Internal Revenue bulletin

Bulletin No. 2012-38
September 17, 2012

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. 9598, page 343.
REG–138489–09, page 355.

Final, temporary, and proposed regulations under section 988 of the Code address certain integrated transactions that involve a foreign currency denominated debt instrument and multiple associated hedging transactions. The regulations provide that if a taxpayer has identified multiple hedgers as being part of a qualified hedging transaction, and the taxpayer has terminated at least one but less than all of the hedges (including a portion of one or more of the hedges), the taxpayer must treat the remaining hedges as having been sold for fair market value on the date of disposition of the terminated hedge.

REG–126770–06, page 347.

Proposed regulations under section 263A of the Code provide that, in general, taxpayers may not use negative amounts to allocate additional section 263A costs under the simplified production method. The proposed regulations provide a new modified simplified production method under which producers may include negative amounts in allocating additional section 263A costs by using a preproduction cost absorption ratio and a production cost absorption ratio.

ADMINISTRATIVE

Announcement 2012–35, page 356.

This document contains corrections to temporary regulations (T.D. 9572, 2012–11 I.R.B. 471) that extend the definition of a specified NPC with respect to payments made before January 1, 1014.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

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

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

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

Section 988.—Treatment of Certain Foreign Currency Transactions

26 CFR 1.988–5: Section 988(d) hedging transactions.

T.D. 9598

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Integrated Hedging Transactions of Qualifying Debt

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary regulations that address certain integrated transactions that involve a foreign currency denominated debt instrument and multiple associated hedging transactions. The regulations provide that if a taxpayer has identified multiple hedges as being part of a qualified hedging transaction, and the taxpayer has terminated at least one but less than all of the hedges (including a portion of one or more of the hedges), the taxpayer must treat the remaining hedges as having been sold for fair market value on the date of disposition of the terminated hedge. The text of the temporary regulations also serves as the text of the proposed regulations (REG–138489–09) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on September 6, 2012.

Applicability Date: These regulations apply to leg-outs within the meaning of §1.988–5(a)(6)(ii) which occur on or after September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Sheila Ramaswamy, at (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1.988–5 provides detailed rules that permit the integration of a qualifying debt instrument with a §1.988–5(a) hedge. The effect of integration under the regulations is to create a synthetic debt instrument. Generally, if a taxpayer enters into a qualified hedging transaction and meets the requirements of the regulations, no exchange gain or loss is recognized on the debt instrument or the hedge for the period that it is part of a qualified hedging transaction (provided that the synthetic debt instrument is not denominated in a nonfunctional currency). See §1.988–5(a)(9). A qualified hedging transaction is an integrated economic transaction consisting of a qualifying debt instrument and a §1.988–5(a) hedge. See §1.988–5(a)(1). A qualifying debt instrument is any debt instrument described in §1.988–1(a)(2)(i) regardless of its denominated currency. See §1.988–5(a)(3). A §1.988–5(a) hedge is a spot contract, futures contract, forward contract, option contract, notional principal contract, currency swap contract, or similar financial instrument, or series or combinations of such instruments, that when integrated with a qualifying debt instrument permits the calculation of a yield to maturity in the currency in which the synthetic debt instrument is denominated. See §1.988–5(a)(4).

Under §1.988–5(a)(6)(ii), a taxpayer that disposes of all or a part of the qualifying debt instrument or hedge prior to the maturity of the qualified hedging transaction, or that changes a material term of the qualifying debt instrument or hedge, is viewed as "legging out" of integrated treatment. One of the consequences of legging out is that if the hedge is disposed of, the qualifying debt instrument is treated as sold for its fair market value on the date of disposition of the hedge (leg-out date). See §1.988–5(a)(6)(ii)(B). Any gain or loss on the qualifying debt instrument from the date of identification to the leg-out date is recognized on the leg-out date. The intended result of this deemed disposition rule is that the gain or loss on the qualifying debt instrument will generally be offset by the gain or loss on the hedge.

The Internal Revenue Service (IRS) and the Department of the Treasury (Treasury Department) have become aware that some taxpayers who are in a loss position with respect to a qualifying debt instrument that is part of a qualified hedging transaction are interpreting the legging-out rules of §1.988–5(a)(6)(ii)(B) to permit the recognition of the loss on the debt instrument without recognition of all of the corresponding gain on the hedging component of the transaction. Taxpayers claim to achieve this result by hedging nonfunctional currency debt instruments with multiple financial instruments and selectively disposing of less than all of these positions. Taxpayers take the position that §1.988–5(a)(6)(ii)(B) triggers the entire loss in the qualifying debt instrument but not the gain in the remaining components of the hedging side of the integrated transaction.

For example, a taxpayer may fully hedge a fixed rate nonfunctional currency denominated debt instrument that it has issued with two swaps—a nonfunctional currency/dollar currency swap and a fixed for floating dollar interest rate swap. The effect of matching the currency swap with the foreign currency denominated debt is to create synthetic fixed rate U.S. dollar debt while the effect of the interest rate swap is to simultaneously transform the synthetic fixed rate U.S. dollar debt into synthetic floating rate U.S. dollar debt. Thus, assuming that the rules of §1.988–5(a) are otherwise satisfied, the taxpayer will have effectively converted the fixed rate foreign currency denominated debt instrument into a synthetic floating rate U.S. dollar denominated debt instrument.

As the U.S. dollar declines in value relative to the foreign currency in which the debt instrument is denominated, the taxpayer disposes of the interest rate swap while keeping the currency swap in existence. The taxpayer takes the position that the disposition of the interest rate swap allows it to treat the debt instrument as having been terminated on the date of dispo-

sition and claims a loss on the debt instrument without taking into account the offsetting gain on the remaining component of the hedge. Thus, the taxpayer claims the transaction generates a net loss. The IRS and the Treasury Department believe that these results are inappropriate under the legging-out rules since the claimed loss is largely offset by unrealized gain on the remaining component of the hedging transaction. Therefore, the IRS and the Treasury Department are issuing these regulations to clarify the rules regarding the consequences of legging-out of qualified hedging transactions that consist of multiple components. No inference is intended regarding the merits of the position taken by the taxpayer with respect to the transaction described above (or comparable positions taken by taxpayers with respect to similar transactions) in the case of transactions occurring prior to the applicability date of these regulations, and in appropriate cases the IRS may challenge the claimed results.

Explanation of Provisions

Section 1.988–5(a) is amended to provide that if a hedge with more than one component has been properly identified as being part of a qualified hedging transaction, and at least one but not all of the components of the hedge that is a part of the qualified hedging transaction has been terminated or disposed of, all of the remaining components of the hedge (as well as the qualifying debt) shall be treated as sold for their fair market value on the leg-out date of the terminated hedge. Similarly, if a part of any component of a hedge (whether a hedge consists of a single or multiple components) has been disposed of, the remaining part of that component (as well as other components in the case of a hedge with multiple components) that is still in existence (as well as the qualifying debt instrument) shall be treated as sold for its fair market value on the leg-out date of the terminated hedge.

Effective/Applicability Date

The regulation applies to leg-outs within the meaning of §1.988–5(a)(6)(ii) which occur on or after September 6, 2012.

Special Analyses

It has been determined that these regulations are 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 these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

* * * * *

Amendment 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 1.988–5 is amended by:

1. Revising paragraph (a)(6)(ii).

2. Adding *Example 11* in paragraph (a)(9)(iv).

The revision and addition read as follows:

§1.988–5 Section 988(d) hedging transactions.

(a) * * *

(6) * * *

(ii) [Reserved]. For further guidance, see §1.988–5T(a)(6)(ii).

* * * * *

(9) * * *

(iv) * * *

Example 11. [Reserved]. For further guidance, see §1.988–5T(a)(9)(iv).

Example 11.

* * * * *

Par. 3. Section 1.988–5T is added to read as follows:

§1.988–5T Section 988(d) hedging transactions (temporary).

(a) through (a)(6)(i) [Reserved]. For further guidance, see §1.988–5(a) through (a)(6)(i).

(ii) *Legging out.* With respect to a qualifying debt instrument and hedge that are properly identified as a qualified hedging transaction, "legging out" of integrated treatment under this paragraph (a) means that the taxpayer disposes of or otherwise terminates all or any portion of the qualifying debt instrument or the hedge prior to maturity of the qualified hedging transaction, or the taxpayer changes a material term of the qualifying debt instrument (for example, exercises an option to change the interest rate or index, or the maturity date) or the hedge (for example, changes the interest or exchange rates underlying the hedge, or the expiration date) prior to maturity of the qualified hedging transaction. A taxpayer that disposes of or terminates a qualified hedging transaction (that is, disposes of or terminates both the qualifying debt instrument and the hedge in their entirety on the same day) shall be considered to have disposed of or otherwise terminated the synthetic debt instrument rather than legging out. If a taxpayer legs out of integrated treatment, the following rules shall apply:

(A) The transaction will be treated as a qualified hedging transaction during the time the requirements of this paragraph (a) were satisfied.

(B) If all of the instruments comprising the hedge (each such instrument, a component) are disposed of or otherwise terminated, the qualifying debt instrument shall be treated as sold for its fair market value on the date the hedge is disposed of or otherwise terminated (the leg-out date), and any gain or loss (including gain or loss resulting from factors other than movements in exchange rates) from the identification date to the leg-out date is realized and recognized on the leg-out date. The spot rate

on the leg-out date shall be used to determine exchange gain or loss on the debt instrument for the period beginning on the leg-out date and ending on the date such instrument matures or is disposed of or otherwise terminated. Proper adjustment must be made to reflect any gain or loss taken into account. The netting rule of §1.988–2(b)(8) shall apply.

(C) If a hedge has more than one component (and such components have been properly identified as being part of the qualified hedging transaction) and at least one but not all of the components that comprise the hedge has been disposed of or otherwise terminated, or if part of any component of the hedge has been terminated (whether a hedge consists of a single or multiple components), the date such component (or part thereof) is disposed of or terminated shall be considered the leg-out date and the qualifying debt instrument shall be treated as sold for its fair market value in accordance with the rules of paragraph (a)(6)(ii)(B) of this section on such leg-out date. In addition, all of the remaining components (or parts thereof) that have not been disposed of or otherwise terminated shall be treated as sold for their fair market value on the leg-out date, and any gain or loss from the identification date to the leg-out date is realized and recognized on the leg-out date. To the extent relevant, the spot rate on the leg-out date shall be used to determine exchange gain or loss on the remaining components (or parts thereof) for the period beginning on the leg-out date and ending on the date such components (or parts thereof) are disposed of or otherwise terminated.

(D) If the qualifying debt instrument is disposed of or otherwise terminated in whole or in part, the date of such disposition or termination shall be considered the leg-out date. Accordingly, the hedge (including all components making up the hedge in their entirety) that is part of the qualified hedging transaction shall be treated as sold for its fair market value on the leg-out date, and any gain or loss from the identification date to the leg-out date is realized and recognized on the leg-out date. To the extent relevant, the spot rate on the leg-out date shall be used to determine exchange gain or loss on the hedge (including all components thereof) for the period beginning on the leg-out date and ending on the date such hedge is disposed of or otherwise terminated.

(E) Except as provided in paragraph (a)(8)(iii) of this section (regarding identification by the Commissioner), the part of the qualified hedging transaction that has not been terminated (that is, the remaining debt instrument in its entirety even if partially hedged, or the remaining components of the hedge) cannot be part of a qualified hedging transaction for any period subsequent to the leg-out date.

(F) If a taxpayer legs out of a qualified hedging transaction and realizes a gain with respect to the disposed of or terminated debt instrument or hedge, then paragraph (a)(6)(ii)(B), (C), and (D) of this section, as appropriate, will not apply if during the period beginning 30 days before the leg-out date and ending 30 days after that date the taxpayer enters into another transaction that, taken together with any remaining components of the hedge, hedges at least 50 percent of the remaining currency flow with respect to the qualifying debt instrument that was part of the qualified hedging transaction or, if appropriate, an equivalent amount under the hedge (or any remaining components thereof) that was part of the qualified hedging transaction. Similarly, in a case in which a hedge has multiple components that are part of a qualified hedging transaction, if the taxpayer legs out of a qualified hedging transaction by terminating one such component or a part of one or more such components and realizes a gain with respect to the terminated component, components, or portions thereof, then paragraphs (a)(6)(ii)(B), (C), and (D) of this section, as appropriate, will not apply if the remaining components of the hedge (including parts thereof) by themselves hedge at least 50 percent of the remaining currency flow with respect to the qualifying debt instrument that was part of the qualified hedging transaction.

(a)(7) through (a)(9)(iv) *Examples 10* [Reserved]. For further guidance, see §1.988–5(a)(7) through (a)(9)(iv) *Example 10*.

Example 11. (i) K is a U.S. corporation with the U.S. dollar as its functional currency. On January 1, 2013, K borrows 100 British pounds (£) for two years at a 10% rate of interest payable on December 31 of each year with no principal payment due until maturity on December 31, 2014. Assume that the spot rate on January 1, 2013, is £1=$1. On the same date, K enters into two swap contracts with an unrelated counterparty that economically results in the transformation of the fixed rate £100 borrowing to a floating rate dollar borrowing. The terms of the swaps are as follows:

(A) *Swap #1, Currency swap*. On January 1, 2013, K will exchange £100 for $100.

(*1*) On December 31 of both 2013 and 2014, K will exchange $8 for £10;

(*2*) On December 31, 2014, K will exchange $100 for £100.

(B) *Swap #2, Interest rate swap*. On December 31 of both 2013 and 2014, K will pay LIBOR times a notional principal amount of $100 and will receive 8% times the same $100 notional principal amount.

(ii) Assume that K properly identifies the pound borrowing and the swap contracts as a qualified hedging transaction as provided in paragraph (a)(8) of this section and that the other relevant requirements of paragraph (a) of this section are satisfied.

(iii) Assume also that on January 1, 2014, the spot exchange rate is £1:$2; the U.S. dollar LIBOR rate of interest is 9%; and the market value of K's note in pounds has not changed. K terminates swap #2. K will incur a loss of ($.91) (the present value of $1) with respect to the termination of such swap on January 1, 2014. Pursuant to paragraph (a)(6)(ii)(C) of this section, K must treat swap #1 as having been sold for its fair market value on the leg-out date, which is the date swap #2 is terminated. K must realize and recognize gain of $100.92 [the present value of £110 discounted in pounds to equal £100 x $2 ($200) less the present value of $108 ($99.08)]. The loss inherent in the pound borrowing from January 1, 2013 to January 1, 2014 is realized and recognized on January 1, 2014. Such loss is exchange loss in the amount of $100 [the present value of £110 that was to be paid at the end of the year discounted at pound interest rates to equal £100 times the change in exchange rates: (£100 x $1, the spot rate on January 1, 2013) - (£100 x $2, the spot rate on January 1, 2014)]. Except as provided in paragraph (a)(8)(iii) of this section (regarding identification by the Commissioner), the pound borrowing and currency swap cannot be part of a qualified hedging transaction for any period subsequent to the leg-out date.

(iv) Assume the facts are the same as in paragraph (iii) of this section except that on January 1, 2014, the U.S. dollar LIBOR rate of interest is 7% rather than 9%. When K terminates swap #2, K will realize gain of $0.93 (the present value of $1) received with respect to the termination on January 1, 2014. Fifty percent or more of the remaining pound cash flow of the pound borrowing remains hedged after the termination of swap #2. Accordingly, under paragraph (a)(6)(ii)(F) of this section, paragraphs (a)(6)(ii)(B) and (C) of this section do not apply and the gain on swap #1 and the loss on the qualifying debt instrument is not taken into account. Thus, K will include in income $0.93 realized from termination of swap #2.

(a)(10) through (g) [Reserved]. For further guidance, see §1.988–5(a)(10) through (g).

(h) *Effective/applicability date*. This section applies to leg-outs that occur on or after September 6, 2012.

(i) *Expiration date*. This section expires on September 4, 2015.

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

Approved August 17, 2012.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on September 5, 2012, 8:45 a.m., and published in the issue of the Federal Register for September 6, 2012, F.R. 54808)

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Allocation of Costs Under the Simplified Methods

REG–126770–06

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations on allocating costs to certain property produced by the taxpayer or acquired by the taxpayer for resale. The proposed regulations affect taxpayers that are producers or resellers of property that are required to capitalize certain costs to the property and that allocate costs under the simplified production method or the simplified resale method. The proposed regulations provide rules for the treatment of negative additional costs.

DATES: Written (including electronic) comments and requests for a public hearing must be received by December 4, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–126770–06), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–126770–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Taxpayers also may submit comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–126770–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Christopher Call, (202) 622–4970; concerning submissions of comments or to request 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, relating to the allocation of costs under the simplified methods of accounting under section 263A of the Internal Revenue Code (Code).

Section 263A requires taxpayers to capitalize the direct costs and indirect costs that are properly allocable to: (1) real or tangible personal property the taxpayer produces, and (2) real property and personal property described in section 1221(a)(1) that the taxpayer acquires for resale. Section 1.263A–1(e)(2)(i) of the Income Tax Regulations provides that direct costs for producers are direct material costs and direct labor costs. Section 1.263A–1(e)(2)(ii) provides that resellers must capitalize the acquisition cost of property acquired for resale. Section 1.263A–1(e)(3)(i) defines indirect costs as all costs other than direct material costs and direct labor costs (in the case of property produced) or acquisition costs (in the case of property acquired for resale). Indirect costs are properly allocable to property produced or acquired for resale when the costs directly benefit or are incurred by reason of the performance of production or resale activities.

Section 263A generally requires taxpayers to allocate capitalizable section 263A costs to specific items in inventory. The legislative history of section 263A indicates that Congress intended that taxpayers would allocate additional section 263A costs (costs, other than interest, that were not capitalized under the taxpayer's method of accounting immediately prior to the effective date of section 263A, but that are required to be capitalized under section 263A) with the same degree of specificity that was required of inventoriable costs prior to the enactment of section 263A. Congress contemplated that taxpayers would continue to use the same methods of allocating costs to items in their inventory that were available under prior law. *See* S. Rep. No. 313, 99th Cong. 2d Sess. 142 (1986). Consistent with these principles, the regulations under §1.263A–1(f)(2) and (f)(3) provide that taxpayers may elect to use a "facts-and-circumstances" allocation method, such as the specific identification method, burden rate, standard cost method, or any other method to allocate direct and indirect costs to units of property produced or acquired for resale, if the method is reasonable within the meaning of §1.263A–1(f)(4).

Section 1.263A–1(f)(1) authorizes taxpayers to use the simplified methods provided in §1.263A–2(b) (the simplified production method) or §1.263A–3(d) (the simplified resale method) to allocate costs to eligible property produced or eligible property acquired for resale in lieu of a facts-and-circumstances allocation method. The simplified methods differ from facts-and-circumstances methods in that, as applied to inventories, they allocate a pool of capitalizable costs (additional section 263A costs) between ending inventory and cost of goods sold using a defined ratio and are an exception to the general rule that additional section 263A costs must be allocated to specific items of inventory. Thus, the simplified methods are intended to reduce the complexity and administrative burdens of having to develop detailed cost accounting systems for the additional costs required to be capitalized under section 263A.

Under the simplified production method, a taxpayer must allocate additional section 263A costs to produced property on hand at the end of the taxable year based on the ratio of these costs incurred during the year to the taxpayer's total section 471 costs incurred during the year (the absorption ratio). The current regulations define additional section 263A costs as the costs, other than interest, that were not capitalized under the taxpayer's method of accounting immediately prior to the effective date of section 263A, but that are required to be capitalized under section 263A. See §1.263A–1(d)(3). The current regulations define section 471 costs as costs, other than interest, capitalized under the taxpayer's method of accounting immediately prior to the effective date of section 263A. If a taxpayer was not in existence before the effective date of section 263A, section 471 costs are generally those costs that would have been required to be capitalized under §1.471–11. See

§1.263A–1(d)(2). The absorption ratio is multiplied by the section 471 costs incurred during the taxable year that remain in ending inventory or are otherwise on hand at year end to determine the additional section 263A costs allocable to produced property on hand at the end of the taxable year.

Under the simplified resale method, an eligible taxpayer computes a combined absorption ratio and multiplies it by the section 471 costs incurred during the taxable year that remain in its ending inventory or are otherwise on hand at year end to determine the additional section 263A costs allocable to eligible property on hand at year end. Section 1.263A–3(d)(3)(i)(C)(*1*) defines the combined absorption ratio as the sum of the storage and handling costs absorption ratio as defined by §1.263A–3(d)(3)(i)(D) and the purchasing costs absorption ratio as defined by §1.263A–3(d)(3)(i)(E).

Notice 2007–29, 2007–1 C.B. 881, requests comments on the treatment of negative amounts under the simplified methods. A negative amount generally occurs when a taxpayer capitalizes a cost as a section 471 cost in an amount that is greater than the amount required to be capitalized for tax purposes. For example, if a taxpayer included book depreciation in section 471 costs in accordance with §1.471–11(c)(2)(iii)(b) and the book depreciation is greater than tax depreciation for the year, the taxpayer would have capitalized more depreciation than is required to be capitalized under section 263A for that year. A negative amount may result if the taxpayer does not remove this excess depreciation amount by adjusting section 471 costs but instead makes an adjustment to its additional section 263A costs. See §601.601(d)(2)(ii)(*b*).

In some situations, including negative amounts in the numerator of the simplified production method formula may result in significant distortions of the amount of additional section 263A costs that is allocated to ending inventory. Distortions may also occur when the method used to capitalize a cost under section 471 is different than the method used under the simplified production method to remove the cost from ending inventory. The extent of the distortion, and whether it is favorable or unfavorable to the taxpayer, generally depends on when the cost is incurred in the production process and how the cost was allocated to raw materials, work-in-process, or finished goods inventories for purposes of section 471.

Notice 2007–29 provides that, pending the issuance of additional published guidance, the IRS will not challenge the inclusion of negative amounts in computing additional costs under section 263A or the permissibility of aggregate negative additional section 263A costs. The notice solicits public comments regarding possible changes to the simplified methods involving negative additional section 263A costs. Comments were received and considered in developing these proposed regulations.

Explanation of Provisions

1. *Prohibition on Negative Amounts*

To reduce the distortions that occur by including negative amounts under the simplified methods, the proposed regulations provide that, subject to certain exceptions described later in this preamble, taxpayers may not include negative amounts in additional section 263A costs. Specific comments are requested on transition rules for taxpayers currently using the simplified production method with the historic absorption ratio election (see section 1.263A–2(b)(4)), including comments on how the regulations should apply to taxpayers that are part way through the qualifying period as described in section 1.263A–2(b)(4)(ii)(C).

To reduce the administrative burden for smaller taxpayers using the simplified production method for which the costs and burdens of excluding negative amounts from additional section 263A costs may otherwise outweigh the benefits, the proposed regulations allow producers with average annual gross receipts of $10,000,000 or less to include negative amounts in additional section 263A costs under the simplified production method.

Additionally, because negative additional section 263A costs cause less distortion under the simplified resale method than under the simplified production method, the proposed regulations allow taxpayers using the simplified resale method to remove section 471 costs that are not required to be capitalized for tax purposes from ending inventory by treating them as negative additional section 263A costs.

The proposed regulations generally prohibit treating cash or trade discounts described in §1.471–3(b) as negative amounts under any of the simplified methods. Comments are requested on reasonable methods of allocating between ending inventory and cost of goods sold cash or trade discounts that taxpayers do not capitalize for book purposes (and therefore are not section 471 costs within the meaning of §1.263A–1(d)(2)).

2. *New Modified Simplified Production Method*

In response to Notice 2007–29, a commentator suggested an alternative to the simplified production method that would reduce overcapitalization and distortion, including distortions resulting from including negative amounts in additional section 263A costs. The commentator suggested that the simplified production method may allocate an excessive amount of section 263A costs to raw materials inventories because the formula does not take into account the fact that taxpayers incur fewer indirect costs for raw materials and because different inventoriable costs turn over at different rates. The commentator's alternative simplified method would allocate additional section 263A costs related to raw materials using a formula that is different from the formula used to allocate additional section 263A costs related to work-in-process and finished goods.

As suggested by this comment, the proposed regulations allow producers to use a new modified simplified production method that reduces the distortions that exist under the traditional simplified methods by more precisely allocating additional section 263A costs, including negative amounts, among raw materials, work-in-process, and finished goods inventories. Under the modified simplified production method, producers determine the allocable portion of preproduction related additional section 263A costs (such as storage and handling for raw materials) using a preproduction cost absorption ratio. The preproduction cost absorption ratio is applied to raw material section 471 costs incurred during the taxable year and remaining on hand at year end. For

purposes of computing the allocable portion of preproduction related additional section 263A costs, raw material costs on hand at year end include unprocessed raw materials and raw materials that are integrated into work-in-progress and finished goods. Under the modified simplified production method, producers determine the allocable portion of all other additional section 263A costs using a production cost absorption ratio.

In addition to reducing distortions that exist under the simplified production method by more precisely allocating additional section 263A costs to raw materials, the modified simplified production method provides producers with a method to remove section 471 costs that are not required to be capitalized for tax purposes from ending inventory by treating them as negative additional section 263A costs. Both resellers and producers, thereby, are allowed to use methods that more precisely allocate additional section 263A costs while alleviating administrative burden, consistent with the purpose of the simplified methods.

As with other simplified methods, a taxpayer must maintain adequate records substantiating proper use of the modified simplified production method (see section 6001).

Comments are requested on the modified simplified production method, including: (1) whether distortions will occur if preproduction related additional section 263A costs are not directly traced from raw materials through work-in-process and finished goods inventories from year to year; (2) how mixed service costs should be allocated between raw materials, work-in-process, and finished goods inventories under the new formula; and (3) how the new formula should apply to a taxpayer using the last-in, first-out method of accounting.

3. *Simplified Definition of Section 471 Costs and Elimination of Separate Provisions for New Taxpayers*

For most taxpayers, section 471 costs generally are the acquisition or production costs, other than interest, that the taxpayer capitalized under its method of accounting immediately before the effective date of section 263A. See §1.263A–1(d)(2)(i). If a taxpayer was not in existence at that time, section 471 costs generally are the acquisition or production costs, other than interest, that the taxpayer would have been required to capitalize if the taxpayer had been in existence immediately before the effective date of section 263A. See §1.263A–1(d)(2)(ii).

To provide greater simplicity and consistency among taxpayers, the proposed regulations adopt a single definition of section 471 costs that applies to taxpayers that were in existence before the effective date of section 263A and to newer taxpayers, whether using the simplified production method, the modified simplified production method, or the simplified resale method. The proposed regulations provide that, for purposes of the simplified methods, a taxpayer's section 471 costs, in general, are the costs, other than interest, that a taxpayer capitalizes to its inventory in its financial statements. However, a taxpayer must include all direct costs in its section 471 costs regardless of the taxpayer's treatment of the costs in its financial statements. The proposed regulations require a taxpayer that is not permitted to remove section 471 costs as negative additional section 263A costs to reduce its section 471 costs. The proposed regulations provide that a taxpayer that reduces its section 471 costs must use a reasonable method that approximates the manner in which the taxpayer originally capitalized the costs.

Effective/Applicability Date

The regulations are proposed to apply to taxable years ending on or after the date the regulations are published as final regulations in the **Federal Register**.

Effect on Other Documents

Notice 2007–29 would be superseded as of the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

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. Section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking 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 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 who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

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

* * * * *

Proposed Amendments to the Regulations

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

PART I — INCOME TAXES

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

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

Section 1.263A–1 also issued under 26 U.S.C. 263A. * * *

Section 1.263A–2 also issued under 26 U.S.C. 263A. * * *

Par. 2. Section 1.263A–0 is amended as follows:

1. Revising the entries in §1.263A–1 for paragraphs (d)(2) and (d)(3).

2. Revising the entries in §1.263A–2 for paragraphs (c) and (d).

3. Adding new entries to §1.263A–2 for paragraphs (e), (f) and (g).

The revisions and addition read as follows:

§1.263A–0 Outline of regulations under section 263A.

* * * * *

§1.263A–1 Uniform capitalization of costs.

* * * * *

(d) * * *

(2) Section 471 costs.

(i) In general.

(ii) Removal of costs from inventory.

(iii) Method changes.

(3) Additional section 263A costs.

(i) In general.

(ii) Negative amounts.

(A) In general.

(B) Exception for small taxpayers using the simplified production method.

(C) Exception for modified simplified production method and simplified resale method.

* * * * *

§1.263A–2 Rules relating to property produced by the taxpayer.

* * * * *

(c) Modified simplified production method.

(1) In general.

(2) Eligible property.

(3) Modified simplified production method without historic absorption ratio election.

(i) General allocation formula.

(A) In general.

(B) Allocable preproduction additional section 263A costs.

(C) Allocable production additional section 263A costs.

(D) Effect of allocation.

(E) Treatment of mixed service costs.

(ii) Definitions

(A) Preproduction absorption ratio.

(*1*) In general.

(*2*) Preproduction additional section 263A costs.

(*3*) Raw material costs.

(B) Production absorption ratio.

(*1*) In general.

(*2*) Production additional section 263A costs.

(*3*) Production section 471 costs.

(iii) LIFO taxpayers electing the modified simplified production method.

(A) In general.

(B) LIFO increment.

(*1*) In general.

(*2*) Combined absorption ratio defined.

(C) LIFO decrement.

(iv) *De minimis* rule for producers with total indirect costs of $200,000 or less.

(v) Examples.

(4) Modified simplified production method with historic absorption ratio election.

(i) In general.

(ii) General allocation formula.

(A) In general.

(B) Preproduction historic absorption ratio.

(C) Production historic absorption ratio.

(iii) LIFO taxpayers making the historic absorption ratio election.

(A) In general.

(B) Combined historic absorption ratio.

(C) Total allocable additional section 263A costs incurred during the test period.

(D) Total section 471 costs remaining on hand at year end during the test period.

(iv) Extension of qualifying period.

(v) Transition rule.

(vi) Examples.

(d) Additional simplified methods for producers.

(e) Cross reference.

(f) Change in method of accounting.

(1) In general.

(2) Scope limitations.

(3) Audit protection.

(4) Section 481(a) adjustment.

(5) Time for requesting change.

(g) Effective/applicability date.

Par. 3. Section 1.263A–1 is amended by:

1. Revising paragraphs (d)(2) and (d)(3).

2. Adding a sentence to the end of paragraph (m).

The addition and revisions read as follows:

§1.263A–1 Uniform capitalization of costs.

* * * * *

(d) * * *

(2) *Section 471 costs*—(i) *In general*. Except as otherwise provided in paragraph (d)(2)(ii) of this section, for purposes of section 263A, a taxpayer's section 471 costs are the costs, other than interest, that a taxpayer capitalizes to its inventory (or other eligible property) in its financial statements. Thus, although section 471 applies only to inventories, section 471 costs include any non-inventory costs, other than interest, that a taxpayer capitalizes or includes in acquisition or production costs in its financial statements. However, notwithstanding the last sentence of paragraph (g)(2) of this section, section 471 costs must include all direct costs of producing property and of acquiring property held for resale, whether or not a taxpayer capitalizes these costs to inventory or to other eligible property in its financial statements. See paragraph (e)(2) of this section for a description of direct production costs and direct costs of acquiring property held for resale.

(ii) *Removal of costs from inventory*. A taxpayer must reduce its section 471 costs by those costs that the taxpayer capitalizes to its inventory (or other eligible property) in its financial statements that may not be capitalized under either §1.263A–1(c)(2) or §1.263A–1(j)(2)(ii), and those period costs that the taxpayer capitalizes to its inventory (or other eligible property) in its financial statements that, under §1.263A–1(j)(2), the taxpayer chooses not to capitalize under section 263A (for example, section 179 costs). A taxpayer described in paragraph (d)(3)(ii)(B) or (d)(3)(ii)(C) of this section that may remove these costs from inventory by including them as negative amounts in additional section 263A costs instead may reduce its section 471 costs for these costs. A taxpayer that reduces its section 471 costs must use a reasonable method that approximates the manner in which the taxpayer originally capitalized the costs to its inventory (or other eligible property) in its financial statements.

(iii) *Method changes*. A taxpayer may change its method of accounting for determining section 471 costs only with the consent of the Commissioner as required

under section 446(e) and the corresponding regulations. If a taxpayer is using the simplified production method described in §1.263A–2(b), the modified simplified production method described in §1.263A–2(c), or the simplified resale method described in §1.263A–3(d), and changes its financial reporting practices regarding the costs capitalized to its inventory (or other eligible property) in a manner that would change its section 471 costs under the general provisions of paragraph (d)(2)(i) of this section, then the taxpayer must secure the Commissioner's consent prior to computing its taxable income under the new method of accounting for section 471 costs.

(3) *Additional section 263A costs*—(i) *In general. Additional section 263A costs* are defined as the costs, other than interest, that are not included in a taxpayer's section 471 costs, but that are required to be capitalized under section 263A. Additional section 263A costs do not include the direct costs that are required to be included in a taxpayer's section 471 costs under paragraph (d)(2)(i) of this section.

(ii) *Negative amounts*—(A) *In general*. Except as otherwise provided by regulations or other published guidance, see §601.601(d)(2), a taxpayer may not include negative amounts in additional section 263A costs.

(B) *Exception for small taxpayers using the simplified production method*. Paragraph (d)(3)(ii)(A) of this section does not apply to a taxpayer using the simplified production method under §1.263A–2(b) if the taxpayer's (or its predecessors') average annual gross receipts for the three previous taxable years (test period) do not exceed $10,000,000. The rules of §1.263A–3(b) apply for purposes of determining the amount of a taxpayer's gross receipts and the test period.

(C) *Exception for modified simplified production method and simplified resale method*. In general, a taxpayer using the modified simplified production method under §1.263A–2(c) or the simplified resale method under §1.263A–3(d) may (but is not required to) remove as negative amounts under section 263A indirect costs that are included in the taxpayer's section 471 costs but that are not required to be, or may not be, capitalized into inventory (or other eligible property) for federal income tax purposes. However, a taxpayer using the modified simplified production method or the simplified resale method may not use negative amounts to adjust additional section 263A costs for cash or trade discounts described in §1.471–3(b).

* * * * *

(m) * * * Paragraphs (d)(2) and (d)(3) of this section apply for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**.

Par. 4. Section 1.263A–2 is amended by:

1. Redesignating paragraphs (c), (d), (e), and (f) as paragraphs (d), (e), (f), and (g).

2. Adding a new paragraph (c).

3. Revising newly designated paragraph (g).

The addition and revisions read as follows:

§1.263A–2 Rules relating to property produced by the taxpayer.

* * * * *

(c) *Modified simplified production method*—(1) *In general*. This paragraph (c) provides a modified simplified method for determining the additional section 263A costs properly allocable to ending inventories of property produced and other eligible property on hand at the end of the taxable year.

(2) *Eligible property*. For purposes of this paragraph (c), *eligible property* has the same meaning as in paragraph (b)(2) of this section.

(3) *Modified simplified production method without historic absorption ratio election*—(i) *General allocation formula*—(A) *In general*. Except as otherwise provided in paragraph (c)(3)(iv) of this section, a taxpayer may compute the total additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year under the modified simplified production method as follows:

Allocable preproduction additional section 263A costs + Allocable production additional section 263A costs.

(B) *Allocable preproduction additional section 263A costs*. The amount of preproduction additional section 263A costs allocable to ending inventory or to other eligible property on hand at the end of the taxable year is computed as follows:

Preproduction absorption ratio x raw material section 471 costs incurred during the taxable year and remaining on hand at year end.

(C) *Allocable production additional section 263A costs*. The amount of production additional section 263A costs allocable to ending inventory or to other eligible property on hand at the end of the taxable year is computed as follows:

Production absorption ratio x production section 471 costs incurred during the taxable year and remaining on hand at year end.

(D) *Effect of allocation*. The allocable preproduction additional section 263A costs and the allocable production additional section 263A costs are totaled to compute the additional section 263A costs, which are added to the taxpayer's ending section 471 costs to determine the total section 263A costs that are capitalized. See, however, paragraph (c)(3)(iii) of this section for special rules for LIFO taxpayers. Except as otherwise provided in this section or in §1.263A–1 or §1.263A–3, additional section 263A costs that are allocated to inventories on hand at the close of the taxable year under the modified simplified production method are treated as inventory costs for all purposes of the Internal Revenue Code.

(E) *Treatment of mixed service costs*. A taxpayer must apportion capitalizable mixed service costs (the aggregate portion of mixed service costs that are properly allocable to the taxpayer's production or resale activities as additional section 263A costs) between preproduction additional section 263A costs described in paragraph (c)(3)(ii)(A)(*2*) of this section and production additional section 263A costs described in paragraph (c)(3)(ii)(B)(*2*) of this section. Under the modified simplified production method, a taxpayer must allocate capitalizable mixed service costs to preproduction additional section 263A costs in proportion to the raw material costs in total section 471 costs. The taxpayer must include the capitalizable mixed service costs that are not allocated to preproduction additional section 263A costs in production additional section 263A costs.

(ii) *Definitions*—(A) *Preproduction absorption ratio*—(*1*) *In general*. Under the modified simplified production method,

the preproduction absorption ratio is determined as follows:

$$\frac{\text{Preproduction additional section 263A costs}}{\text{Raw material costs}}$$

(*2*) *Preproduction additional section 263A costs*. Preproduction additional section 263A costs are the sum of the additional section 263A costs (as defined in §1.263A–1(d)(3)) incurred during the current taxable year that are described in paragraph (a)(3)(ii) of this section to the extent the costs are not treated as section 471 costs and the allocable portion of capitalizable mixed service costs as described in paragraph (c)(3)(i)(E) of this section.

(*3*) *Raw material costs*. Raw material costs are defined as the direct costs of acquiring raw materials that a taxpayer purchases during its current taxable year. Raw material section 471 costs incurred during the taxable year and remaining on hand at year end include the raw material costs in work-in-process and finished goods as well as unprocessed raw materials.

(B) *Production absorption ratio*—(*1*) *In general*. Under the modified simplified production method, the production absorption ratio is determined as follows:

$$\frac{\text{Production additional section 263A costs}}{\text{Production section 471 costs}}$$

(*2*) *Production additional section 263A costs*. Production additional section 263A costs are the sum of all additional section 263A costs (as defined in §1.263A–1(d)(3)) incurred during the current taxable year that are not preproduction additional section 263A costs as described in this section and the allocable portion of capitalizable mixed service costs as described in paragraph (c)(3)(i)(E) of this section. For example, production additional section 263A costs include the additional section 263A costs that constitute post-production costs as defined in paragraph (a)(3)(iii) of this section.

(*3*) *Production section 471 costs*. Production section 471 costs are defined as the total section 471 costs that a taxpayer incurs during its current taxable year less the taxpayer's raw material costs.

(iii) *LIFO taxpayers electing the modified simplified production method*—(A) *In general*. Under the modified simplified production method, a taxpayer using a LIFO method must calculate a particular year's index (for example, under §1.472–8(e)) without regard to its additional section 263A costs. Similarly, a taxpayer that adjusts current-year costs by applicable indexes to determine whether there has been an inventory increment or decrement in the current year for a particular LIFO pool must disregard the additional section 263A costs in making that determination.

(B) *LIFO increment*—(*1*) *In general*. If a taxpayer determines there has been an inventory increment, the taxpayer must state the amount of the increment in current-year dollars (stated in terms of section 471 costs). The taxpayer then multiplies this amount by the combined absorption ratio, as defined in paragraph (c)(3)(iii)(B)(*2*) of this section. The resulting product is the additional section 263A costs that must be added to the taxpayer's increment for the year stated in terms of section 471 costs.

(*2*) *Combined absorption ratio defined*. For purposes of this paragraph (c)(3)(iii), the numerator of the combined absorption ratio is the total additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year, as described in paragraph (c)(3)(i)(A) of this section. The denominator of the combined absorption ratio is the total section 471 costs remaining on hand at year end, as described in paragraph (b)(3)(ii)(B) of this section.

(C) *LIFO decrement*. If a taxpayer determines there has been an inventory decrement, the taxpayer must state the amount of the decrement in dollars for the particular year for which the LIFO decrement has occurred. The additional section 263A costs incurred in prior years that apply to the decrement are included in cost of goods sold. The taxpayer determines the additional section 263A costs that apply to the decrement by multiplying the additional section 263A costs allocated to the layer of the pool in which the decrement occurred by the ratio of the decrement (excluding additional section 263A costs) to the section 471 costs in the layer of that pool.

(iv) *De minimis rule for producers with total indirect costs of $200,000 or less*. Paragraph (b)(3)(iv) of this section, which provides that the additional section 263A costs allocable to eligible property remaining on hand at the close of the taxable year are deemed to be zero for producers with total indirect costs of $200,000 or less, applies to the modified simplified production method.

(v) *Examples*. The rules of this paragraph (c)(3) are illustrated by the following examples:

Example 1. FIFO inventory method. (i) Taxpayer P uses the first-in, first-out (FIFO) method of accounting for inventories and a calendar taxable year. P's beginning inventory for 2010 is $2,500,000, including $2,000,000 of section 471 costs and $500,000 of additional section 263A costs.

(ii) During 2010, P incurs $10,000,000 of section 471 costs, including $4,000,000 of raw material costs (as defined in paragraph (c)(3)(ii)(A)(*3*) of this section) and $6,000,000 of production section 471 costs (as defined in paragraph (c)(3)(ii)(B)(*3*) of this section). P also incurs $1,060,000 of additional section 263A costs, including $340,000 of preproduction additional section 263A costs (as defined in paragraph (c)(3)(ii)(A)(*2*) of this section) and $720,000 of production additional section 263A costs (as defined in paragraph (c)(3)(ii)(B)(*2*) of this section).

(iii) At the end of 2010, P's section 471 costs incurred during the taxable year remaining in ending inventory are $3,500,000, including $2,000,000 of raw materials section 471 costs and $1,500,000 of production section 471 costs.

(iv) P computes its preproduction absorption ratio for 2010 under paragraph (c)(3)(ii)(A) of this section as follows:

Preproduction additional section 263A costs	=	$ 340,000	=	8.5 percent
Raw material costs		$4,000,000		

(v) P computes its production absorption ratio for 2010 under paragraph (c)(3)(ii)(B)(*1*) of this section as follows:

Production additional section 263A costs	=	$ 720,000	=	12 percent
Production section 471 costs		$6,000,000		

(vi) Under paragraph (c)(3)(i)(B) of this section, P computes its allocable preproduction additional section 263A costs by multiplying the preproduction absorption ratio by raw materials section 471 costs incurred during the taxable year and remaining in ending inventory (8.5 percent * $2,000,000 = $170,000).

(vii) Under paragraph (c)(3)(i)(C) of this section, P computes its allocable production additional section 263A costs by multiplying the production absorption ratio by production section 471 costs incurred during the taxable year and remaining in ending inventory at year end (12 percent * $1,500,000 = $180,000).

(viii) Under paragraph (c)(3)(i)(A) of this section, P computes its total additional section 263A costs allocable to ending inventory by adding its allocable preproduction additional section 263A costs to its allocable production additional section 263A costs ($170,000 + $180,000 = $350,000).

(ix) P adds the $350,000 additional section 263A costs to the $3,500,000 of section 471 costs remaining in its ending inventory to calculate its total ending inventory of $3,850,000. P includes the balance of P's additional section 263A costs incurred during 2010, $710,000 ($1,060,000 less $350,000), in P's cost of goods sold.

Example 2. LIFO inventory method. (i) The facts are the same as in *Example 1*, except that P uses the LIFO inventory method rather than the FIFO method. P's 2010 LIFO increment is $1,500,000.

(ii) Under paragraph (c)(3)(iii)(B)(*1*) of this section, P determines the additional section 263A costs allocable to its 2010 LIFO increment by multiplying the increment by a combined absorption ratio. Under paragraph (c)(3)(iii)(B)(*2*) of this section, P computes the combined absorption ratio as follows:

Additional section 263A costs allocable to eligible property remaining in ending inventory at the close of 2010	=	$ 350,000	=	10 percent
Section 471 costs remaining in ending inventory at the end of 2010		$3,500,000		

(iii) P's additional section 263A costs allocable to its 2010 increment are $150,000 (10 percent * $1,500,000). Under paragraph (c)(3)(iii)(B)(*1*) of this section, P adds the $150,000 additional section 263A costs to its $1,500,000 LIFO increment to determine a total 2010 LIFO increment of $1,650,000. P's ending inventory is $4,150,000 (its beginning inventory of $2,500,000 plus the $1,650,000 increment). P includes the remaining $910,000 ($1,060,000 less $150,000) of additional section 263A costs incurred during 2010 in P's cost of goods sold.

Example 3. Mixed service costs. (i) During 2010, Taxpayer R incurs $200,000 of capitalizable mixed service costs (within the meaning of paragraph (c)(3)(i)(E) of this section). R incurs $8,000,000 of section 471 costs, including $2,000,000 of raw material costs (as defined in paragraph (c)(3)(ii)(A)(*3*) of this section).

(ii) Under paragraph (c)(3)(i)(E) of this section, R allocates its mixed service costs to preproduction additional section 263A costs by computing the proportion of raw material costs in its section 471 costs and multiplying its mixed service costs by this percentage. The proportion of raw material costs in R's section 471 costs is 25 percent ($2,000,000/$8,000,000). R allocates $50,000 (25 percent * $200,000) of mixed service costs to preproduction additional section 263A costs. R includes the remaining $150,000 ($200,000 less $50,000) of capitalizable mixed service costs as production additional section 263A costs.

(4) *Modified simplified production method with historic absorption ratio election*—(i) *In general*. Except as otherwise provided in this paragraph (c)(4), paragraph (b)(4) of this section applies to the historic absorption ratio election under the modified simplified production method.

(ii) *General allocation formula*—(A) *In general*. Except as provided in paragraph (c)(4)(iii) of this section (relating to LIFO taxpayers), a taxpayer making the historic absorption ratio election under the modified simplified production method uses a preproduction historic absorption ratio and a production historic absorption ratio in place of the actual preproduction absorption ratio and production absorption ratio under paragraph (c)(3)(ii) of this section. The preproduction and production historic absorption ratios are based on costs a taxpayer capitalizes during its test period.

(B) *Preproduction historic absorption ratio*. The preproduction historic absorption ratio is computed as follows:

$$\frac{\text{Preproduction additional section 263A costs incurred during the test period}}{\text{Raw material costs incurred during the test period}}$$

(C) *Production historic absorption ratio*. The production historic absorption ratio is computed as follows:

$$\frac{\text{Production additional section 263A costs incurred during the test period}}{\text{Production section 471 costs incurred during the test period}}$$

(iii) *LIFO taxpayers making the historic absorption ratio election*—(A) *In general*. Instead of the combined absorption ratio under paragraph (c)(3)(iii)(B)(*2*) of this section, a LIFO taxpayer making the historic absorption ratio election un-

der the modified simplified production method calculates a combined historic absorption ratio based on costs a taxpayer capitalizes during its test period.

(B) *Combined historic absorption ratio*. The combined historic absorption ratio is computed as follows:

$$\frac{\text{Total allocable additional section 263A costs incurred during the test period}}{\text{Total section 471 costs remaining on hand at each year end of the test period}}$$

(C) *Total allocable additional section 263A costs incurred during the test period*. Total allocable additional section 263A costs incurred during the test period are the sum of the total additional section 263A costs allocable to eligible property on hand at year end as described in paragraph (c)(3)(i)(A) of this section, for all years in the test period.

(D) *Total section 471 costs remaining on hand at each year end of the test period*. Total section 471 costs remaining on hand at each year end of the test period are the sum of the total section 471 costs remaining on hand at year end described in paragraph (b)(3)(ii)(B) of this section, for all taxable years in the test period.

(iv) *Extension of qualifying period*. In the first taxable year following the close of each qualifying period (for example, the sixth taxable year following the test period), a taxpayer must compute the actual absorption ratios under paragraph (c)(3) of this section (preproduction and production absorption ratios or, for LIFO taxpayers, the combined absorption ratio). If the actual combined absorption ratio or both the actual preproduction and production absorption ratios, as applicable, computed for this taxable year (the recomputation year) is within one-half of one percentage point (plus or minus) of the corresponding historic absorption ratio or ratios used in determining capitalizable costs for the qualifying period (the previous five taxable years), the qualifying period is extended to include the recomputation year and the following five taxable years, and the taxpayer must continue to use the historic absorption ratio or ratios throughout the extended qualifying period. If, however, the actual combined historic absorption ratio or either the actual preproduction absorption ratio or production absorption ratio, as applicable, is not within one-half of one percentage point (plus or minus) of the corresponding historic absorption ratio, the taxpayer must use the actual absorption ratio or ratios beginning with the recomputation year and throughout the updated test period. The taxpayer must resume using the historic absorption ratio or ratios based on the updated test period in the third taxable year following the recomputation year.

(v) *Transition rule*. [Reserved].

(vi) *Examples*. The provisions of this paragraph (c)(4) are illustrated by the following examples:

Example 1. FIFO inventory method. (i) Taxpayer S uses the FIFO method of accounting for inventories and a calendar taxable year, and in 2010 elects to use the modified simplified production method. In 2013, S makes the historic absorption ratio election. S identifies the following costs incurred during the test period:

	2010	2011	2012
Preproduction additional section 263A costs	$ 100	$ 200	$ 300
Production additional section 263A costs	200	350	450
Raw material costs	2,000	2,500	3,000
Production section 471 costs	2,500	3,500	4,000

In 2013, S incurs $10,000 of section 471 costs of which $1,000 raw material costs and $2,000 production 471 costs remain in ending inventory.

(ii) Under paragraph (c)(4)(ii)(B) of this section, in 2013 S computes the preproduction historic absorption ratio as follows:

$$\frac{\text{Preproduction additional section 263A costs}}{\text{Raw material costs}} = \frac{\$\ 100 + 200 + 300}{\$2{,}000 + 2{,}500 + 3{,}000} = \frac{600}{7{,}500} = 8 \text{ percent}$$

(iii) Under paragraph (c)(4)(ii)(C) of this section, S computes the production historic absorption ratio as follows:

$$\frac{\text{Production additional section 263A costs}}{\text{Production 471 costs}} = \frac{\$\ 200 + 350 + 450}{\$2{,}500 + 3{,}500 + 4{,}000} = \frac{1{,}000}{10{,}000} = 10 \text{ percent}$$

(iv) Under paragraph (c)(4)(ii)(A) of this section, S determines the preproduction additional section 263A costs allocable to its ending inventory for 2013 by multiplying its raw materials section 471 costs incurred during the 2013 taxable year and remaining in its ending inventory by its preproduction historic absorption ratio. S allocates $80 preproduction additional section 263A costs to its ending inventory ($1,000 * 8 percent).

(v) S determines the production additional section 263A costs allocable to its ending inventory for

2013 by multiplying its production section 471 costs incurred during the 2013 taxable year and remaining in its ending inventory by its production historic absorption ratio. S allocates $200 production additional section 263A costs to its ending inventory ($2,000 * 10 percent).

(vi) Under paragraph (c)(4)(ii) of this section, S's total additional section 263A costs allocable to ending inventory in 2013 are $280, which is the sum of the allocable preproduction additional section 263A costs ($80) and the allocable production additional section 263A costs ($200). S's ending inventory in 2013 is $3,280, which is the sum of S's additional section 263A costs allocable to ending inventory and S's section 471 costs remaining in ending inventory ($280 + $3,000). S includes the balance of S's additional section 263A costs incurred during 2013 in S's cost of goods sold.

Example 2. LIFO inventory method. (i) The facts are the same as in *Example 1*, except that S uses the LIFO inventory method rather than the FIFO method. S calculates additional section 263A costs incurred during the taxable year and allocable to ending inventory under paragraph (c)(3)(iii) of this section and identifies the following costs incurred during the test period:

	2010	2011	2012
Additional section 263A costs incurred during the taxable year allocable to ending inventory	$ 100	$ 150	$ 200
Section 471 costs incurred during the taxable year that remain in ending inventory	1,000	1,400	2,100

In 2013, the LIFO value of S's increment is $1,500.

(ii) Under paragraph (c)(4)(iii) of this section, S computes a combined historic absorption ratio as follows:

$$\frac{\text{Additional section 263A costs incurred during each taxable year in the test period allocable to ending inventory}}{\text{Section 471 costs incurred during each taxable year in the test period that remain in ending inventory}} = \frac{\$\ 100 + 150 + 200}{\$1{,}000 + 1{,}400 + 2{,}100} = \frac{\$\ 450}{\$4{,}500} = 10 \text{ percent}$$

(iii) S's additional section 263A costs allocable to its 2013 LIFO increment is $150 ($1,500 beginning LIFO increment * 10 percent combined historic absorption ratio). S adds the $150 to the $1,500 LIFO increment to determine a total 2013 LIFO increment of $1,650.

* * * * *

(g) *Effective/applicability date*. Paragraphs (b)(2)(i)(D), and (f) of this section apply for taxable years ending on or after August 2, 2005. Paragraph (c) of this section applies for taxable years ending on or after the date these regulations are published as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on September 4, 2012, 8:45 a.m., and published in the issue of the Federal Register for September 5, 2012, 77 F.R. 54482)

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Integrated Hedging Transactions of Qualifying Debt

REG–138489–09

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 and the Treasury Department are issuing temporary regulations (T.D. 9598) under section 988(d) of the Internal Revenue Code. These regulations address certain integrated transactions that involve a foreign currency denominated debt instrument and multiple associated hedging transactions. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by December 6, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138489–09), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–138489–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS and REG–138489–09).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Sheila Ramaswamy, at (202) 622–3870; concerning submissions and delivery of comments, Oluwafunmilayo Taylor, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in this issue of the Bulletin provide guidance regarding certain integrated transactions

that involve a foreign currency denominated debt instrument and multiple associated hedging transactions. The text of those temporary regulations 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. 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 provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

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

Drafting Information

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

* * * * *

Proposed Amendment to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.988–5 is amended by revising paragraph (a)(6)(ii) and adding paragraph (a)(9)(iv) *Example 11* and paragraph (h) to read as follows:

§1.988–5 Section 988(d) hedging transactions.

(a) * * *

(6) * * *

(ii) [The text of these proposed amendments to §1.988–5(a)(6)(ii) is the same as the text of §1.988–5T(a)(6)(ii) published elsewhere in this issue of the Bulletin.]

* * * * *

(9) * * *

(iv) * * *

* * * * *

Example 11 [The text of these proposed amendments to §1.988–5(a)(9)(iv) *Example 11* is the same as the text of §1.988–5T(a)(9)(iv) *Example 11* published elsewhere in this issue of the Bulletin.]

* * * * *

(h) [The text of these proposed amendments to §1.988–5(h) is the same as the text of §1.988–5T(h) 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 September 5, 2012, 8:45 a.m., and published in the issue of the Federal Register for September 6, 2012, 77 F.R. 54862)

Dividend Equivalents from Sources Within the United States; Correction

Announcement 2012–35

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations; correcting amendment.

SUMMARY: This document amends temporary regulations (T.D. 9572, 2012–11 I.R.B. 471) relating to dividend equivalents for purposes of section 871(m) of the Internal Revenue Code (Code). The regulations affect nonresident aliens and foreign corporations that hold notional principal contracts (NPCs) providing for payments determined by reference to payments of dividends from sources within the United States.

DATES: *Effective Date*: These regulations are effective August 31, 2012.

Applicability Date: For dates of applicability, see § 1.871–16T(g).

FOR FURTHER INFORMATION CONTACT: Mark E. Erwin or D. Peter Merkel at (202) 622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 23, 2012, the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) published in the **Federal Register** a temporary regulation and a notice of proposed rulemaking relating to dividend equivalents from sources within the United States. *See* T.D. 9572, 77 FR 3108 (Temporary Regulations); REG–120282–10, 2012–11 I.R.B. 487 [77 FR 3202] (Proposed Regulations). Section 871(m)(2) defines the term "dividend equivalent" to include, in part, any payment made pursuant to a specified notional principal contract (specified NPC) that is contingent upon or determined by reference to a U.S. source dividend. Section 871(m)(3)(A) provides a definition for the term specified NPC that is applicable to payments made through March 18, 2012. Section 1.871–16T(b) of the Temporary Regulations provides that the definition of specified NPC contained in paragraphs (i) through (iv) of section 871(m)(3)(A) will apply to payments made after March 18, 2012, and before January 1, 2013. The Proposed Regulations provide a different definition of specified NPC that would apply to payments made on or after January 1, 2013.

Explanation of Provisions

Treasury and the IRS received numerous comments on the Proposed Regulations, stating that the proposed effective date of January 1, 2013, would not allow taxpayers sufficient time to build and test the systems required to implement the withholding rules for specified NPCs and equity-linked instruments. In response to these comments, this document amends § 1.871–16T(b) of the Temporary Regulations so that the definition of a specified NPC contained in paragraphs (i) through (iv) of section 871(m)(3)(A) will apply to payments made after March 18, 2012, and before January 1, 2014. When final regulations are issued adopting the Proposed Regulations, Treasury and the IRS intend that the rules contained in the final regulations will apply to payments made on or after January 1, 2014.

Treasury and the IRS continue to consider the other public comments made on the Temporary Regulations and the Proposed Regulations.

Drafting Information

The principal author of these regulations is D. Peter Merkel, the Office of Associate Chief Counsel (International). Other personnel from Treasury and the IRS participated in their development.

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1— INCOME TAXES

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

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

Section 1.871–16T also issued under 26 U.S.C. 871(m).

§ 1.871–16T(b) [Amended]

Par. 2. Section 1.871–16T(b) is amended by removing the language "2013" and adding the language "2014" in its place wherever it appears.

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

Approved August 16, 2012.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on August 30, 2012, 8:45 a.m., and published in the issue of the Federal Register for August 31, 2012, F.R. 53141)

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D. —Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z —Corporation.

Numerical Finding List[1]

Bulletins 2012–27 through 2012–38

Announcements:

2012-26, 2012-27 I.R.B. *8*
2012-27, 2012-27 I.R.B. *10*
2012-28, 2012-27 I.R.B. *10*
2012-30, 2012-34 I.R.B. *314*
2012-31, 2012-34 I.R.B. *315*
2012-32, 2012-35 I.R.B. *325*
2012-33, 2012-35 I.R.B. *325*
2012-34, 2012-36 I.R.B. *334*
2012-35, 2012-38 I.R.B. *356*

Notices:

2012-39, 2012-31 I.R.B. *95*
2012-44, 2012-28 I.R.B. *45*
2012-45, 2012-29 I.R.B. *59*
2012-46, 2012-30 I.R.B. *86*
2012-47, 2012-31 I.R.B. *98*
2012-48, 2012-31 I.R.B. *102*
2012-49, 2012-31 I.R.B. *119*
2012-50, 2012-31 I.R.B. *121*
2012-51, 2012-33 I.R.B. *150*
2012-52, 2012-35 I.R.B. *317*
2012-53, 2012-35 I.R.B. *317*
2012-55, 2012-36 I.R.B. *332*

Proposed Regulations:

REG-126770-06, 2012-38 I.R.B. *347*
REG-101812-07, 2012-34 I.R.B. *311*
REG-134042-07, 2012-27 I.R.B. *5*
REG-153627-08, 2012-29 I.R.B. *60*
REG-136491-09, 2012-35 I.R.B. *321*
REG-138489-09, 2012-38 I.R.B. *355*
REG-125570-11, 2012-30 I.R.B. *93*
REG-130266-11, 2012-32 I.R.B. *126*
REG-134935-11, 2012-29 I.R.B. *64*
REG-141832-11, 2012-28 I.R.B. *54*
REG-107889-12, 2012-28 I.R.B. *53*
REG-113738-12, 2012-29 I.R.B. *66*

Revenue Procedures:

2012-28, 2012-27 I.R.B. *4*
2012-29, 2012-28 I.R.B. *49*
2012-30, 2012-33 I.R.B. *165*
2012-31, 2012-33 I.R.B. *256*
2012-32, 2012-34 I.R.B. *267*
2012-33, 2012-34 I.R.B. *272*
2012-34, 2012-34 I.R.B. *280*
2012-35, 2012-37 I.R.B. *341*

Revenue Rulings:

2012-19, 2012-28 I.R.B. *16*
2012-20, 2012-27 I.R.B. *1*

Revenue Rulings— Continued:

2012-21, 2012-32 I.R.B. *123*
2012-24, 2012-36 I.R.B. *329*
2012-25, 2012-37 I.R.B. *337*

Treasury Decisions:

9591, 2012-28 I.R.B. *32*
9592, 2012-28 I.R.B. *41*
9593, 2012-28 I.R.B. *17*
9594, 2012-29 I.R.B. *57*
9595, 2012-30 I.R.B. *71*
9596, 2012-30 I.R.B. *84*
9597, 2012-34 I.R.B. *258*
9598, 2012-38 I.R.B. *343*

[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.

Finding List of Current Actions on Previously Published Items[1]

Bulletins 2012–27 through 2012–38

Announcements:

83-196
Superseded by
Rev. Proc. 2012-31, 2012-33 I.R.B. *256*

85-141
Superseded by
Rev. Proc. 2012-31, 2012-33 I.R.B. *256*

2008-105
Modified and superseded by
Ann. 2012-34, 2012-36 I.R.B. *334*

Notices:

2009-24
Amplified by
Notice 2012-51, 2012-33 I.R.B. *150*

2012-51
Amplified by
Notice 2012-51, 2012-33 I.R.B. *150*

Proposed Regulations:

REG-100276-97
Withdrawn by
Ann. 2012-27, 2012-27 I.R.B. *10*

Revenue Procedures:

94-22
Modified and superseded by
Rev. Proc. 2012-35, 2012-37 I.R.B. *341*

95-15
Superseded by
Rev. Proc. 2012-31, 2012-33 I.R.B. *256*

98-32
Modified and superseded by
Rev. Proc. 2012-33, 2012-34 I.R.B. *272*

2007-38
Modified and superseded by
Rev. Proc. 2012-32, 2012-34 I.R.B. *267*

2011-40
Superseded by
Rev. Proc. 2012-30, 2012-33 I.R.B. *165*

Treasury Decisions:

9752
Corrected by
Ann. 2012-35, 2012-38 I.R.B. *356*

[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.

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, $300

INTERNAL REVENUE BULLETIN

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

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. For the foreseeable future, the IRS will not create Cumulative Bulletins after the 2008–2 edition. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Select Businesses. Under Businesses Topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

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

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197–9000. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

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