

HIGHLIGHTS OF THIS ISSUE

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

SPECIAL ANNOUNCEMENT

Announcement 2012-16, page 876.

This announcement confirms that the Service will continue to process requests for the refund of the wrongfully collected Telephone Excise Taxes described in Notice 2006-50 and Notice 2007-11 and also announces the July 27, 2012 filing deadline for such requests.

INCOME TAX

T.D. 9582, page 868.

Final regulations under section 642 of the Code contains information regarding the Federal tax consequences of an ordering provision in a trust, a will, or a provision of local law that attempts to determine the tax character of the amount paid to a charitable beneficiary of the trust or estate.

T.D. 9583, page 866.

Final regulations under section 267 of the Code provide guidance concerning the time for taking into account deferred losses on the sale or exchange of property between members of a controlled group.

Notice 2012-30, page 874.

Nonconventional source fuel credit, 2011 section 45K inflation adjustment factor and section 45K reference price. This proposed notice publishes the nonconventional fuel source credit, inflation adjustment factor, and reference price under section 45K of the Code for calendar year 2011. The inflation adjustment factor is used to determine the credit allowable on sales of fuel produced from a nonconventional source under section 45K. For calendar year 2011, the credit

is available only for coke or coke gas (other than from petroleum based products). The calendar year 2011 nonconventional fuel source credit and inflation adjustment factor apply to the sales of barrel-of-oil equivalent of qualified fuels sold by the taxpayer to an unrelated person during the 2011 calendar year, the domestic production of which is attributable to the taxpayer.

Announcement 2012-17, page 876.

This announcement contains corrections to Rev. Proc. 2011-62, 2011-52 I.R.B. 1032, which clarify the dimensions for Exhibit B for calendar year 2011. Rev. Proc. 2011-62 corrected.

EMPLOYEE PLANS

Notice 2012-29, page 872.

This notice announces that the IRS and the Treasury Department anticipate issuing guidance relating to the applicability of the normal retirement age rules to governmental plans. The notice describes the guidance under consideration, which - (a) would clarify that governmental plans that do not provide for in-service distributions before age 62 do not need to have a definition of normal retirement age and (b) would modify the age-50 safe harbor rule for qualified public safety employees. The notice also announces that the IRS and Treasury Department intend to extend the effective date of the regulations relating to distributions from a pension plan upon attainment of normal retirement age for governmental plans. The notice includes a request for public comments. Notices 2008-98 and 2009-86 modified.

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Finding Lists begin on page ii.
Index for January through April begins on page v.



EXEMPT ORGANIZATIONS

Announcement 2012–20, page 876.

The IRS has revoked its determination that A Family Budget Counseling, Inc., of Huntington City, NY; Angels Enterprise, Inc., of Buchanan, MI; Fisher Institute of Irving, TX; and Graystone University Housing Corporation of Malvern, PA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

ESTATE TAX

T.D. 9582, page 868.

Final regulations under section 642 of the Code contains information regarding the Federal tax consequences of an ordering provision in a trust, a will, or a provision of local law that attempts to determine the tax character of the amount paid to a charitable beneficiary of the trust or estate.

GIFT TAX

T.D. 9582, page 868.

Final regulations under section 642 of the Code contains information regarding the Federal tax consequences of an ordering provision in a trust, a will, or a provision of local law that attempts to determine the tax character of the amount paid to a charitable beneficiary of the trust or estate.

ADMINISTRATIVE

Announcement 2012–16, page 876.

This announcement confirms that the Service will continue to process requests for the refund of the wrongfully collected Telephone Excise Taxes described in Notice 2006–50 and Notice 2007–11 and also announces the July 27, 2012 filing deadline for such requests.

Announcement 2012–17, page 876.

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The IRS Mission

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 267.—Losses, Expenses, and Interest With Respect to Transactions Between Related Taxpayers

26 CFR 1.267(f)-1: *Controlled groups.*

T.D. 9583

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Guidance Under Section 267(f); Deferral of Loss on Transactions between Members of a Controlled Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning the deferral of losses on the sale or exchange of property between members of a controlled group and provides guidance as to the time for taking into account those losses. These regulations affect corporations that are members of a controlled group.

DATES: *Effective Date:* These regulations are effective on April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Amie Colwell Breslow (202) 622-7530 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 267(a)(1) provides that no deduction shall be allowed for any loss on the sale or exchange of property between certain related persons. Section 267(f)(2) contains an exception for a loss on the sale or exchange of property between members of a controlled group. For this purpose, “controlled group” has the meaning given to such term in section 1563(a) except that “more than 50 percent” is substituted for

“at least 80 percent” each place it appears. In the case of a sale or exchange of loss property between members of a controlled group, the loss is deferred rather than disallowed. Under section 267(f)(2)(B), the loss is deferred until the property is transferred outside of the controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

The regulations under section 267(f) provide that the timing principles for intercompany sales or exchanges between members of a consolidated group (see generally §1.1502-13(c)(2)) apply to sales or exchanges of property at a loss between members of a controlled group. See §1.267(f)-1(a)(2). The attribute redetermination rules applicable to transactions between members of a consolidated group (see §1.1502-13(c)(1)), however, do not apply to sales or exchanges between members of a controlled group.

Although the attribute redetermination rule generally does not apply to sales or exchanges between members of a controlled group, §1.267(f)-1(c)(1)(iv) contains a special rule with respect to losses that would have been redetermined to be a noncapital, nondeductible amount if the consolidated return attribute redetermination rule did apply. Under §1.267(f)-1(c)(1)(iv), if an intercompany loss between members of a consolidated group would have been redetermined to be a noncapital, nondeductible amount as a result of the attribute redetermination rule applicable to consolidated groups, but is not redetermined because the sale or exchange occurred between members of a controlled group (to which the attribute redetermination rule does not apply), then the loss will be deferred. The loss is taken into account when the selling member (S) and buying member (B) are no longer in a controlled group relationship.

On April 21, 2011, the IRS and Treasury Department published a notice of proposed rulemaking (REG-118761-09, 2011-21 I.R.B. 803) in the **Federal Register** (76 FR 22336). The notice included proposed regulations under section 267(f) providing guidance concerning the Federal

income tax treatment of deferred losses on the sale or exchange of property between members of a controlled group, including transactions in which the member acquiring the property subsequently recognizes a corresponding gain with respect to the property. The proposed regulations provided that certain losses on the sale or exchange of property between members of a controlled group, which have been deferred, are taken into account upon the occurrence of either of two events. The deferred loss is taken into account to the extent of any corresponding gain that the member acquiring the property recognizes with respect to the property. Alternatively, the deferred loss is taken into account when the parties to the transaction cease to be in a controlled group relationship. The proposed regulations also provided that for purposes of determining whether the loss is redetermined to be a noncapital, nondeductible amount under the principles of §1.1502-13, stock held by S, stock held by B, and stock held by all members of the consolidated group that includes S, as well as stock held by any member of a controlled group of which S is a member that was acquired from a member of S’s consolidated group, must be taken into account. A public hearing was requested and held on August 3, 2011. The IRS received one formal comment in response to the notice of proposed rulemaking. The comment raised several questions with certain recommendations, which are discussed in the following paragraphs of this preamble.

The commentator suggested that the final regulations incorporate a model that allows a loss to be taken into account based on the arm’s length principles contained in section 482 and the regulations thereunder. Specifically, the commentator noted that if the transaction is arm’s length in nature and has substance from a business perspective, the loss should be taken into account immediately. The IRS and Treasury Department do not agree with this comment. In a transaction described in these regulations, it is assumed that the parties are acting at arm’s length. Section 267(f) serves a different purpose, namely, to determine the timing of when a loss should be taken into account on a sale or exchange of

property between members of a controlled group. Accordingly, the final regulations retain the model contained in the proposed regulations.

The commentator also suggested that the proposed regulations do not clearly state how to establish whether a recognized loss is redetermined to be a noncapital, nondeductible amount under the principles of §1.1502-13. Specifically, the commentator noted that it is unclear whether the proposed regulations, as written, are intended to direct taxpayers to a §1.1502-34 type of analysis in determining whether the loss is redetermined to be a noncapital, nondeductible amount. Under the rule, stock held by S, stock held by B, and stock held by all members of the consolidated group that includes S, as well as stock held by any member of a controlled group of which S is a member that was acquired from a member of S's consolidated group must be taken into account. After considering the comment, the IRS and Treasury Department believe that the rules in the proposed regulations, as written, are clear in that they expressly list the corporations the stock holdings of which must be taken into account. Furthermore, the IRS and Treasury Department believe that the proposed regulation is appropriately broader than the stock aggregation rule of §1.1502-34 to account for, among other considerations, the fact that the controlled group definition is broader than the definition of a consolidated group.

In addition, the commentator questioned whether the proposed regulations were consistent with the holdings in *Granite Trust v. United States*, 238 F.2d 670 (1st Cir. 1956), and other applicable case law. The IRS and Treasury Department believe that the rules contained in the proposed regulations and these final regulations are consistent with applicable case law. These rules are intended to address the timing for taking into account a loss on a sale of property between members of a controlled group, and do not relate to whether a liquidation otherwise results in the recognition of a loss.

Explanation of Provisions

These final regulations retain the rules of the proposed regulations, but make one revision to clarify the interaction of section 267(f) and §1.1502-13 principles. The fi-

nal regulations also make one modification to ensure that taxpayers cannot circumvent the purposes of the proposed regulation through issuances of target corporation stock to controlled group members.

The proposed regulations provided that a deferred loss is taken into account to the extent of any corresponding gain that the member acquiring the property recognizes with respect to the property. For example, assume S sells 30 percent of T's stock to B (a member of S's controlled group) at a loss (in a transaction that is treated as a sale or exchange for Federal income tax purposes). If T's stock appreciates after the sale and before a subsequent event that results in B's recognition of gain, the proposed regulations provided that S's deferred loss may be taken into account to the extent that B recognizes a corresponding gain.

Questions have been raised concerning whether this rule is necessary because the relevant consolidated return provisions currently allow the loss to be taken into account to the extent of the corresponding gain. The IRS and Treasury Department agree that an explicit rule is unnecessary because the timing of taking the loss into account in these circumstances is provided for under §1.1502-13. Accordingly, the rule in the proposed regulations has been removed from the final regulations and an example has been added to §1.267(f)-1(j) to illustrate the interaction of these final regulations and the consolidated return regulations.

In addition to this clarification, these final regulations provide that stock issued to a member of the controlled group by a target corporation is taken into account for purposes of determining whether a loss would be treated as noncapital, nondeductible amount if the rules of §1.1502-13 applied. For example, assume FP is a foreign corporation that owns all the stock of FS, a foreign subsidiary, and all the stock of P, a domestic corporation. P owns all the stock of T. In Year 1, FS contributes cash to T in exchange for newly issued stock of T that constitutes 40 percent of T's outstanding stock. In Year 2, when the value of the T stock owned by P is less than its basis in P's hands, P sells all of its T stock to FP. In Year 3, in a transaction unrelated to the issuance of the T stock in Year 1, T converts under state law to a limited liability company that is treated

as a partnership for Federal income tax purposes.

Under these final regulations, the T stock issued by T to FS is taken into account for purposes of determining whether, upon the conversion of T, P's deferred loss would be treated under the principles of §1.1502-13 as a noncapital, nondeductible amount.

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 this regulation. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect controlled groups of corporations which tend to be larger businesses. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. No comments were received.

Drafting Information

The principal author of this regulation is Amie Colwell Breslow, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in its development.

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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 1.267(f)-1 is also issued under 26 U.S.C. 267.

Par. 2. Section 1.267(f)-1 is amended as follows:

1. Paragraph (c)(1)(iv) is revised.
2. Adding *Example 9* to paragraph (j).
3. Adding *Example 10* to paragraph (j).
4. Paragraph (l)(3) is redesignated as paragraph (l)(4) and a new paragraph (l)(3) is added.

The additions and revision read as follows:

§1.267(f)-1 Controlled Groups.

* * * * *

(c) * * *

(1) * * *

(iv) *B's item is excluded from gross income or noncapital and nondeductible.* To the extent S's loss would be redetermined to be a noncapital, nondeductible amount under the principles of §1.1502-13, but is not redetermined under paragraph (c)(2) of this section (which generally renders the attribute redetermination rule inapplicable to sales between members of a controlled group), S's loss continues to be deferred. For purposes of this paragraph, stock held by S, stock held by B, stock held by all members of S's consolidated group, stock held by any member of a controlled group of which S is a member that was acquired from a member of S's consolidated group, and stock issued by T to a member of the controlled group must be taken into account in determining whether a loss would be redetermined to be a noncapital, nondeductible amount under the principles of §1.1502-13. If the loss remains deferred, it is taken into account when S and B (including their successors) are no longer in a controlled group relationship. (If, however, the property is transferred to certain related persons, paragraph (c)(1)(iii) of this section will cause the loss to be permanently disallowed.) For example, if S sells all of the T stock to B at a loss (in a transaction that is treated as a sale or exchange for Federal income tax purposes), and T subsequently liquidates in an unrelated transaction that qualifies under section 332, S's loss is deferred until S and B are no longer in a controlled group relationship. Similarly, if S owns all of the T stock and sells 30 percent of T's stock to B at a loss (in a transaction that is treated as a sale or exchange for Federal income tax

purposes), and T subsequently liquidates, S's loss on the sale is deferred until S and B (including their successors) are no longer in a controlled group relationship.

* * * * *

(j) * * *

Example 9. Sale of stock by consolidated group member to controlled group member. (a) *Facts.* P1, a domestic corporation, owns 75% of the outstanding stock of P, the common parent of a consolidated group. P owns all of the outstanding stock of subsidiaries M and S, which are members of P's consolidated group. M and S each own 50% of the only class of stock of L, a nonmember life insurance company. On January 1 of Year 1, S sells 25% of L's stock to P1 for \$50 cash. At the time of the sale, S's aggregate basis in the L shares transferred to P1 was \$80, and S recognizes a \$30 loss. On February 18 of Year 3, at a time when the L shares held by P1 are worth \$60, L liquidates. As a result of the liquidation, P1 recognizes a \$10 gain.

(b) *Timing.* Under paragraph (a)(2) of this section, S's loss on the sale of the L stock to P1 is deferred. Under paragraph (c)(1)(iv) of this section, upon the liquidation of L, to the extent S's loss would be redetermined to be a noncapital, nondeductible amount under the principles of §1.1502-13, S's loss continues to be deferred. Under the principles of §1.1502-13, S's loss is not redetermined to be a noncapital, nondeductible amount to the extent of P1's \$10 of gain recognized. Accordingly, S takes into account \$10 of loss as a result of the liquidation. In determining whether the remainder of S's \$20 loss would be redetermined to be a noncapital, nondeductible amount, under paragraph (c)(1)(iv) of this section, stock held by P1, stock held by M, and stock held by S is taken into account. Accordingly, under the principles of §1.1502-13, the liquidation of L would be treated as a liquidation qualifying under section 332, and the remainder of S's loss would be redetermined to be a noncapital, nondeductible amount. Thus, under paragraph (c)(1)(iv), S's remaining \$20 loss continues to be deferred until S and P1 are no longer in a controlled group relationship.

Example 10. Issuance of stock to controlled group member. (a) *Facts.* FP is a foreign corporation that owns all the stock of FS, a foreign corporation, and all the stock of P, a domestic corporation. P owns all of the single class of outstanding common stock of T. In Year 1, FS contributes cash to T in exchange for newly issued stock of T that constitutes 40 percent of T's outstanding stock. In Year 2, when the value of the T stock owned by P is less than its basis in P's hands, P sells all of its T stock to FP. In Year 3, in a transaction unrelated to the issuance of the T stock in Year 1, T converts under state law to a limited liability company that is treated as a partnership for Federal income tax purposes.

(b) *Timing.* Under paragraph (a)(2) of this section, P's loss on the sale of its T stock is deferred. Under paragraph (c)(1)(iv) of this section, upon the conversion of T, to the extent P's loss would be redetermined to be a noncapital, nondeductible amount under the principles of §1.1502-13, P's loss continues to be deferred. In determining whether the loss would be redetermined to be a noncapital, nondeductible amount, stock held by FS (which was acquired from T) and stock held by FP (the buyer of

the T stock from P and a member of P's controlled group) is taken into account. Accordingly, under the principles of §1.1502-13 the deemed liquidation of T resulting from the conversion of T would be treated as a liquidation qualifying under section 332, and P's loss would be redetermined to be a noncapital, nondeductible amount. Thus, under paragraph (c)(1)(iv), P's loss continues to be deferred until P and FP are no longer in a controlled group relationship.

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(1) * * *

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(3) *Effective/applicability date.* Paragraph (c)(1)(iv) of this section applies to a loss that continues to be deferred pursuant to that paragraph if the event that would cause the loss to be redetermined as a noncapital nondeductible amount under the principles of §1.1502-13 occurs on or after April 16, 2012.

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

Approved April 9, 2012.

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

(Filed by the Office of the Federal Register on April 13, 2012, 8:45 a.m., and published in the issue of the Federal Register for April 16, 2012, 76 F.R. 22480)

Section 642.—Special Rules for Credits and Deductions

26 CFR 1.642(c)-3: *Adjustments and other special rules for determining unlimited charitable contributions deductions.*

T.D. 9582

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

**Guidance Under Sections 642
and 643 (Income Ordering
Rules)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations under Internal Revenue Code (Code) section 642(c) with regard to the Federal tax consequences of an ordering provision in a trust, a will, or a provision of local law that attempts to determine the tax character of the amounts paid to a charitable beneficiary of the trust or estate. The final regulations also make conforming amendments to the regulations under section 643(a)(5). The final regulations affect estates, charitable lead trusts (CLTs), and other trusts making payments or permanently setting aside amounts for a charitable purpose.

DATES: *Effective Date:* These regulations are effective on April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Melissa Liquerman, at (202) 622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

On June 18, 2008, proposed regulations (REG-101258-08, 2008-2 C.B. 111) were published in the **Federal Register** [73 FR 34670]. The proposed regulations contain proposed amendments to the Income Tax Regulations 26 CFR part 1, confirming that a provision in a trust, a will, or a provision of local law that specifically indicates the source out of which amounts are to be paid, permanently set aside, or used for a purpose specified in section 642(c) must have economic effect independent of income tax consequences in order to be respected for Federal tax purposes. If such provision does not have economic effect independent of income tax consequences, income distributed for a purpose specified in section 642(c) will consist of the same proportion of each class of the items of income as the total of each class bears to the total of all classes. The proposed regulations also make conforming changes in the corresponding language in the Income Tax Regulations under section 643(a)(5). The trusts and estates that are the subject of the proposed regulations include, without limitation, charitable lead trusts (CLTs) and trusts and estates making payments or permanently setting aside amounts for a charitable purpose.

The proposed regulations are based on the structure and provisions of Subchapter J (of Chapter 1, Subtitle A, of the Code) as a whole, as well as on an analysis of the existing regulations with their inter-related cross-references. The IRS and Treasury Department believe that the current regulations under §§1.642(c)-3(b) and 1.643(a)-5(b) require that a specific provision of the governing instrument or a provision under local law have economic effect independent of income tax consequences in order to be respected for Federal income tax purposes. To make this clearer, the proposed regulations add the principle of economic effect directly to the regulations under sections 642(c) and 643(a), rather than leaving this principle to be reached by cross-reference to other regulations.

Finally, the proposed regulations remove §1.642(c)-3(b)(4) because the provisions of section 116 referenced therein were repealed by the Tax Reform Act of 1986 (Public Law 99-514).

Written comments were received on the proposed regulations. Because there were no requests to speak at the scheduled public hearing, the public hearing was cancelled. The proposed regulations, with certain changes made in response to the written comments received, are adopted as final regulations.

Summary of Comments and Explanation of Provisions

Specific Provisions Must Have Economic Effect Independent of Income Tax Consequences

Commentators suggested that the clarification in the proposed regulations, that a specific provision in a governing instrument or in local law that identifies the source(s) of the amounts to be paid, permanently set aside, or used for a purpose specified in section 642(c) must have economic effect independent of income tax consequences in order for the specific provision in the governing instrument or in local law to be respected for Federal tax purposes, is an interpretation contrary to the clear language of section 642(c) and 643(a)(5) and the existing regulations.

The IRS and Treasury Department have carefully considered these arguments and the analyses suggested by the commenta-

tors. The IRS and Treasury Department continue to believe that the position clarified in the proposed regulations, requiring that a specific provision of the governing instrument or a provision under local law have economic effect independent of income tax consequences in order to be respected for Federal tax purposes, is the proper interpretation of the relevant Code provisions and is a principle that applies throughout Subchapter J.

The general rule provided in Subchapter J, which mandates that the tax character of distributions to beneficiaries consists of a *pro rata* portion of all types of a trust's income, appears in section 652(b) and in several different sections of the regulations under the subchapter. The only regulatory exception to this *pro rata* rule is for a specific provision in a governing instrument or a provision under local law that provides as to the tax character of distributions to beneficiaries. This exception to the *pro rata* rule must have the same meaning throughout the Subchapter J regulations. The chain of regulatory references from §§1.642(c)-3(b) and 1.643(a)-5(b), detailed in the preamble to the proposed regulations, incorporates into each of those provisions, by cross-reference to §1.662(b)-2, "the principles contained" in §1.652(b)-1 and, in turn, §1.652(b)-2(a) and -2(b), which require a specific provision to have economic effect independent of income tax consequences in order to be respected. The proposed regulations confirm this uniform principle by inserting the terms of §§1.652(b)-1 and 1.652(b)-2(a) and -2(b) explicitly into §§1.642(c)-3(b) and 1.643(a)-5(b).

Moreover, section 643(a)(7) grants express regulatory authority to "prescribe such regulations as may be necessary or appropriate to carry out the purposes of this part, including regulations to prevent avoidance of such purposes."

Income Ordering Provisions and Economic Effect Independent of Income Tax Consequences

A commentator suggested that income ordering provisions in CLTs have economic effect independent of income tax consequences because disregarding an income ordering provision could increase a CLT's tax liability, thereby reducing the value of the trust and in turn reducing the

annual unitrust payments to the charitable beneficiaries and increasing the risk that the trust's assets will be depleted before the end of the trust term. Although the general *pro rata* allocation rule may increase a trust's tax liability and thereby reduce the value of the trust's *corpus*, the effect of the payment of the trust's income tax liability is not an economic effect independent of income tax consequences as described in these regulations. Any possible reduction in the unitrust amount subsequently paid to the charitable beneficiary would be the direct result of the payment of income taxes by the unitrust. The use of an income ordering rule in a CLT, directing the tax characteristics of the unitrust or annuity payments to the charity, is primarily, if not exclusively, an attempt to minimize the tax liabilities of the trust and its remainder beneficiaries. The only effects of the use of an ordering rule are in fact dependent solely upon tax consequences: specifically, the reduced amount of tax paid and the trust's retention of the income tax savings.

Ordering provisions in CLTs will never have economic effect independent of their tax consequences because the amount paid to the charity is not dependent upon the type of income it is allocated. An annuity payment is a fixed amount from year to year, and although a unitrust amount may fluctuate annually, the amount is based upon a predetermined percentage of the trust's value.

Permitting an ordering rule with no economic effect independent of income tax consequences to supersede the *pro rata* allocation rule generally applicable under Subchapter J would, in effect, permit taxpayers to deviate at will from the general rule imposed throughout Subchapter J in the case of all kinds of complex trusts.

Encouragement of Charitable Gifts

A commentator suggested that the proposed regulations are contrary to the Federal government's long standing policy to encourage charitable gifts and to benefit and protect charities.

The IRS and Treasury Department have carefully considered the merits and implications of this suggestion. The IRS and Treasury Department believe, however, that the proper interpretation of the relevant Code sections does not permit the

creation of a special rule for CLTs. A CLT is treated and taxed in the same way as any other complex trust under Subchapter J. Subchapter J does not differentiate between a CLT and a different type of complex trust, and there is no provision of Subchapter J that applies exclusively and expressly to CLTs. Thus, any income tax rule applicable to a CLT will apply in the same way to every other complex trust.

Principal/Income Ordering Rules

A commentator requested that the proposed regulations be expanded to provide that trusts that make distributions to both charitable and noncharitable beneficiaries in the same taxable year must allocate the distributions equally to principal and income as between charitable and noncharitable beneficiaries, unless there is a provision that has economic effect independent of income tax consequences.

This request is beyond the scope of the proposed regulations and might implicate other well settled income tax rules applicable to complex trusts. Section 662 and the regulations thereunder provide the rules for distributions by complex trusts with a charitable beneficiary, and sufficiently address the commentator's concern. If the commentator believes that further guidance is needed or would be helpful to taxpayers, a request for additional guidance may be submitted for consideration to be added to the Priority Guidance Plan.

Economic Effect Independent of Income Tax Consequences Example

A commentator requested an example of a provision in a governing instrument that would have economic effect independent of income tax consequences. Such an example has been added to the final regulations as *Example 2*.

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, 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. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these proposed regulations is Melissa Liquerman, Office of the Associate Chief Counsel (Passthroughs and Special Industries).

* * * * *

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 * * *

Par. 2. Section 1.642(c)–3 is amended by:

1. Revising the heading of paragraph (b) and adding a heading for (b)(1).
2. Revising paragraph (b)(2).
3. Adding a heading to paragraph (b)(3).
4. Removing paragraph (b)(4).

The revisions and addition read as follows:

§1.642(c)–3 Adjustments and other special rules for determining unlimited charitable contributions deduction.

* * * * *

(b) *Determination of amounts deductible under section 642(c) and the character of such amounts—(1) Reduction of charitable contributions deduction by amounts not included in gross income.*

* * *

(2) *Determination of the character of an amount deductible under section 642(c).* In determining whether the amounts of income so paid, permanently set aside, or used for a purpose specified in section

642(c)(1), (2), or (3) include particular items of income of an estate or trust, whether or not included in gross income, a provision in the governing instrument or in local law that specifically provides the source out of which amounts are to be paid, permanently set aside, or used for such a purpose controls for Federal tax purposes to the extent such provision has economic effect independent of income tax consequences. See §1.652(b)-2(b). In the absence of such specific provisions in the governing instrument or in local law, the amount to which section 642(c) applies is deemed to consist of the same proportion of each class of the items of income of the estate or trust as the total of each class bears to the total of all classes. See §1.643(a)-5(b) for the method of determining the allocable portion of exempt income and foreign income. This paragraph (b)(2) is illustrated by the following examples:

Example 1. A charitable lead annuity trust has the calendar year as its taxable year, and is to pay an annuity of \$10,000 annually to an organization described in section 170(c). A provision in the trust governing instrument provides that the \$10,000 annuity should be deemed to come first from ordinary income, second from short-term capital gain, third from fifty percent of the unrelated business taxable income, fourth from long-term capital gain, fifth from the balance of unrelated business taxable income, sixth from tax-exempt income, and seventh from principal. This provision in the governing instrument does not have economic effect independent of income tax conse-

quences, because the amount to be paid to the charity is not dependent upon the type of income from which it is to be paid. Accordingly, the amount to which section 642(c) applies is deemed to consist of the same proportion of each class of the items of income of the trust as the total of each class bears to the total of all classes.

Example 2. A trust instrument provides that 100 percent of the trust's ordinary income must be distributed currently to an organization described in section 170(c) and that all remaining items of income must be distributed currently to B, a noncharitable beneficiary. This income ordering provision has economic effect independent of income tax consequences because the amount to be paid to the charitable organization each year is dependent upon the amount of ordinary income the trust earns within that taxable year. Accordingly, for purposes of section 642(c), the full amount distributed to charity is deemed to consist of ordinary income.

(3) *Other examples.* * * *

* * * * *

Par. 3. Section 1.643(a)-5 is amended by revising paragraph (b) to read as follows:

§1.643(a)-5 Tax-exempt interest.

* * * * *

(b) If the estate or trust is allowed a charitable contributions deduction under section 642(c), the amounts specified in paragraph (a) of this section and §1.643(a)-6 are reduced by the portion deemed to be included in income paid, permanently set aside, or to be used for the purposes specified in section 642(c).

If the governing instrument or local law specifically provides as to the source out of which amounts are paid, permanently set aside, or to be used for such charitable purposes, the specific provision controls for Federal tax purposes to the extent such provision has economic effect independent of income tax consequences. See §1.652(b)-2(b). In the absence of such specific provisions in the governing instrument or local law, an amount to which section 642(c) applies is deemed to consist of the same proportion of each class of the items of income of the estate or trust as the total of each class bears to the total of all classes. For illustrations showing the determination of the character of an amount deductible under section 642(c), see *Examples 1* and *2* of §1.662(b)-2 and §1.662(c)-4(e).

Linda M. Kroening,
(Acting) Deputy Commissioner for
Services and Enforcement.

Approved April 9, 2012.

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

(Filed by the Office of the Federal Register on April 13, 2012, 8:45 a.m., and published in the issue of the Federal Register for April 16, 2012, 76 F.R. 22483)

Part III. Administrative, Procedural, and Miscellaneous

Application of the Normal Retirement Age Requirements to Governmental Plans

Notice 2012-29

I. PURPOSE

The IRS and the Treasury Department anticipate issuing guidance relating to the applicability of the normal retirement age rules to governmental plans (as defined in § 414(d)). This notice describes and invites public comment on the guidance under consideration, which (a) would clarify that governmental plans that do not provide for in-service distributions before age 62 do not need to have a definition of normal retirement age and (b) would modify the age-50 safe harbor rule for qualified public safety employees. The notice also provides that the IRS and Treasury Department intend to extend the effective date of the regulations relating to distributions from a pension plan upon attainment of normal retirement age for governmental plans.

II. BACKGROUND

Section 414(d) of the Code provides that the term *governmental plan* generally means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. See sections 3(32) and 4021(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) for definitions of the term *governmental plan*, which govern for purposes of title I and title IV of ERISA, respectively.¹

Section 401(a) sets forth the qualification requirements for a trust forming part of a stock bonus, pension, or profit-sharing plan of an employer. Several of these

qualification requirements are based on a plan's normal retirement age. Section 411(a)(8) defines the term *normal retirement age* as the earlier of (a) the time a participant attains normal retirement age under the plan or (b) the later of the time a plan participant attains age 65 or the 5th anniversary of the time a plan participant commenced participation in the plan. However, under the statutory framework, the definition of normal retirement age under § 411(a)(8) does not apply to a governmental plan that is not subject to § 411(a) through (d) (provided that the governmental plan satisfies the requirements in § 411(e)(2)). Under § 411(e)(1), the provisions of § 411, other than § 411(e)(2), do not apply to a governmental plan within the meaning of § 414(d).²

Section 401(a)(36) provides that a "trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution."

On May 22, 2007, final regulations on distributions from a pension plan upon attainment of normal retirement age were published in the **Federal Register** as T.D. 9325, 2007-1 C.B. 1386 [72 FR 28604] (2007 NRA regulations). Section 1.401(a)-1(b)(1) of the 2007 NRA regulations requires that a pension plan be established and maintained primarily to provide systematically for the payment of definitely determinable benefits over a period of years, usually for life, after retirement.³ The 2007 NRA regulations describe two exceptions to this rule. First, a plan is permitted to commence payment of benefits to a participant after the participant reaches normal retirement age even if the participant continues employment with the employer. Second, a plan does not fail

to provide definitely determinable benefits to employees after retirement or attainment of normal retirement age merely because the plan, pursuant to § 401(a)(36), provides that a distribution may be made from the plan to an employee who has attained age 62 and who is not separated from employment at the time of the distribution. Thus, there are two exceptions to the prohibition against the payment of benefits from a pension plan during employment: (1) payments can commence after attainment of normal retirement age (as defined in the 2007 NRA regulations); and (2) payments can commence after an employee reaches age 62.

Section 1.401(a)-1(b)(2)(i) of the 2007 NRA regulations provides that, as a general rule, the normal retirement age under a plan must be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. Section 1.401(a)-1(b)(2) provides various safe harbors for determining normal retirement ages that are deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. Under § 1.401(a)-1(b)(2)(v) of the 2007 NRA regulations, in the case of a plan in which substantially all of the participants are qualified public safety employees (within the meaning of § 72(t)(10)(B)), a normal retirement age of age 50 or later is deemed to be not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed.

Notice 2007-69, 2007-2 C.B. 468, asked for comments "on whether and how a pension plan with a normal retirement age conditioned on the completion of a stated number of years of service satisfies the requirement in § 1.401(a)-1(b)(1)(i) that a pension plan be maintained primar-

¹ The definition of the term *governmental plan* also includes special rules relating to (a) plans to which the Railroad Retirement Act of 1935 or 1937 (49 Stat. 967, as amended by 50 Stat. 307) applies, (b) plans of an international organization that is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669), and (c) certain plans that are established and maintained by an Indian tribal government (as defined in § 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with § 7871(d)), or an agency or instrumentality of either. See REG-157714-06 and REG-133223-08, which are advance notices of proposed rulemaking (ANPRMs) relating to the determination of governmental plan status and Indian tribal governmental plans. The ANPRMs were published November 8, 2011 in the **Federal Register** (76 FR 69172 and 69188).

² Section 411(e)(2) states that governmental plans "shall be treated as meeting the requirements of [§ 411], for purposes of section 401(a), if such plan meets the vesting requirements resulting from the application of section 401(a)(4) and 401(a)(7) as in effect on September 1, 1974."

³ This rule was also reflected in pre-ERISA regulations. See § 1.401-1(b)(1)(i) of the regulations, which was adopted prior to the enactment of ERISA and provides that for pre-ERISA plans a qualified pension plan is a "plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees over a period of years, usually for life, after retirement."

ily to provide for the payment of definitely determinable benefits after retirement or attainment of normal retirement age and how such a plan satisfies the pre-ERISA vesting rules.” Comments were received on a variety of issues, including comments that the guidance should (1) clarify that governmental plans are not required to define normal retirement age and (2) provide that the age-50 safe harbor rule in § 1.401(a)-1(b)(2)(v) for qualified public safety employees can apply to these employees even if less than substantially all of a plan’s participants are qualified public safety employees.

Notices 2008-98, 2008-44 I.R.B. 1080, and 2009-86, 2009-46 I.R.B. 629, provided that the IRS and the Treasury Department intend to amend the 2007 NRA regulations to change the effective date of the 2007 NRA regulations for governmental plans to January 1, 2013.

III. GUIDANCE UNDER CONSIDERATION

The IRS and the Treasury Department are currently considering guidance relating to the applicability of the 2007 NRA regulations to governmental plans, as described in this Part III. For governmental plans, the definition of normal retirement age may be used in a variety of different circumstances relating to plan qualification, *e.g.*, in applying the pre-ERISA vesting rules or to specify circumstances in which in-service benefit payments are permitted. The definition of normal retirement age may also be relevant to participant eligibility for certain favorable tax treatment, including § 402(l) of the Code (providing an income exclusion of up to \$3,000 annually for certain distributions for health insurance and long-term care insurance premiums to eligible retired public safety officers who separate from service by reason of disability or attainment of normal retirement age) or the special catch-up provisions under § 1.457-4(c)(3)(v)(A).⁴

For plans that are required to comply with § 411(a) through (d) of the Code (including any governmental plans not satisfying the requirements of § 411(e)(2)), the

definition of normal retirement age is used for a variety of additional purposes relating to plan qualification. The definition of normal retirement age is important in applying the accrual rules under § 411(b), rules relating to suspension of benefits under § 411(a)(3)(B), plan offset rules under § 411(b)(1)(H)(iii), and the minimum benefit rules for non-key employees in a top-heavy defined benefit plan under § 416.

In response to comments received with respect to Notice 2007-69, the IRS and the Treasury Department intend to modify provisions of the 2007 NRA regulations as applied to governmental plans in two ways.⁵ First, the regulations would be modified to clarify that a governmental plan that is not subject to § 411(a) through (d) and does not provide for the payment of in-service distributions before age 62 will not fail to satisfy the requirement that the plan provide definitely determinable benefits to employees after retirement or attainment of normal retirement age merely because the pension plan does not have a definition of normal retirement age or does not have a definition of normal retirement age that satisfies the requirements of the 2007 NRA regulations.

Second, the IRS and the Treasury Department intend to modify the 2007 NRA regulations with respect to the age-50 safe harbor rule for qualified public safety employees (within the meaning of § 72(t)(10)(B)). Under the 2007 NRA regulations, in the case of a plan in which substantially all of the participants are qualified public safety employees, a normal retirement age of 50 or later is deemed to satisfy the requirement that a pension plan’s normal retirement age be an age that is not earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. It has come to our attention that a requirement that qualified public safety employees be in a separate plan, rather than a separate group within a larger plan containing other employees with higher NRAs, may impose inappropriate administrative burdens on state and local governments. Accordingly,

the IRS and the Treasury Department intend to modify the 2007 NRA regulations to provide that the rule deeming age 50 or later to be a normal retirement age that satisfies those regulations will apply to a group of employees substantially all of whom are qualified public safety employees, whether or not the group of qualified public safety employees are covered by a separate plan. Thus, a governmental pension plan could satisfy the normal retirement age requirement using a normal retirement age as low as 50 for a group substantially all of whom are qualified public safety employees and a later normal retirement age that otherwise satisfies the 2007 NRA requirements for other participants.

The IRS and Treasury intend to amend the 2007 NRA regulations to change the effective date for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of (1) January 1, 2015 or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the **Federal Register**. Governmental plan sponsors may rely on this notice with respect to the extension until such time as the 2007 NRA regulations are so amended. This extension will provide additional time for the IRS and Treasury to consider and respond to comments on the guidance under consideration that is described in this notice.

IV. COMMENTS REQUESTED

Comments are requested regarding the guidance under consideration that is described in Part III of this notice. The IRS and the Treasury Department specifically request comments regarding whether, because qualified public safety employees generally tend to have career spans that commence at a young age and continue over a limited period of years, an additional rule should be provided under which retirement after 20 to 30 years of service may be a normal retirement that is reasonably representative for qualified public

⁴ Section 1.457-4(c)(3)(v)(A) provides that, for purposes of the special § 457 catch-up in § 1.457-4(c)(3), a plan must specify the normal retirement age under the plan. It further provides that a plan may define normal retirement age as any age that is on or after the earlier of age 65 or the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the State, immediate retirement benefits without actuarial or similar reduction.

⁵ Further modifications to the 2007 NRA regulations may be made after consideration of comments not addressed in this notice, as well as future comments received in response to the request for comments in Part IV of this notice.

safety employees.⁶ Comments are also requested on whether there is information indicating that there are other categories of governmental employees who have career spans similar to qualified public safety employees that would justify a similar rule. In addition, any information that governmental plans have on the overall retirement patterns of other employees in government service is requested in order to assist the IRS and Treasury in determining the earliest age that is reasonably representative of the typical retirement ages for such employees.

Written comments should be submitted by July 30, 2012. Send submissions to CC:PA:LPD:PR, (Notice 2012-29), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may also be hand delivered Monday through Friday between the hours of 8 a.m. and 4:00 p.m. to: Internal Revenue Service, CC:PA:LPD:PR, (Notice 2012-29), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington DC. Alternatively, comments may be submitted via the Internet at notice.comments@irs.counsel.treas.gov (Notice 2012-29). All comments will be available for public inspection.

V. EFFECT ON OTHER DOCUMENTS

Notices 2008-98 and 2009-86 are modified.

DRAFTING INFORMATION

The principal authors of this notice are Sarah R. Bolen and Pamela R. Kinard of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Bolen and Ms. Kinard at (202) 622-6060 (not a toll-free number).

Nonconventional Source Fuel Credit, 2011 Section 45K Inflation Adjustment Factor and Section 45K Reference Price

Notice 2012-30

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 45K of the Internal Revenue Code for coke or coke gas (other than from petroleum based products) for calendar year 2011. The inflation adjustment factor is used to determine the credit allowable under § 45K for coke or coke gas. The calendar year 2011 inflation-adjusted credit applies to the sales of barrel-of-oil equivalent of coke or coke gas sold by a taxpayer to an unrelated person during the 2011 calendar year, the domestic production of which is attributable to the taxpayer.

SECTION 2. BACKGROUND

Section 45K(a) provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuel, the production of which is attributable to the taxpayer and is sold by the taxpayer to an unrelated person during the taxable year. For calendar year 2011, the credit is available only for coke or coke gas. The credit amount for coke or coke gas is equal to the product of \$3.00 and the appropriate inflation adjustment factor.

Section 45K(d)(1) provides that the credit applies only to sales of qualified fuels the production of which is within the United States (within the meaning of § 638(1)) or a possession of the United States (within the meaning of § 638(2)).

Section 45K(d)(2)(A) requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 45K(d)(2)(B) defines "inflation adjustment factor" for a calendar year as a fraction the numerator of which is the

GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 45K(d)(2)(C) defines "reference price" to mean with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 45K(d)(5) provides that the term "barrel-of-oil equivalent" with respect to any fuel generally means that amount of the fuel that has a Btu content of 5.8 million.

Section 45K(g)(1) provides that in the case of a facility for producing coke or coke gas (other than from petroleum based products), which was placed in service before January 1, 1993, or after June 30, 1998, and before January 1, 2010, § 45K(g) shall apply with respect to coke or coke gas produced in such facility and sold during the period beginning on the later of January 1, 2006, or the date that such facility is placed in service, and ending on the date which is 4 years after the date such period began.

Section 45K(g)(2)(A) provides that the amount of coke or coke gas sold during any taxable year that may be taken into account to compute the credit under § 45K with respect to any facility shall not exceed an average barrel-of-oil equivalent of 4,000 barrels per day.

Section 45K(g)(2)(B) provides that in determining the amount of credit allowable to coke or coke gas sold after 2005, the credit shall be computed by substituting "2004" for "1979." Accordingly, for purposes of § 45K(g), the inflation adjustment factor for a calendar year is a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 2004.

Section 45K(g)(2)(D) provides that the phase-out of the credit under § 45K(b)(1)

⁶ See section 4(j) of the Age Discrimination in Employment Act.

does not apply in the case of facilities producing coke or coke gas.

SECTION 3. REFERENCE PRICE

The reference price for calendar year 2011 is \$95.73.

SECTION 4. INFLATION ADJUSTMENT AND CREDIT AMOUNT

The inflation adjustment factor for calendar year 2011 is 1.1712. The nonconventional source fuel credit is \$3.51 per barrel-of-oil equivalent ($\$3.00 \times 1.1712$).

SECTION 5. DRAFTING INFORMATION

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

Part IV. Items of General Interest

IRS Encourages Taxpayers to Request Credit or Refund of any Telephone Excise Taxes Paid for Nontaxable Service As Outlined in Notices 2006–50 and 2007–11

Announcement 2012–16

The Internal Revenue Service reminds and encourages taxpayers to timely request a Telephone Excise Tax Refund if they have not already done so. Since the Service stopped collecting the tax on long distance service in 2006, it has administered a simplified procedure for taxpayers to request a refund of excise taxes paid under section 4251 on nontaxable services that were billed after February 28, 2003, and before August 1, 2006. Taxpayers have until July 27, 2012, to request refunds of the telephone excise tax.

Based on recent litigation, the validity of the notice that outlines the procedures under which a taxpayer may request a refund of telephone excise tax has been called into question. While the litigation continues, in the interest of providing certainty to taxpayers, if the taxpayer chooses to request a refund, the Internal Revenue Service will process and honor requests that are made on or before July 27, 2012. Taxpayers should make their requests on the appropriate 2006 income tax return. For example, individuals who were not otherwise required to file a federal income tax return for 2006 may request a refund of the safe harbor amount, without documentation, by filing a Form 1040EZ–T, *Request For Refund of Federal Telephone Excise Tax*. Taxpayers who have previously filed 2006 income tax returns but did not request a telephone excise tax refund should use amended income tax returns, for example a Form 1040–X, *Amended U.S. Individual Income Tax Return*, to make their requests. Taxpayers who wish to request actual amounts of excise taxes paid rather than the safe harbor amounts described in Notice 2007–11 should use Form 8913, *Credit for Federal Telephone Excise Tax Paid*.

The Service will not process refund requests submitted after July 27, 2012.

For further details on how to make the requests, please see the instructions for the appropriate 2006 income tax return form and the instructions for Form 8913. Forms and instructions are available on <http://www.irs.gov>.

The principal author of this announcement is Micah A. Levy of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement, contact Micah A. Levy at (202) 622–3630 (not a toll-free call).

Correction to Revenue Procedure 2011–62; Publication 1141: General Rules and Specifications for Substitute Forms W–2 and W–3

Announcement 2012–17

Revenue Procedure 2011–62, 2011–52 I.R.B. 1032, contains an error in the list of exhibits, Exhibit–B. Revenue Procedure 2011–62 states the requirements of the Internal Revenue Service (IRS) and the Social Security Administration (SSA) regarding the preparation and use of substitute forms for Form W–2, *Wage and Tax Statement*, and Form W–3, *Transmittal of Wage and Tax Statements*, for wages paid during the calendar year 2011. This announcement corrects the dimensions for Exhibit–B of Rev. Proc. 2011–62.

This correction clarifies the dimensional left-right arrows in Box b, Kind of Payer, that was published in the IR Bulletin 2011–52 dated December 27, 2011.

Exhibit–B of Rev. Proc. 2011–62 now shows as follows:

On the bottom row of the checkboxes, in Box b of Form W–3 (Red-Ink), the left-right arrow should be 1.2" originating from the form's left vertical line should end on the left vertical line of the CT–1 checkbox. The two left-right arrows (.36") should be centered directly between the CT–1 and Household Employee checkboxes. There should be no left-right arrows to the right of the Medicare Government Employee checkbox.

Drafting Information

The principal author of this announcement is Sara Covington of the Office of Media & Publications/Tax Forms and Publications (Multilingual and Agency Services Branch). For further information regarding this announcement, please contact Sara Covington at (202) 622–3945 (not a toll-free call).

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

Announcement 2012–20

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

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on April 30, 2012, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For

individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

A Family Budget Counseling, Inc.
Huntington City, NY

Angels Enterprise, Inc.
Buchanan, MI

Fisher Institute
Irving, TX

Graystone University Housing
Corporation
Malvern, PA

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.
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Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
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