptable methods of providing a section 101(j) notice?

A-10. A section 101(j) notice must be in writing and may be furnished in any paper or electronic form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided. Permissible electronic methods include those permitted under regulations of the Department of Labor at 29 C.F.R.

§ 2520.104b-1(c) and those described at § 54.4980F-1, Q&A-13(c).

IV. Applicability Date

This notice is effective on **[INSERT DATE THAT IS THE FIRST DAY OF THE FIRST CALENDAR MONTH FOLLOWING 90 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE INTERNAL REVENUE BULLETIN]**. However, the plan administrator may rely on the provisions in this notice before that date. The plan administrator may also apply a reasonable interpretation of section 101(j) of ERISA before that date.

V. Request for Comments

Comments are requested on whether a section 101(j) notice should be required to be provided at additional dates, such as whenever a limitation ceases to apply. Similarly, comments are requested on whether a section 101(j) notice should be provided to individuals who become participants or beneficiaries after the first date the limitation applies or to participants and beneficiaries at later dates if the limitation continues to apply to the plan, such as on an annual or tri-annual basis.

DRAFTING INFORMATION

The principal author of this notice is Diane Bloom of Employee Plans, Tax Exempt and Government Entities Division, with the participation of personnel from other offices within the Service and Treasury. For further information regarding this notice, please call the Employee Plans customer assistance service Monday through Friday between 8:30 a.m. and 4:30 p.m. Eastern time at (877) 829-5500 (a toll-free number) or e-mail RetirementPlanQuestions@irs.gov.

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Disregarded Entities and the Indoor Tanning Services Excise Tax

REG-125570-11

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9596) relating to disregarded entities (including qualified subchapter S subsidiaries) and the indoor tanning services excise tax. These regulations affect disregarded entities responsible for collecting the indoor tanning services excise tax and owners of those disregarded entities. The text of the temporary regulations also serves as the text of the proposed regulations.

DATES: Comments and requests for a public hearing must be received by September 24, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-125570-11), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered to: CC:PA:LPD:PR Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-125570-11), 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-125570-11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael H. Beker, (202) 622-3130; concerning submissions of comments and requests for a public

hearing, Oluwafunmilayo Taylor, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 1361 of the Internal Revenue Code (Code) and the Procedure and Administration Regulations (26 CFR part 301) under section 7701 of the Code. The text of temporary regulations published in this issue of the Bulletin also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and 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, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this 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 comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person

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

Drafting Information

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

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAX

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

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

Par. 2. Section 1.1361-4 is amended by adding paragraph (a)(8)(iii) to read as follows:

§1.1361-4 Effect of QSub election.

(a) * * *

(8) * * *

(iii) [The text of proposed §1.1361-4(a)(8)(iii) is the same as the text of §1.1361-4T(a)(8)(iii)(A) and (B) published elsewhere in this issue of the Bulletin].

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. Section 301.7701-2 is amended by adding new paragraphs (c)(2)(vi) and (e)(9) to read as follows:

§301.7701-2 Business entities; definitions.

* * * * *

(c) * * *

(2) * * *

(vi) [The text of proposed §301.7701-2(c)(2)(vi) is the same as the text of §301.7701-2T(c)(2)(vi) published elsewhere in this issue of the Bulletin].

* * * * *

(e) * * *

(9) [The text of proposed §301.7701-2(e)(9) is the same as the text of §301.7701-2T(e)(9)(i) published elsewhere in this issue of the Bulletin].

Steven T. Miller,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on June 22, 2012, 8:45 a.m., and published in the issue of the Federal Register for June 25, 2012, 77 F.R. 37886)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–1 through 2012–26 is in Internal Revenue Bulletin 2012–26, dated June 25, 2012.

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¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2012–1 through 2012–26 is in Internal Revenue Bulletin 2012–26, dated June 25, 2012.

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