Internal Revenue
bulletin

Bulletin No. 2004-50
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HIGHLIGHTS OF THIS ISSUE

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

SPECIAL ANNOUNCEMENT

Announcement 2004–98, page 983.

Public hearings with Chief Counsel Donald L. Korb and Associate Chief Counsel (International) Hal Hicks will be held on January 5, 2005, and February 1, 2005, to solicit comments and suggestions regarding the operation of the Advance Pricing Agreement program within the Office of Associate Chief Counsel (International).

INCOME TAX

Rev. Rul. 2004–110, page 960.

Contract cancellation; employment contract. This ruling holds that an amount paid to an employee as consideration for cancellation of an employment contract and relinquishment of contract rights is ordinary income and wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source (federal income tax withholding). Rev. Ruls. 55–520 and 58-301 modified and superseded. Rev. Ruls. 74–252 and 75–44 modified.

Notice 2004–80, page 963.

This notice alerts taxpayers to recent amendments to sections 6111, 6112, and 6708 of the Code and provides interim guidance until regulations or other guidance is published.

Rev. Proc. 2004–65, page 965.

This procedure provides exceptions to the contractual protection filter, which is a reportable transaction under section 1.6011–4(b)(4) of the regulations.

Rev. Proc. 2004–66, page 966.

This procedure provides exceptions to the loss transaction filter, which is a reportable transaction under section 1.6011–4(b)(5) of the regulations. Rev. Proc. 2003–24 modified and superseded.

Rev. Proc. 2004–67, page 967.

This procedure provides exceptions to the book-tax filter, which is a reportable transaction under section 1.6011–4(b)(6) of the regulations. Rev. Proc. 2003–25 modified and superseded.

Rev. Proc. 2004–68, page 969.

This procedure provides exceptions to the brief asset holding period filter, which is a reportable transaction under section 1.6011–4(b)(7) of the regulations.

EMPLOYMENT TAX

Rev. Rul. 2004–109, page 958.

Signing or ratifying bonuses. This ruling holds that certain amounts paid to an employee as a signing bonus for a baseball contract or as a ratifying bonus pursuant to a collective bargaining agreement are wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source on Wages (federal income tax withholding). Rev. Ruls. 58–145 and 74–108 revoked. Rev. Ruls. 69–424 and 71–532 obsoleted.

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Announcements of Disbarments and Suspensions begin on page 977.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Rev. Rul. 2004–110, page 960.
Contract cancellation; employment contract. This ruling holds that an amount paid to an employee as consideration for cancellation of an employment contract and relinquishment of contract rights is ordinary income and wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source (federal income tax withholding). Rev. Ruls. 55–520 and 58-301 modified and superseded. Rev. Ruls. 74–252 and 75–44 modified.

ADMINISTRATIVE

Rev. Proc. 2004–71, page 970.
Cost-of-living adjustments for 2005. This procedure provides cost-of-living adjustments for the tax rate tables for individuals, estates, and trusts, the standard deduction amounts, the personal exemption, and several other items that use the adjustment method provided for the tax rate tables. The Service also provides the adjustment for eligible long-term care premiums and another item that uses the adjustment method provided for eligible long-term care premiums.

Announcement 2004–99, page 983.
This document provides notice of a public hearing for proposed regulations (REG–128767–04, 2004–39 I.R.B. 534) that provide rules under section 752 of the Code for taking into account certain obligations of a business entity that is disregarded as separate from its owner under sections 856(i), 1361(b)(3), or regulations sections 301.7701–1 through 301.7701–3 (disregarded entity) for purposes of characterizing and allocating partnership liabilities. A public hearing is scheduled for January 14, 2005.

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

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

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

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

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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 3121.—Definitions

26 CFR 31.3121(a)–1: Wages.
(Also: §§ 3306, 3401, 31.3306(b)–1, 31.3401(a)–1.)

Signing or ratifying bonuses. This ruling holds that certain amounts paid to an employee as a signing bonus for a baseball contract or as a ratifying bonus pursuant to a collective bargaining agreement are wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source on Wages (federal income tax withholding). Rev. Ruls. 58–145 and 74–108 revoked. Rev. Ruls. 69–424 and 71–532 obsoleted.

Rev. Rul. 2004–109

ISSUE

Whether certain amounts an employer pays as bonuses for signing or ratifying a contract are wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source (Federal income tax withholding)?

FACTS

Situation 1. Baseball Club negotiates an employment contract with an individual player. It is the first contract between the Club and the player. The contract provides that the player receives a signing bonus if he reports for spring training at the time and place directed by the Club. The contract provides that the signing bonus is not contingent on the player's future performance of services.

Situation 2. An employer negotiates a collective bargaining agreement (CBA) with a union representing a group of its employees. The CBA will take effect on the "ratification date," which is the date it is ratified by a majority of the union members covered by the agreement. The CBA provides that each employee covered by the terms of the agreement who is employed by the employer as of the ratification date receives a bonus. Each such employee is paid the same amount regardless of compensation, seniority, position and whether or not the employee voted for ratification. In addition, each eligible employee receives the payment even if the employee had not performed services for the employer before the ratification date. Finally, the CBA provides that the payment is not contingent on the employee's future performance of services.

LAW

Sections 3101 and 3111 of the Internal Revenue Code (Code) impose FICA taxes on "wages," as that term is defined in section 3121(a), with respect to "employment," as that term is defined in section 3121(b). FICA taxes consist of the Old-Age, Survivors and Disability Insurance tax (social security tax) and the Hospital Insurance tax (Medicare tax). These taxes are imposed on both the employer and employee. Sections 3101(a) and 3101(b) impose the employee portions of the social security tax and the Medicare tax, respectively. Sections 3111(a) and 3111(b) impose the employer portions of the social security tax and the Medicare tax, respectively.

The term "wages" is defined in section 3121(a) for FICA purposes as all remuneration for employment, with certain specific exceptions. Section 3121(b) defines the term "employment" as any service, of whatever nature, performed by an employee for the person employing him, with certain specific exceptions.

Section 31.3121(a)–1(b) of the Employment Tax Regulations provides that the term "wages" means all remuneration for employment unless specifically excepted under section 3121(a). Section 31.3121(a)–1(c) provides that the name by which the remuneration for employment is designated is immaterial. Salaries, fees, and bonuses are wages, if paid as compensation for employment. Section 31.3121(a)–1(d) provides that generally the basis upon which the remuneration is paid is immaterial in determining whether the remuneration is wages. Section 31.3121(b)–3(b) defines employment as services performed by an employee for an employer, unless specifically excepted under section 3121(b).

The FUTA taxation provisions are similar to the FICA provisions, except that only the employer pays the tax imposed under FUTA. See sections 3301 and 3306(b) and the regulations thereunder. Although there are differences in the statutory exceptions to what constitutes wages and employment, the general definitions of the terms "wages" and "employment" for FUTA purposes are similar to the definitions for FICA purposes. See sections 3306(b) and 3306(c).

Section 3402(a), relating to Federal income tax withholding, generally requires every employer making a payment of wages to deduct and withhold upon those wages a tax determined in accordance with prescribed tables or computational procedures. The term "wages" is defined in section 3401(a) for Federal income tax withholding purposes as all remuneration for services performed by an employee for his employer, with certain specific exceptions. Section 31.3401(a)–1(a)(2) provides that the name by which remuneration for services is designated is immaterial. Thus, salaries, fees and bonuses are wages if paid as compensation for services performed by the employee for his employer. Section 31.3401(a)–1(a)(3) provides that generally the basis upon which the remuneration is paid is immaterial in determining whether the remuneration is wages. Unlike the FICA and the FUTA, the Federal income tax withholding provisions do not include a definition of employment.

Revenue Ruling 58–145, 1958–1 C.B. 360, in answering four specific questions, holds that a bonus paid by a baseball club to an individual solely for signing the individual's first contract and not in any way contingent on the performance of subsequent services is not remuneration for services and, therefore, is not wages for purposes of Federal income tax withholding under section 3402. The ruling further holds that a bonus paid to a baseball player that is contingent upon the performance of subsequent services is wages subject to Federal income tax withholding.

Revenue Ruling 69–424, 1969–2 C.B. 15, holds that amounts paid by a baseball club for educational expenses of a minor league baseball player attending college

were not scholarships excluded from income under section 117 because the payments were "compensation for past, present or future employment services" within the meaning of section 1.117–4 of the Income Tax Regulations. The contract provided that the club was not required to make the payments if the player failed to attend the college for two consecutive years without proper reason, did not report for spring training as directed by the club, or was placed on the voluntarily retired, disqualified or ineligible list. The ruling holds that the payments are wages for Federal income tax withholding and FICA purposes.

Revenue Ruling 71–532, 1971–2 C.B. 356, holds that Rev. Rul. 69–424 is to be applied without retroactive effect with respect to wages paid prior to January 1, 1970. The ruling makes clear that the amount paid for certain educational expenses under the employment contract described in Rev. Rul. 69–424 is distinguishable from the bonus paid solely as consideration for signing a contract described in Rev. Rul. 58–145, but nonetheless limits the retroactive effect of Rev. Rul. 69–424.

Rev. Rul. 74–108, 1974–1 C.B. 248, analyzes whether a sign-on fee paid by a domestic corporation that operates a professional soccer club to a non-resident alien player as an inducement not to negotiate with any other team is treated as income from sources within or without the United States. Rev. Rul. 74–108 cites Rev. Rul. 58–145 as authority for the conclusion that the sign-on fee is not compensation for labor or personal services and that, therefore, source is not determined under the rules in section 861(a)(3) or 862(a)(3). Instead, Rev. Rul. 74–108 characterized the sign-on fee as a payment for a covenant not to compete both within and without the United States, with the result that the sign-on fee was attributable to sources both within and without the United States.

ANALYSIS

The Code and regulations provide that amounts an employer pays an employee as remuneration for employment are wages, unless a specific exception applies. Sections 3121(a), 3306(b), and 3401(a) and sections 31.3121(a)–1(b), 31.3306(b)–1(b), and 31.3401(a)–1(a)(1) of the regulations. The regulations also provide that the name by which the remuneration is designated is immaterial. Salaries, fees, and bonuses, for example, are all wages, if paid as compensation for employment. Sections 31.3121(a)–1(c), 31.3306(b)–1(c), and 31.3401(a)–1(a)(2).

The Code and the regulations also provide that any service of whatever nature performed by an employee for the person employing him is employment, unless a specific exemption applies. Sections 3121(b) and 3306(c) and sections 31.3121(b)–3(b) and 31.3306(c)–2(b).

Employment encompasses the establishment, maintenance, furtherance, alteration, or cancellation of the employer-employee relationship or any of the terms and conditions thereof. If the employee provides clear, separate, and adequate consideration for the employer's payment that is not dependent upon the employer-employee relationship and its component terms and conditions, the payment is not wages for purposes of FICA, FUTA, or Federal income tax withholding.

Under the facts presented in Situation 1, the individual receives the signing bonus in connection with establishing the employer-employee relationship. The individual does not provide clear, separate, and adequate consideration for the payment that is not dependent upon the employer-employee relationship and its component terms and conditions. Thus, the signing bonus is part of the compensation the Baseball Club pays as remuneration for employment, making it wages regardless of the fact that the contract provides that the bonus is not contingent on the performance of future services.

Under the facts presented in Situation 2, the employees receive the ratification bonus payments as part of a bargain that establishes the terms and conditions of the employment relationship with all of the employees covered by the CBA. The employees do not provide clear, separate, and adequate consideration for the employer's payments that is not dependent upon the employer-employee relationship and its component terms and conditions. The payments are part of the compensation the employer pays as remuneration for employment. Thus, the ratification bonuses are wages regardless of the fact that they are uniform in amount, do not vary based on seniority or position or any other factor, and are not explicitly contingent on the performance of services.

Revenue Ruling 58–145 considered whether Federal income tax withholding applied to a bonus paid to a baseball player at the time a first contract was signed with a baseball club. It erred in its analysis by failing to apply the Code and regulations appropriately to the question of whether the bonus was wages in each of the four questions presented. Specifically, it failed to apply the correct definition of wages and to consider whether the bonus was paid in connection with establishing the employer-employee relationship. Accordingly, Rev. Rul. 58–145 is revoked. In addition, Rev. Rul. 74–108 is revoked as its conclusion relies upon Rev. Rul. 58–145.

HOLDING

Amounts an employer pays as bonuses for signing or ratifying a contract in connection with the establishment of the employer-employee relationship are wages for purposes of FICA, FUTA, and Federal income tax withholding. Accordingly, the payments in Situations 1 and 2 are wages for purposes of FICA, FUTA, and Federal income tax withholding.

EFFECT ON OTHER RULINGS

Rev. Rul. 58–145 and Rev. Rul. 74–108 are revoked. Rev. Rul. 69–424 and Rev. Rul. 71–532 are obsoleted in view of the amendment of section 117 by section 123(a) of the Tax Reform Act of 1986, 1986–3 (Vol.1) C.B. 1, 29. See section 117(c) and Notice 87–31, 1987–1 C.B. 475.

APPLICATION

Under the authority of section 7805(b), the Service will not apply the position adopted in this ruling to any signing bonus, sign-on fee, or similar amount paid to an employee in connection with the employee's initial employment with the employer pursuant to a sign-on agreement or other contract entered into before January 12, 2005, provided the amount is paid under facts and circumstances that are substantially the same as in Rev. Rul. 58–145 or Rev. Rul. 74–108.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Marie Cashman and Stephen Suetterlein of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue ruling, contact Mr. Suetterlein at (202) 622–6040 (not a toll-free call).

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26 CFR 31.3121(a)–1: Wages.
(Also: §§ 1221, 1222, 3306, 3401, 1.1221–1, 1.1222–1, 31.3306(b)–1, 31.3401(a)–1.)

Contract cancellation; employment contract. This ruling holds that an amount paid to an employee as consideration for cancellation of an employment contract and relinquishment of contract rights is ordinary income and wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source (federal income tax withholding). Rev. Ruls. 55–520 and 58-301 modified and superseded. Rev. Ruls. 74–252 and 75–44 modified.

Rev. Rul. 2004–110

ISSUE

Whether an amount paid to an employee as consideration for the cancellation of an employment contract and relinquishment of contract rights is ordinary income, and wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source (Federal income tax withholding)?

FACTS

An employee performs services under a written employment contract providing for a specified number of years of employment. The contract does not provide for any payments to be made by either party in the event the contract is cancelled by mutual agreement. Before the end of the contract period, the employee and the employer agree to cancel the contract and negotiate a payment from the employer to the employee in consideration for the employee's relinquishment of his contract rights to the remaining period of employment.

LAW

Ordinary Income

Section 1(h) of the Internal Revenue Code (Code) provides for maximum capital gains tax rates on net capital gain.

Section 1222(11) defines "net capital gain" as the excess of net long-term capital gain over net short-term capital loss. Under section 1222(3), the term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than one year.

Section 1221 provides that the term "capital asset" means property held by the taxpayer, with certain exclusions listed in section 1221(a)(1)-(8).

Section 1231 provides generally for capital gain or loss if there is net gain from the sale or exchange of property used in a trade or business and from certain involuntary conversions of business or investment property.

The United States Supreme Court has held that not everything that can be called "property" in the ordinary sense and that is outside the statutory exclusions in section 1221 or section 1231 qualifies as a "capital asset" under section 1221 or for purposes of section 1231, and that the term does not include certain claims or rights, the consideration for which essentially substitutes for ordinary income. *See Commissioner v. Gillette Motor Transport, Inc.*, 364 U.S. 130, 134–136 (1960), Ct. D. 1853, 1960–2 C.B. 466, 468; *Commissioner v. P.G. Lake, Inc.*, 356 U.S. 260, 265–67 (1958), Ct. D. 1823, 1958–1 C.B. 516, 518–19. Under this line of Supreme Court decisions, it is settled that consideration received for the transfer or termination of a right to receive income for the past or future performance of services is taxable as ordinary income. *See, e.g., Rothstein v. Commissioner*, 90 T.C. 488, 493–94 (1988).

Wages

Sections 3101 and 3111 impose FICA taxes on "wages," as that term is defined in section 3121(a), with respect to "employment," as that term is defined in section 3121(b). FICA taxes consist of the Old-Age, Survivors and Disability Insurance tax (social security tax) and the Hospital Insurance tax (Medicare tax). These taxes are imposed on both the employer and employee. Sections 3101(a) and 3101(b) impose the employee portions of the social security tax and the Medicare tax, respectively. Sections 3111(a) and 3111(b) impose the employer portions of the social security tax and the Medicare tax, respectively.

The term "wages" is defined in section 3121(a) for FICA purposes as all remuneration for employment, with certain specific exceptions. Section 3121(b) defines "employment" as any service, of whatever nature, performed by an employee for the person employing him, with certain specific exceptions.

Section 31.3121(a)–1(b) of the Employment Tax Regulations provides that the term "wages" means all remuneration for employment unless specifically excepted under section 3121(a). Section 31.3121(a)–1(c) provides that the name by which the remuneration for employment is designated is immaterial. Section 31.3121(a)–1(d) provides that generally the basis upon which the remuneration is paid is immaterial in determining whether the remuneration is wages. Section 31.3121(b)–3(b) defines employment as services performed by an employee for an employer, unless specifically excepted under section 3121(b).

Section 31.3121(a)–1(i) provides that remuneration, unless specifically excepted, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

The FUTA taxation provisions are similar to the FICA provisions, except that only the employer pays the tax imposed under FUTA. See sections 3301 and 3306(b) and the regulations thereunder. Although there are differences in the statutory exceptions to what constitutes wages and employment, the general definitions of the terms "wages" and "employment" for FUTA purposes are similar to the definitions for FICA purposes. See sections 3306(b) and 3306(c).

Section 3402(a), relating to Federal income tax withholding, generally requires every employer making a payment of wages to deduct and withhold upon those wages a tax determined in accordance

with prescribed tables or computational procedures. The term "wages" is defined in section 3401(a) for Federal income tax withholding purposes as all remuneration for services performed by an employee for his employer, with certain specific exceptions. Section 31.3401(a)–1(a)(2) provides that the name by which remuneration for services is designated is immaterial. Section 31.3401(a)–1(a)(3) provides that generally the basis upon which the remuneration is paid is immaterial in determining whether the remuneration is wages. Unlike the FICA and the FUTA, the Federal income tax withholding provisions do not include a definition of employment.

Section 31.3401(a)–1(a)(5) provides that remuneration, unless specifically excepted, constitutes wages even though at the time paid the relationship of employer and employee no longer exists between the person in whose employ the services were performed and the individual who performed them.

Revenue Ruling 55–520, 1955–2 C.B. 393, concludes that an amount paid to an individual as a compromise settlement for the cancellation, before the normal expiration date, of a two-year employment contract is not wages for FICA and Federal income tax withholding purposes. The ruling further concludes that the payment is includible in the employee's gross income for Federal income tax purposes.

Revenue Ruling 58–301, 1958–1 C.B. 23, concludes that a lump sum payment received by an employee as consideration for his agreement to cancel the remaining period of a five-year employment contract during the second year of the term and to relinquish his contract rights is ordinary income, not capital gain, and is includible in his gross income in the year of receipt. The ruling further concludes that the payment is not subject to FICA and Federal income tax withholding.

Revenue Ruling 74–252, 1974–1 C.B. 287, concludes that payments made by an employer to an employee, following involuntary termination, under the provisions of a three-year contract are wages for FICA, FUTA, and Federal income tax withholding purposes. Under the terms of the contract, the employer could terminate the relationship at any time, provided the employee was paid an amount equal to an additional six months salary. The ruling distinguishes Rev. Rul. 58–301 on the basis that these payments are in the nature of dismissal payments provided for under the terms of the contract, rather than as consideration for the relinquishment of interests the employee had in the employment contract.

Revenue Ruling 75–44, 1975–1 C.B. 15, involves an employer's payment to a railroad employee as consideration for the employee's agreement to perform a different type of work and refrain from asserting his employment rights acquired pursuant to his past service under a general contract of employment. The ruling concludes that the payment received by the employee is ordinary income in the taxable year of receipt and is "compensation" for purposes of the Railroad Retirement Tax Act (RRTA) and "wages" for purposes of Federal income tax withholding. This ruling distinguishes Rev. Rul. 58–301 on the basis that in Rev. Rul. 58–301 the lump sum payment was primarily in consideration of the cancellation of the employee's original contract rights rather than primarily in consideration of the past performance of services through which the relinquished employment rights were acquired.

ANALYSIS

The Code and regulations provide that amounts an employer pays an employee as remuneration for employment are wages, unless a specific exception applies. Sections 3121(a), 3306(b), and 3401(a) and sections 31.3121(a)–1(b), 31.3306(b)–1(b), and 31.3401(a)–1(a)(1) of the regulations. The regulations also provide that the name by which the remuneration is designated is immaterial. Sections 31.3121(a)–1(c), 31.3306(b)–1(c), and 31.3401(a)–1(a)(2). Furthermore, the remuneration is wages even though at the time paid the relationship of employer and employee no longer exists. Sections 31.3121(a)–1(i), 31.3306(b)–1(i), and 31.3401(a)–1(a)(5).

The Code and the regulations also provide that any service of whatever nature performed by an employee for the person employing him is employment, unless a specific exemption applies. Sections 3121(b) and 3306(c) and sections 31.3121(b)–3(b) and 31.3306(c)–2(b).

Employment encompasses the establishment, maintenance, furtherance, alteration, or cancellation of the employer-employee relationship or any of the terms and conditions thereof. If the employee provides clear, separate, and adequate consideration for the employer's payment that is not dependent upon the employer-employee relationship and its component terms and conditions, the payment is not wages for purposes of FICA, FUTA, or Federal income tax withholding.

Under the facts presented in this ruling, the employee receives the payment as consideration for canceling the remaining period of his employment contract and relinquishing his contract rights. As such, the payment is part of the compensation the employer pays as remuneration for employment. The employee does not provide clear, separate, and adequate consideration for the employer's payment that is not dependent upon the employer-employee relationship and its component terms and conditions. Thus, the payment provided by the employer to the employee is wages for purposes of FICA, FUTA, and Federal income tax withholding. This conclusion applies regardless of the name by which the remuneration is designated or whether the employment relationship still exists at the time the payment is made.

With respect to the application of FICA and Federal income tax withholding, Rev. Rul. 55–520 and Rev. Rul. 58–301 erred in their analysis by failing to apply the Code and regulations appropriately to the question of whether the payments made in cancellation of the employment contract were wages.

To qualify as capital gain, eligible for the reduced rates in section 1(h), a payment must be received in connection with a "sale or exchange" of "property," as those terms are used in sections 1221, 1222, and 1231. Under *Gillette Motor, P.G. Lake*, and the settled line of authority applying the Supreme Court's reasoning to compensation-related rights, consideration received for the transfer or termination of a right to receive income for the past or future performance of services is a substitute for ordinary income, taxable as such. The payment received by the employee in the present situation is a payment of this type, and for capital gains purposes is not a payment for property. It is therefore taxable to the employee as ordinary income.

With respect to the ordinary or capital character of a payment, the payments in Rev. Rul. 55–520, Rev. Rul. 58–301, Rev. Rul. 74–252, and Rev. Rul. 75–44 are ordinary income; in particular, the specific holdings to this effect in Rev. Rul. 58–301 and Rev. Rul. 75–44 remain correct.

Accordingly, Rev. Rul. 55–520 and Rev. Rul. 58–301 are modified and superseded. In addition, Rev. Rul. 74–252 and Rev. Rul. 75–44 are modified to the extent their holdings regarding FICA, FUTA, RRTA, and Federal income tax withholding rely on distinguishing Rev. Rul. 58–301.

HOLDING

An amount paid to an employee as consideration for cancellation of an employment contract and relinquishment of contract rights is ordinary income, and wages for purposes of FICA, FUTA, and Federal income tax withholding.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 55–520 and Rev. Rul. 58–301 are modified and superseded. Rev. Rul. 74–252 and Rev. Rul. 75–44 are modified.

APPLICATION

Under the authority of section 7805(b), the Service will not apply the position adopted in this ruling to any payment that an employer made to an employee or former employee before January 12, 2005, provided that the payment is made under facts and circumstances that are substantially the same as in Rev. Rul. 55–520 or Rev. Rul. 58–301.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Michael Swim and Elliot Rogers of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue ruling, contact Mr. Rogers at (202) 622–6040 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Temporary Rules Under Sections 6111 and 6112

Notice 2004–80

The purpose of this notice is to alert taxpayers to recent amendments to §§ 6111, 6112, and 6708 of the Internal Revenue Code. The notice announces that the Internal Revenue Service and the Treasury Department will issue regulations under § 6111 and amend the regulations under § 6112. The regulations under § 6111 and § 6112 will apply to transactions with respect to which material aid, assistance, or advice is provided after October 22, 2004. The Service and Treasury also will issue regulations under § 6708 that will apply to written requests made after October 22, 2004, for investor lists required to be maintained under § 6112. This notice provides guidance for material advisors who are required to comply with §§ 6111 and 6112, as amended, and who are potentially subject to penalty under § 6708, as amended. This notice also invites comments from the public regarding rules and standards relating to §§ 6111, 6112, and 6708, as amended.

BACKGROUND AND PRIOR LAW

Prior to the recent amendments, § 6111(a) required an organizer of a tax shelter to register the shelter with the Secretary not later than the day on which interests in the shelter were first offered for sale. Under former § 6111(c), a tax shelter was defined as any investment with respect to which any person could reasonably infer from the representations made in connection with the offering for sale of interests that the tax shelter ratio for any investor as of the close of any of the first five years ending after the investment was offered for sale may have been greater than two to one and which was: (1) required to be registered under federal or state securities laws; (2) sold pursuant to an exemption from registration requiring the filing of a notice with a federal or state securities agency; or (3) a substantial investment (the aggregate amount which may have been offered for sale exceeded $250,000 and the expected involvement of at least five investors). Under former § 6111(d), other entities, plans, arrangements or transactions could be treated as tax shelters for purposes of former § 6111(a) if: (1) a significant purpose of the structure was the avoidance or evasion of federal income tax for a direct or indirect corporate participant; (2) the offer was made under conditions of confidentiality; and (3) the tax shelter promoter may have received fees in excess of $100,000 in the aggregate.

THE AMERICAN JOBS CREATION ACT OF 2004

The American Jobs Creation Act of 2004, P.L. 108–357, 118 Stat. 1418, (the Act) was enacted on October 22, 2004. Section 815 of the Act amended § 6111 to require each material advisor with respect to any reportable transaction to make a return (in such form as the Secretary may prescribe) setting forth: (1) information identifying and describing the transaction; (2) information describing any potential tax benefits expected to result from the transaction; and (3) other information as the Secretary may prescribe. Section 6111(a), as amended, provides that the return must be filed not later than the date specified by the Secretary. Section 6111(b)(1) defines a material advisor and includes a requirement that the material advisor receive certain threshold amounts of gross income that the Secretary may prescribe.

The amendments to § 6111 authorize the Secretary to prescribe regulations that provide: (1) that only one person shall be required to meet the requirements of § 6111(a) in cases in which two or more persons would otherwise be required to meet such requirements; (2) exemptions from the requirements of § 6111; and (3) rules as may be necessary or appropriate to carry out the purposes of § 6111.

Section 815 of the Act also amended § 6112 to provide that each material advisor (as defined in new § 6111) with respect to any reportable transaction is required to maintain a list (in such manner as the Secretary may by regulations prescribe) identifying each person with respect to whom the advisor acted as a material advisor with respect to the transaction, and containing other information as the Secretary may by regulations require.

Section 815 of the Act is effective for transactions with respect to which material aid, assistance, or advice is provided after October 22, 2004, the date of enactment of the Act.

Section 817 of the Act amended § 6708 to impose a penalty on a material advisor who fails to make available, within 20 business days after the date of a written request by the Secretary, a list required to be maintained under § 6112(a). The new amount of the penalty is $10,000 for each day after the 20th day that the material advisor fails to provide the list. Section 6708(a)(2) provides a reasonable cause exception to the imposition of the penalty under § 6708. Section 817 of the Act is effective for requests made after October 22, 2004, the date of the enactment of the Act.

INTERIM PROVISIONS

The Service and Treasury intend to issue regulations providing rules under §§ 6111, 6112, and 6708, as amended. However, because the amendments to §§ 6111, 6112, and 6708 currently are effective, the Service and Treasury are providing the following interim rules implementing the requirements of §§ 6111, 6112, and 6708, as amended, until the Secretary prescribes regulations. The interim rules as adopted by this notice incorporate, in part, rules in the current regulations under §§ 6011, 6111, and 6112. These interim rules will apply until further guidance is issued.

A. *Disclosure by Material Advisors Under § 6111*

As indicated above, section 815 of the Act amended § 6111 to require that each material advisor with respect to any reportable transaction make a return setting forth information identifying and describing the transaction and any potential tax benefits expected to result from the transaction no later than the date specified by the Secretary. Until further guidance is issued, the definition of a reportable transaction, the definition of a material advisor,

and the requirements for filing a return under § 6111 are as indicated below.

1. *Definition of Reportable Transaction*

For purposes of new § 6111(a), a "reportable transaction" is defined in § 1.6011–4(b) of the Income Tax Regulations. In addition, the rules in § 301.6112–1(b)(2) and (c)(2) (without regard to provisions relating to a transaction required to be registered under former § 6111) will apply for purposes of determining whether a transaction is a reportable transaction with respect to a material advisor. Determinations made by public guidance pursuant to § 1.6011–4(b)(8) that a transaction will not be considered a reportable transaction or will be excluded from a category of reportable transactions, including Rev. Proc. 2004–65 (relating to transactions with contractual protection), Rev. Proc. 2004–66 (relating to loss transactions), Rev. Proc. 2004–67 (relating to transactions with a significant book-tax difference), and Rev. Proc. 2004–68 (relating to transactions with a brief asset holding period) also will apply for purposes of new §§ 6111 and 6112.

2. *Definition of a Material Advisor*

For purposes of new § 6111, a "material advisor" is defined in § 301.6112–1(c)(2) of the Procedure and Administration Regulations. The existing rules under § 301.6112–1(c)(2), (c)(3), and (d) (without regard to the provisions relating to a transaction required to be registered under former § 6111), including the minimum fee amounts for listed transactions under § 301.6112–1(c)(3)(ii), will apply for purposes of determining whether a person is a material advisor.

In the case of a transaction with a significant book-tax difference described in § 1.6011–4(b)(6), a person will be considered a material advisor with regard to the transaction for purposes of §§ 6111 and 6112 only if the person who makes a tax statement described in § 301.6112–1(c)(2)(iii)(E) also makes a statement, oral or written, that relates to the financial accounting treatment of the item(s) that gives rise to a significant book-tax difference described in § 1.6011–4(b)(6).

3. *Filing of Return Under § 6111*

Until Form 8264, *Application for Registration of a Tax Shelter*, is revised, or a successor form is issued, for purposes of new § 6111(a), a material advisor required to file a return with respect to a reportable transaction must complete Form 8264 in the following manner. A material advisor is required to complete only Parts I (except item 1(b)), IV, and V of Form 8264. In completing Form 8264, the form and instructions are to be read to apply, by substituting: (1) "reportable transaction" each place "tax shelter" or "confidential corporate tax shelter" appears; (2) "material advisor" each place "organizer" or "principal organizer" appears; and (3) "Date the material advisor became a material advisor with respect to the reportable transaction" in place of "Date an interest in the tax shelter was first offered for sale" in Part I, line 7, of the form. In Part IV, fees must be determined by applying the rules in § 301.6112–1(c)(3)(iii) instead of the instructions. In Part V, the material advisor must identify the type of reportable transaction under § 1.6011–4(b) that is being disclosed, and describe the facts of the transaction and the potential tax benefits expected to result from the transaction. Form 8264 must be signed under penalties of perjury. The form must be sent to the Internal Revenue Service Center, Ogden, UT 84201.

A material advisor may file a single Form 8264 for substantially similar transactions. A material advisor is required to supplement information disclosed on Form 8264 if the information provided is no longer accurate, or if additional information that was not disclosed on Form 8264 becomes available.

In addition, the following rules contained in § 301.6111–1T will apply: (1) Q&A–3 and 50 regarding representations made to investors about disclosures under § 6111; (2) Q&A–38 and 39 regarding designation agreements; (3) Q&A 49 regarding timely mailing; and (4) Q&A–51 through 57 regarding the furnishing of registration numbers and the reporting requirement on Form 8271, *Investor Reporting of Tax Shelter Registration Number,* or any successor form.

4. *Due Date of Return Under § 6111*

Section 6111(a), as amended, provides that the Secretary may specify the date the return must be filed by a material advisor. A material advisor, as defined in § 301.6112–1(c)(2), who is required to file a return under § 6111 must file the return within 30 days after the date on which the person becomes a material advisor. However, if a person becomes a material advisor after October 22, 2004, and on or before December 31, 2004, that material advisor must file the return before February 1, 2005. If a person is required to disclose a reportable transaction under the provisions of § 6111, as amended, and the person has registered the transaction under former § 6111 prior to October 22, 2004, that registration will satisfy the disclosure requirements for the new provisions in § 6111, provided that the material advisor amends the previous registration to reflect any information required under this notice.

B. *Maintenance of Lists by Material Advisors Under § 6112*

Section 815 of the Act amended § 6112 to provide that each material advisor (as defined in new § 6111(b)) with respect to any reportable transaction is required to maintain a list identifying each person with respect to whom the advisor acted as a material advisor with respect to the transaction. Section 817 of the Act amended § 6708 to impose a penalty on a material advisor who fails to make a list available upon written request within 20 business days after the date of the request.

For purposes of new § 6112, the existing rules under § 301.6112–1 (without regard to the provisions relating to a transaction required to be registered under former § 6111) relating to the preparation, maintenance, retention, and furnishing of lists will apply to material advisors required to maintain lists with respect to a reportable transaction.

For purposes of former § 6112, § 301.6112–1 will continue to apply to organizers and sellers (defined as material advisors in § 301.6112–1(c)(2)) who are required to maintain lists under former § 6112. Consequently, an organizer or seller under former § 6112 must continue to maintain any list described in § 301.6112–1(e) for the seven-year period

described in § 301.6112–1(f) even if such period expires after October 22, 2004.

For purposes of § 6708, the 20 business-day period within which a person must provide the list required to be maintained under § 6112 shall begin on the first business day following the earlier of the date that the IRS: (1) mails a request for the list by certified or registered mail to the last known address of the material advisor required to maintain the list or (2) hand-delivers the written request in person. Business days include every calendar day other than Saturdays, Sundays, or legal holidays. For purposes of this notice, "legal holiday" shall have the same meaning provided in § 7503.

REQUEST FOR COMMENTS

The Service and Treasury intend to issue regulations implementing the requirements of §§ 6111, 6112, and 6708, as amended. The Service and Treasury continue to balance the benefits to the government of early and complete disclosure with the burden imposed on taxpayers and their representatives. The Service and Treasury invite interested persons to submit comments regarding the requirements of §§ 6111, 6112, and 6708, including comments on the definition of material advisor and comments on ways to reduce taxpayer burden and to improve disclosure. Comments on guidance under §§ 6111, 6112, or 6708, may be submitted to: CC:PA:LPD:PR (NOT–155984–04), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (NOT–155984–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS e-mail address: *notice.comments@irscounsel.treas.gov*.

EFFECTIVE DATE

This notice is effective for transactions with respect to which material aid, assistance, or advice is provided after October 22, 2004. This notice is also effective for written requests made after October 22, 2004, for investor lists required to be maintained under § 6112.

DRAFTING INFORMATION

The principal author of this notice is Tara P. Volungis of the Office of the Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Ms. Volungis at (202) 622–3080 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 6011, 6112; 1.6011–4, 301.6112–1.)

Rev. Proc. 2004–65

SECTION 1. PURPOSE

This revenue procedure provides that certain transactions with contractual protection are not reportable transactions for purposes of the disclosure rules under § 1.6011–4(b)(4) of the Income Tax Regulations. However, these transactions may be reportable transactions for purposes of the disclosure rules under § 1.6011–4(b)(2), (b)(3), (b)(5), (b)(6), or (b)(7).

SECTION 2. BACKGROUND

.01 Section 1.6011–4 requires a taxpayer that participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011–4. Under § 1.6011–4(b), there are six categories of reportable transactions. One category of reportable transaction is a transaction with contractual protection. A transaction with contractual protection is defined in § 1.6011–4(b)(4). Generally, a transaction with contractual protection is a transaction involving a fee that is refundable if all or part of the intended tax consequences from the transaction are not sustained or a transaction involving a fee that is contingent on the taxpayer's realization of the tax benefits from the transaction.

.02 Section 1.6011–4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011–4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011–4, material advisors that may be required to disclose reportable transactions under § 6111, as amended by § 815 of the American Jobs Creation Act of 2004, P.L. 108–357, 118 Stat. 1418 (October 22, 2004), and material advisors that may be required to maintain lists under former and new § 6112.

SECTION 4. APPLICATION

.01 *In general*. The definition of a transaction with contractual protection includes references to "tax consequences" and "tax benefits." For purposes of § 1.6011–4, "tax" is defined as "Federal income tax." § 1.6011–4(c)(5). Accordingly, § 1.6011–4(b)(4) does not apply to transactions in which the refundable or contingent fees are based on the taxpayer's liability for taxes other than federal income taxes.

.02 *Exceptions*. The following transactions are not taken into account in determining whether a transaction is a transaction with contractual protection under § 1.6011–4(b)(4):

(1) Transactions in which the refundable or contingent fee is related to the work opportunity credit under § 51 of the Internal Revenue Code.

(2) Transactions in which the refundable or contingent fee is related to the welfare-to-work credit under § 51A.

(3) Transactions in which the refundable or contingent fee is related to the Indian employment credit under § 45A(a).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective November 16, 2004, the date this revenue procedure was released to the public. This revenue procedure applies to transactions that are entered into on or after January 1, 2003.

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are Tara P. Volungis and Charlotte Chyr of the Office of Associate Chief Counsel (Passthroughs & Special

Industries). For further information regarding this revenue procedure, contact Ms. Volungis or Ms. Chyr at (202) 622–3080 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 6011, 6112; 1.6011–4, 301.6112–1.)

Rev. Proc. 2004–66

SECTION 1. PURPOSE

This revenue procedure provides that certain losses are not taken into account in determining whether a transaction is a reportable transaction for purposes of the disclosure rules under § 1.6011–4(b)(5) of the Income Tax Regulations. However, these transactions may be reportable transactions for purposes of the disclosure rules under § 1.6011–4(b)(2), (b)(3), (b)(4), (b)(6), or (b)(7).

SECTION 2. BACKGROUND

.01 Section 1.6011–4 requires a taxpayer that participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011–4. Under § 1.6011–4(b), there are six categories of reportable transactions. One category of reportable transaction is a loss transaction. A loss transaction is defined in § 1.6011–4(b)(5). Generally, a loss transaction is any transaction resulting in the taxpayer claiming a loss under § 165 of the Internal Revenue Code of (i) at least $10 million in a single taxable year or $20 million in any combination of taxable years for corporations or partnerships with only corporations as partners, (ii) at least $2 million in any single taxable year or $4 million in any combination of taxable years for other partnerships, individuals, S corporations, and trusts, or (iii) at least $50,000 in any single taxable year for individuals or trusts if the loss is attributable to a § 988 transaction.

.02 Section 1.6011–4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011–4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011–4, material advisors that may be required to disclose reportable transactions under § 6111, as amended by § 815 of the American Jobs Creation Act of 2004, P.L. 108–357, 118 Stat. 1418 (October 22, 2004), and material advisors that may be required to maintain lists under former and new § 6112.

SECTION 4. APPLICATION

.01 *In general*. Losses from the sale or exchange of an asset with a qualifying basis under section 4.02 of this revenue procedure or losses described in section 4.03 of this revenue procedure are not taken into account in determining whether a transaction is a reportable transaction under § 1.6011–4(b)(5).

.02 *Sale or exchange of an asset with a qualifying basis*.

(1) *General rule*. A loss under § 165 from the sale or exchange of an asset is not taken into account in determining whether a transaction is a loss transaction under § 1.6011–4(b)(5) if—

(a) the basis of the asset (for purposes of determining the loss) is a qualifying basis;

(b) the asset is not an interest in a passthrough entity (within the meaning of § 1260(c)(2), other than regular interests in a REMIC as defined in § 860G(a)(1));

(c) the loss from the sale or exchange of the asset is not treated as ordinary under § 988;

(d) the asset has not been separated from any portion of the income it generates; and

(e) the asset is not, and has never been, part of a straddle within the meaning of § 1092(c), excluding a mixed straddle under § 1.1092(b)–4T.

(2) *Qualifying basis*. For purposes of section 4 of this revenue procedure, a taxpayer's basis in an asset (less adjustments for any allowable depreciation, amortization, or casualty loss) is a qualifying basis if—

(a) the basis of the asset is equal to, and is determined solely by reference to, the amount (including any option premium) paid in cash by the taxpayer for the asset and for any improvements to the asset;

(b) the basis of the asset is determined under § 358 by reason of it being received in an exchange to which § 354, 355, or 361 applies, and the taxpayer's basis in the property exchanged in the transaction was described in this section 4.02(2);

(c) the basis of the asset is determined under § 1014;

(d) the basis of the asset is determined under § 1015, and the donor's basis in the asset was described in this section 4.02(2);

(e) the basis of the asset is determined under § 1031(d), the taxpayer's basis in the property that was exchanged for the asset in the § 1031 transaction was described in this section 4.02(2), and any debt instrument issued or assumed by the taxpayer in connection with the § 1031 transaction is treated as a payment in cash under section 4.02(4) of this revenue procedure;

(f) the basis of the asset is adjusted under § 961 or § 1.1502–32, and the taxpayer's basis in the asset immediately prior to the adjustment was described in this section 4.02(2); or

(g) the basis of the asset is adjusted under § 1272(d)(2) or § 1278(b)(4), and the taxpayer's basis in the asset immediately prior to the adjustment was described in this section 4.02(2).

(3) *Section 83 income*. For purposes of section 4.02(2)(a) of this revenue procedure, an amount included as compensation income under § 83 by the taxpayer will be treated as an amount paid in cash by the taxpayer for an asset if the amount is included in the taxpayer's basis in the asset.

(4) *Debt instruments*. Except as provided below, an amount paid in cash will not be disregarded for purposes of section 4.02(2) of this revenue procedure merely because the taxpayer issued a debt instrument to obtain the cash. However, if the taxpayer has issued a debt instrument to the person (or a related party as described in § 267(b) or § 707(b)) who sold or transferred the asset to the taxpayer, assumed a debt instrument (or took an asset subject to a debt instrument) issued by the person (or a related party as described in § 267(b) or § 707(b)) who sold or transferred the asset to the taxpayer, or issued a debt instrument in exchange for improvements to an asset, the taxpayer will be treated as having paid cash for the asset or the improve-

ment only if the debt instrument is secured by the asset and all amounts due under the debt instrument have been paid in cash no later than the time of the sale or exchange of the asset (except in the case of stock or securities traded on an established securities market, the settlement date) for which the loss is claimed.

.03 *Other losses*. The following losses under § 165 are not taken into account in determining whether a transaction is a loss transaction under § 1.6011–4(b)(5):

(1) A loss from fire, storm, shipwreck, or other casualty, or from theft, as those terms are defined for purposes of § 165(c)(3);

(2) A loss from a compulsory or involuntary conversion as described in § 1231(a)(3)(A)(ii) and 1231(a)(4)(B);

(3) A loss to which § 475(a) or § 1256(a) applies;

(4) A loss arising from any mark-to-market treatment of an item under §§ 475(f), 1296(a), 1.446–4(e), 1.988–5(a)(6), or 1.1275–6(d)(2), and any loss from a sale or disposition of an item to which one of the foregoing provisions applied, provided that the taxpayer computes its loss by using a qualifying basis (as defined in section 4.02(2) of this revenue procedure) or a basis resulting from previously marking the item to market, or computes its loss by making appropriate adjustments for previously determined mark-to-market gain or loss;

(5) A loss arising from a hedging transaction described in § 1221(b), if the taxpayer properly identifies the transaction as a hedging transaction, or from a mixed straddle account under § 1.1092(b)–4T;

(6) A loss attributable to basis increases under § 860C(d)(1) during the period of the taxpayer's ownership;

(7) A loss attributable to the abandonment of depreciable tangible property that was used by the taxpayer in a trade or business and that has a qualifying basis under section 4.02(2) of this revenue procedure;

(8) A loss arising from the bulk sale of inventory if the basis of the inventory is determined under § 263A; or

(9) A loss that is equal to, and is determined solely by reference to, a payment of cash by the taxpayer (for example, a cash payment by a guarantor that results in a loss or a cash payment that is treated as a loss from the sale of a capital asset under § 1234A or § 1234B).

(10) A loss from the sale to a person other than a related party (within the meaning of § 267(b) or § 707(b)) of property described in § 1221(a)(4) in a factoring transaction in the ordinary course of business.

(11) A loss arising from the disposition of an asset to the extent that the taxpayer's basis in the asset is determined under § 338(b).

SECTION 5. EFFECT ON OTHER DOCUMENTS

This document modifies and supersedes Rev. Proc. 2003–24, 2003–1 C.B. 599.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective November 16, 2004, the date this revenue procedure was released to the public. This revenue procedure applies to transactions that are entered into on or after January 1, 2003.

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Tara P. Volungis and Charlotte Chyr of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Ms. Volungis or Ms. Chyr at (202) 622–3080 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 6011, 6112; 1.6011–4, 301.6112–1.)

Rev. Proc. 2004–67

SECTION 1. PURPOSE

This revenue procedure provides that certain book-tax differences are not taken into account in determining whether a transaction is a reportable transaction for purposes of the disclosure rules under § 1.6011–4(b)(6) of the Income Tax Regulations. However, these transactions may be reportable transactions for purposes of the disclosure rules under § 1.6011–4(b)(2), (b)(3), (b)(4), (b)(5), or (b)(7).

SECTION 2. BACKGROUND

.01 Section 1.6011–4 requires a taxpayer that participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011–4. Under § 1.6011–4(b), there are six categories of reportable transactions. One category of reportable transaction is a transaction with a significant book-tax difference. A transaction with a significant book-tax difference is defined in § 1.6011–4(b)(6). Generally, a transaction with a significant book-tax difference is a transaction where the amount for tax purposes of any item or items of income, gain, expense, or loss from the transaction differs by more than $10 million on a gross basis from the amount of the item or items for book purposes in any taxable year.

.02 Section 1.6011–4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011–4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011–4, material advisors that may be required to disclose reportable transactions under § 6111, as amended by § 815 of the American Jobs Creation Act of 2004, P.L. 108–357, 118 Stat. 1418 (October 22, 2004), and material advisors that may be required to maintain lists under former and new § 6112.

SECTION 4. APPLICATION

.01 *In general.* In determining whether a transaction has a significant book-tax difference in any taxable year, the taxpayer must first identify the transaction and then determine which items of income, gain, expense, or loss result from that transaction. If the book-tax difference for all of the items resulting from the transaction (as determined under § 1.6011–4(b)(6) without netting) exceeds $10 million in any taxable year, the transaction is a reportable transaction under § 1.6011–4(b)(6). For example, if the taxpayer participates in

one transaction in which book income exceeds taxable income by $3 million for an income item, tax expense exceeds book expense by $5 million for an expense item, and tax expense exceeds book expense by $4 million for a second expense item (none of which are excluded from § 1.6011–4(b)(6) in section 4.02 of this revenue procedure), then the transaction has a book-tax difference of $12 million and is a reportable transaction under § 1.6011–4(b)(6).

.02 *Exceptions.* If a particular item for a specific transaction is excluded from the determination of the book-tax difference under this revenue procedure, future items reflecting that book-tax difference are also excluded from the determination of the book-tax difference for that transaction in future years, even if the subsequent reversal of the item, for example through cost recovery or an asset disposition, gives rise to a book-tax difference. Book-tax differences arising by reason of the following are not taken into account in determining whether a transaction has a significant book-tax difference under § 1.6011–4(b)(6):

(1) Items to the extent a book loss or expense is reported before or without a loss or deduction for federal income tax purposes.

(2) Items to the extent income or gain for federal income tax purposes is reported before or without book income or gain.

(3) Depreciation, depletion under § 612 of the Internal Revenue Code, and amortization relating solely to differences in methods, lives (for example, useful lives, recovery periods), or conventions, as well as differences resulting from the application of §§ 168(k), 1400I, or 1400L(b).

(4) Percentage depletion under § 613 or § 613A, and intangible drilling costs deductible under § 263(c).

(5) Capitalization and amortization under §§ 195, 248, and 709.

(6) Bad debts or cancellation of indebtedness income.

(7) Federal, state, local, and foreign taxes.

(8) Compensation of employees and independent contractors (whether or not individuals), including stock options, pensions, severance, and retirement.

(9) Charitable contributions of cash or tangible property.

(10) Tax exempt interest, including municipal bond interest.

(11) Dividends as defined in § 316 (including any dividends received deduction), amounts treated as dividends under § 78, distributions of previously taxed income under §§ 959 and 1293, and income inclusions under §§ 551, 951, and 1293.

(12) A dividends paid deduction by a publicly-traded REIT.

(13) Patronage refunds or dividends from cooperatives without a § 267 relationship to the taxpayer.

(14) Items resulting from the application of § 1033.

(15) Items resulting from the application of §§ 354, 355, 361, 367, 368, or 1031, if the taxpayer fully complies with the filing and reporting requirements for these sections, including any requirement in the regulations or in forms.

(16) Items resulting from debt-for-debt exchanges.

(17) Treatment of a transaction as a sale, purchase, or lease for book purposes and as a financing arrangement for tax purposes.

(18) Treatment of a transaction as a sale for book purposes and as a nontaxable transaction under § 860F(b)(1)(A) for tax purposes, not including differences resulting from the application of different valuation methodologies to determine the relative value of REMIC interests for purposes of allocating tax basis among those interests.

(19) Items resulting from differences solely due to the use of hedge accounting for book purposes but not for tax purposes, the use of hedge accounting under § 1.446–4 for tax purposes but not for book purposes, the use of integrated hedge accounting under § 988(d) and § 1.1275–6 for tax purposes but not for book purposes, or the use of different hedge accounting methodologies for book and tax purposes.

(20) Items resulting solely from (i) the use of a mark-to-market method of accounting for book purposes and not for tax purposes, (ii) the use of a mark-to-market method of accounting for tax purposes but not for book purposes, or (iii) in the case of a taxpayer who uses mark-to-market accounting for both book purposes and tax purposes, the use of different methodologies for book purposes and tax purposes.

(21) Items resulting from the application of § 1286.

(22) Inside buildup, death benefits, or cash surrender value of life insurance or annuity contracts.

(23) Life insurance reserves determined under § 807 and non-life insurance reserves determined under § 832(b).

(24) Capitalization of policy acquisition expenses of insurance companies.

(25) Imputed interest income or deductions under §§ 483, 1274, 7872, or 1.1275–4.

(26) Gains and losses arising under §§ 986(c), 987, and 988.

(27) Items excluded under § 883, § 921, or an applicable treaty from a foreign corporation's income that would otherwise be subject to tax under § 882.

(28) Section 481 adjustments.

(29) Inventory valuation differences.

(30) Section 198 deductions for environmental remediation costs.

(31) Items resulting from the treatment of a group of mortgages as a single asset for book purposes but as multiple assets for tax purposes.

(32) Items that are reported on a gross basis for tax and on a net basis for book, or on a net basis for tax and a gross basis for book, if the differing reporting produces no net book-tax difference for the taxable period; for example, in situations in which the amount reported for book purposes by a holder of a mortgage pass-through certificate is equal to the gross interest reported for tax purposes reduced by the holder's separate tax deduction for mortgage servicing fees.

(33) Any item resulting from the use of different book and tax treatment of original issue discount, market discount, acquisition discount, *de minimis* original issue discount, qualified stated interest, amortizable bond premium, bond issuance premium, or debt issuance costs.

(34) Items resulting from the application of specialized accounting methods for capital expenditures under § 263A, Rev. Proc. 2001–46, 2001–2 C.B. 263, or Rev. Proc. 2002–65, 2002–2 C.B. 700.

(35) Items resulting from adjustments to taxable income under § 833(b).

SECTION 5. EFFECT ON OTHER DOCUMENTS

This document modifies and supersedes Rev. Proc. 2003–25, 2003–1 C.B. 601.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective November 16, 2004, the date this revenue procedure was released to the public. This revenue procedure applies to transactions that are entered into on or after January 1, 2003.

SECTION 7. DRAFTING INFORMATION

The principal authors of this revenue procedure are Tara P. Volungis and Charlotte Chyr of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Ms. Volungis or Ms. Chyr at (202) 622–3080 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 6011, 6112; 1.6011–4, 301.6112–1.)

Rev. Proc. 2004–68

SECTION 1. PURPOSE

This revenue procedure provides that certain transactions with brief asset holding periods are not reportable transactions for purposes of the disclosure rules under § 1.6011–4(b)(7) of the Income Tax Regulations. However, these transactions may be reportable transactions for purposes of the disclosure rules under § 1.6011–4(b)(2), (b)(3), (b)(4), (b)(5), or (b)(6).

SECTION 2. BACKGROUND

.01 Section 1.6011–4 requires a taxpayer that participates in a reportable transaction to disclose the transaction in accordance with the procedures provided in § 1.6011–4. Under § 1.6011–4(b), there are six categories of reportable transactions. One category of reportable transaction is a transaction involving a brief asset holding period. A transaction involving a brief asset holding period is defined in § 1.6011–4(b)(7). Generally, a transaction involving a brief asset holding period is any transaction resulting in the taxpayer claiming a tax credit exceeding $250,000 (including a foreign tax credit) if the underlying asset giving rise to the credit is held by the taxpayer for 45 days or less.

.02 Section 1.6011–4(b)(8)(i) provides that a transaction will not be considered a reportable transaction, or will be excluded from any individual category of reportable transaction, if the Commissioner makes a determination by published guidance that the transaction is not subject to the reporting requirements of § 1.6011–4.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that may be required to disclose reportable transactions under § 1.6011–4, material advisors that may be required to disclose reportable transactions under § 6111, as amended by § 815 of the American Jobs Creation Act of 2004, P.L. 108–357, 118 Stat. 1418 (October 22, 2004), and material advisors that may be required to maintain lists under former and new § 6112.

SECTION 4. APPLICATION

.01 *In general*. For purposes of determining the holding period, the principles of § 246(c)(3) and (c)(4) of the Internal Revenue Code will apply.

.02 *Exceptions*. In addition to the existing exception in § 1.6011–4(b)(7), the following transactions are not taken into account in determining whether a transaction is a transaction involving a brief asset holding period under § 1.6011–4(b)(7):

(1) In the case of transactions involving solely foreign tax credits, sales made in the ordinary course of the taxpayer's trade or business of property described in § 1221(a)(1), provided, however, that this exception applies only to credits with respect to sales proceeds and not to the receipt of other income, such as interest received on bonds held in inventory.

(2) Transactions involving a brief asset holding period under the principles of § 246(c)(4) solely by reason of (i) a hedge that reduces only the risk of interest rate or currency fluctuations, or (ii) a guarantee issued by a person that is related to the taxpayer within the meaning of §§ 267(b) or 707(b).

(3) Transactions involving a debt instrument that has a term of 45 days or less if the taxpayer's holding period in the debt instrument equals the debt instrument's entire term. For purposes of this paragraph (3), the taxpayer's holding period in the debt instrument is determined under § 1.6011–4(b)(7), except that the taxpayer's holding period is not reduced as a result of a hedge or guarantee described in paragraph (2) of this section.

(4) Transactions resulting in a foreign tax credit for withholding taxes imposed in respect of non-dividend income or gain with respect to any property that are not disallowed under § 901(l) (including transactions eligible for the exception for securities dealers under § 901(l)(2)).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective November 16, 2004, the date this revenue procedure was released to the public. This revenue procedure applies to transactions that are entered into on or after January 1, 2003.

SECTION 6. DRAFTING INFORMATION

The principal authors of this revenue procedure are Tara P. Volungis and Charlotte Chyr of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Ms. Volungis or Ms. Chyr at (202) 622–3080 (not a toll-free call).

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26 CFR 601.602. Tax forms and instructions.
(Also, Part I, §§ 1, 23, 24, 25A, 32, 42, 59, 62, 63, 68, 132, 135, 137, 146, 1.148–5, 151, 170, 179, 213, 220, 221, 223, 512, 513, 685, 877, 2032A, 2503, 2523, 4261, 6033, 6039F, 6323, 6334, 6601, 7430, 7702B.)

Rev. Proc. 2004–71

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SECTION 1. PURPOSE

This revenue procedure sets forth inflation adjusted items for 2005.

SECTION 2. CHANGES

.01 The amounts in § 1.148–5(e)(2)(iii)(B)(1) of the Income Tax Regulations used to determine whether a broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable under § 1.148–5(e)(2)(i) are adjusted for inflation. (Section 3.16).

.02 The amounts in § 223(b)(2) of the Internal Revenue Code used to determine the monthly limitation on deductions for health savings accounts under § 223(a) are adjusted for inflation. The amounts in § 223(c)(2)(A) used to determine whether a health plan meets the definition of a high deductible health plan are adjusted for inflation. (Section 3.22).

.03 The new "net worth" amount in § 877(a)(2)(B) used to determine whether an individual who ceased to be a U.S. citizen or long-term resident is subject to the special rules of § 877 is not adjusted for inflation. (Section 3.26).

SECTION 3. 2005 ADJUSTED ITEMS

.01 *Tax Rate Tables*. For taxable years beginning in 2005, the tax rate tables under § 1 are as follows:

TABLE 1 — Section 1(a). — Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is:	*The Tax Is*:
Not Over $14,600	10% of the taxable income
Over $14,600 but not over $59,400	$1,460 plus 15% of the excess over $14,600
Over $59,400 but not over $119,950	$8,180 plus 25% of the excess over $59,400
Over $119,950 but not over $182,800	$23,317.50 plus 28% of the excess over $119,950
Over $182,800 but not over $326,450	$40,915.50 plus 33% of the excess over $182,800
Over $326,450	$88,320 plus 35% of the excess over $326,450

TABLE 2 — Section 1(b). — Heads of Households

If Taxable Income Is:	*The Tax Is*:
Not Over $10,450	10% of the taxable income
Over $10,450 but not over $39,800	$1,045 plus 15% of the excess over $10,450
Over $39,800 but not over $102,800	$5,447.50 plus 25% of the excess over $39,800
Over $102,800 but not over $166,450	$21,197.50 plus 28% of the excess over $102,800
Over $166,450 but not over $326,450	$39,019.50 plus 33% of the excess over $166,450
Over $326,450	$91,819.50 plus 35% of the excess over $326,450

TABLE 3 — Section 1(c). — Unmarried Individuals (other than Surviving Spouse and Heads of Households).

If Taxable Income Is:	*The Tax Is*:
Not Over $7,300	10% of the taxable income
Over $7,300 but not over $29,700	$730 plus 15% of the excess over $7,300
Over $29,700 but not over $71,950	$4,090 plus 25% of the excess over $29,700
Over $71,950 but not over $150,150	$14,652.50 plus 28% of the excess over $71,950
Over $150,150 but not over $326,450	$36,548.50 plus 33% of the excess over $150,150
Over $326,450	$94,727.50 plus 35% of the excess over $326,450

TABLE 4 — Section 1(d). — Married Individuals Filing Separate Returns

If Taxable Income Is:	*The Tax Is*:
Not Over $7,300	10% of the taxable income
Over $7,300 but not over $29,700	$730 plus 15% of the excess over $7,300
Over $29,700 but not over $59,975	$4,090 plus 25% of the excess over $29,700
Over $59,975 but not over $91,400	$11,658.75 plus 28% of the excess over $59,975
Over $91,400 but not over $163,225	$20,457.75 plus 33% of the excess over $91,400
Over $163,225	$44,160 plus 35% of the excess over $163,225

TABLE 5 — Section 1(e). — Estates and Trusts

If Taxable Income Is:	*The Tax Is*:
Not Over $2,000	15% of the taxable income
Over $2,000 but not over $4,700	$300 plus 25% of the excess over $2,000
Over $4,700 but not over $7,150	$975 plus 28% of the excess over $4,700
Over $7,150 but not over $9,750	$1,661 plus 33% of the excess over $7,150
Over $9,750	$2,519 plus 35% of the excess over $9,750

.02 *Unearned Income of Minor Children Taxed as if Parent's Income (the "Kiddie Tax")*. For taxable years beginning in 2005, the amount in § 1(g)(4)(A)(ii)(I), which is used to reduce the net unearned income reported on the child's return that is subject to the "kiddie tax," is $800. (This amount is the same as the $800 standard deduction amount provided in section 3.10(2) of this revenue procedure.) The same $800 amount is used for purposes of § 1(g)(7) (that is, in determining whether a parent may elect to include a child's gross income in the parent's gross income and for calculating the "kiddie tax"). For example, one of the requirements for the parental election is that a child's gross income is more than the amount referenced in § 1(g)(4)(A)(ii)(I) but less than 10 times such amount; thus, a child's gross income for 2005 must be more than $800 but less than $8,000 to satisfy that requirement.

.03 *Adoption Credit*. For taxable years beginning in 2005, under § 23(a)(3) the maximum credit allowed for an adoption of a child with special needs is $10,630. For taxable years beginning in 2005, under § 23(b)(1) the maximum credit allowed with regard to other adoptions is the amount of qualified adoption expenses up to $10,630. The available adoption credit begins to phase out under § 23(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $159,450 and is completely phased out for taxpayers with modified adjusted gross income of $199,450. (See section 3.14 of this revenue procedure for the adjusted items relating to adoption assistance programs.)

.04 *Child Tax Credit*. For taxable years beginning in 2005, the value used in § 24(d)(1)(B)(i) in determining the amount of credit under § 24 that may be refundable is $11,000.

.05 *Hope and Lifetime Learning Credits*.

(1) For taxable years beginning in 2005, 100 percent of qualified tuition and related expenses not in excess of $1,000 and 50 percent of such expenses in excess of $1,000 are taken into account in determining the amount of the Hope Scholarship Credit under § 25A(b)(1).

(2) For taxable years beginning in 2005, a taxpayer's modified adjusted gross income in excess of $43,000

($87,000 for a joint return) is taken into account in determining the reduction under § 25A(d)(2)(A)(ii) in the amount of the Hope Scholarship and Lifetime Learning Credits otherwise allowable under § 25A(a).

.06 *Earned Income Credit*.

(1) *In general*. For taxable years beginning in 2005, the following amounts are used to determine the earned income credit under § 32(b). The "earned income amount" is the amount of earned income at or above which the maximum amount of the earned income credit is allowed. The "threshold phaseout amount" is the amount of adjusted gross income (or, if greater, earned income) above which the maximum amount of the credit begins to phase out. The "completed phaseout amount" is the amount of adjusted gross income (or if greater, earned income) at or above which no credit is allowed.

	Number of Qualifying Children		
Item	*One*	*Two or More*	*None*
Earned Income Amount	$ 7,830	$11,000	$ 5,220
Maximum Amount of Credit	$ 2,662	$ 4,400	$ 399
Threshold Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$14,370	$14,370	$ 6,530
Completed Phaseout Amount (Single, Surviving Spouse, or Head of Household)	$31,030	$35,263	$11,750
Threshold Phaseout Amount (Married Filing Jointly)	$16,370	$16,370	$ 8,530
Completed Phaseout Amount (Married Filing Jointly)	$33,030	$37,263	$13,750

The instructions for the Form 1040 series provide tables showing the amount of the earned income credit for each type of taxpayer.

(2) *Excessive investment income*. For taxable years beginning in 2005, the earned income tax credit is denied under § 32(i) if the aggregate amount of certain investment income exceeds $2,700.

.07 *Low-Income Housing Credit*. For calendar years beginning in 2005, the amounts used under § 42(h)(3)(C)(ii) to calculate the State housing credit ceiling for the low-income housing credit is the greater of (i) $1.85 multiplied by the State population, or (ii) $2,125,000.

.08 *Alternative Minimum Tax Exemption for a Child Subject to the "Kiddie Tax."* For taxable years beginning in 2005, for a child to whom the § 1(g) "kiddie tax" applies, the exemption amount under §§ 55 and 59(j) for purposes of the alternative minimum tax under § 55 may not exceed the sum of (i) such child's earned income for the taxable year, plus (ii) $5,850.

.09 *Transportation Mainline Pipeline Construction Industry Optional Expense Substantiation Rules for Payments to Employees under Accountable Plans*. For calendar years beginning in 2005, an eligible employer may pay certain welders and heavy equipment mechanics an amount of up to $13 per hour for rig-related expenses that is deemed substantiated under an accountable plan when paid in accordance with Rev. Proc. 2002–41. If the employer provides fuel or otherwise reimburses fuel expenses, up to $8 per hour is deemed substantiated when paid under Rev. Proc. 2002–41.

.10 *Standard Deduction*.

(1) *In general*. For taxable years beginning in 2005, the standard deduction amounts under § 63(c)(2) are as follows:

Filing Status	*Standard Deduction*
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(a))	$10,000
Heads of Households (§ 1(b))	$ 7,300
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	$ 5,000
Married Individuals Filing Separate Returns (§ 1(d))	$ 5,000

(2) *Dependent*. For taxable years beginning in 2005, the standard deduction amount under § 63(c)(5) for an individual who may be claimed as a dependent by another taxpayer may not exceed the greater of (i) $800, or (ii) the sum of $250 and the individual's earned income.

(3) *Aged and blind*. For taxable years beginning in 2005, the additional standard deduction amounts under § 63(f) for the aged and for the blind are $1,000 for each.

These amounts are increased to $1,250 if the individual is also unmarried and not a surviving spouse.

.11 *Overall Limitation on Itemized Deductions*. For taxable years beginning in 2005, the "applicable amount" of adjusted gross income under § 68(b), above which the amount of otherwise allowable itemized deductions is reduced under § 68, is $145,950 (or $72,975 for a separate return filed by a married individual).

.12 *Qualified Transportation Fringe*. For taxable years beginning in 2005, the monthly limitation under § 132(f)(2)(A) (regarding the aggregate fringe benefit exclusion amount for transportation in a commuter highway vehicle and any transit pass) is $105. The monthly limitation under § 132(f)(2)(B) (regarding the fringe benefit exclusion amount for qualified parking) is $200.

.13 *Income from United States Savings Bonds for Taxpayers Who Pay Qualified Higher Education Expenses*. For taxable years beginning in 2005, the exclusion under § 135 (regarding income from United States savings bonds for taxpayers who pay qualified higher education expenses) begins to phase out for modified adjusted gross income above $91,850 for joint returns and $61,200 for other returns. This exclusion completely phases out for modified adjusted gross income of $121,850 or more for joint returns and $76,200 or more for other returns.

.14 *Adoption Assistance Programs*. For taxable years beginning in 2005, under § 137(a)(2) the maximum amount that can be excluded from an employee's gross income in connection with the adoption by the employee of a child with special needs is $10,630. For taxable years beginning in 2005, under § 137(b)(1) the maximum amount that can be excluded from an employee's gross income for the amounts paid or expenses incurred by the employer for qualified adoption expenses furnished pursuant to an adoption assistance program in connection with other adoptions by the employee is $10,630. The amount excludable from an employee's gross income begins to phase out under § 137(b)(2)(A) for taxpayers with modified adjusted gross income in excess of $159,450 and is completely phased out for taxpayers with modified adjusted gross income of $199,450. (See section 3.03 of this revenue procedure for the adjusted items relating to the adoption credit.)

.15 *Private Activity Bonds Volume Cap*. For calendar years beginning in 2005, the amounts used under § 146(d)(1) to calculate the State ceiling for the volume cap for private activity bonds is the greater of (i) $80 multiplied by the State population, or (ii) $239,180,000.

.16 *Safe Harbor Rules for Broker Commissions on Guaranteed Investment Contracts or Investments Purchased for a Yield Restricted Defeasance Escrow*. For calendar year 2005, under § 1.148–5(e)(2)(iii)(B)(1), a broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable to the extent that (i) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) $31,000, or (B) 0.2 percent of the computational base (as defined in § 1.148–5(e)(2)(iii)(B)(2)) or, if more, $3,000; and (ii) the issuer does not treat more than $87,000 in brokers' commissions or similar fees as qualified administrative costs with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

.17 *Personal Exemption*.

(1) *Exemption amount*. For taxable years beginning in 2005, the personal exemption amount under § 151(d) is $3,200.

(2) *Phase out*. For taxable years beginning in 2005, the personal exemption amount begins to phase out at, and is completely phased out after, the following adjusted gross income amounts:

Filing Status	*AGI – Beginning of Phaseout*	*AGI – Exemption Fully Phased Out*
Married Individuals Filing Joint Returns and Surviving Spouses (§ 1(a))	$218,950	$341,450
Heads of Households (§ 1(b))	$182,450	$304,950
Unmarried Individuals (other than Surviving Spouses and Heads of Households) (§ 1(c))	$145,950	$268,450
Married Individuals Filing Separate Returns (§ 1(d))	$109,475	$170,725

.18 *Election to Expense Certain Depreciable Assets*. For taxable years beginning in 2005, under § 179(b)(1) the aggregate cost of any § 179 property a taxpayer may elect to treat as an expense shall not exceed $105,000. Under § 179(b)(2) the $105,000 limitation shall be reduced (but not below zero) by the amount by which the cost of § 179 property placed in service during the 2005 taxable year exceeds $420,000.

.19 *Eligible Long-Term Care Premiums*. For taxable years beginning in 2005, the limitations under § 213(d)(10) (regarding eligible long-term care premiums includible in the term "medical care") are as follows:

Attained Age Before the Close of the Taxable Year	*Limitation on Premiums*
40 or less	$ 270
More than 40 but not more than 50	$ 510
More than 50 but not more than 60	$1,020
More than 60 but not more than 70	$2,720
More than 70	$3,400

.20 *Medical Savings Accounts*.

(1) *Self-only coverage*. For taxable years beginning in 2005, the term "high deductible health plan" as defined in § 220(c)(2)(A) means, for self-only coverage, a health plan that has an annual deductible that is not less than $1,750 and not more than $2,650, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits does not exceed $3,500.

(2) *Family coverage*. For taxable years beginning in 2005, the term "high deductible health plan" means, for family coverage, a health plan that has an annual deductible that is not less than $3,500 and not more than $5,250, and under which the annual out-of-pocket expenses required to be paid (other than for premiums) for covered benefits does not exceed $6,450.

.21 *Interest on Education Loans*. For taxable years beginning in 2005, the $2,500 maximum deduction for interest paid on qualified education loans under § 221 is reduced under § 221(b)(2)(B) when modified adjusted gross income exceeds $50,000 ($105,000 for joint returns), and is completely eliminated when modified adjusted gross income is $65,000 ($135,000 for joint returns).

.22 *Health Savings Accounts*.

(1) *Monthly contribution limitation*. For calendar year 2005, the monthly limitation on deductions under § 223(b)(2)(A) for an individual with self-only coverage under a high deductible plan as of the first day of such month is 1/12 of the lesser of (i) the annual deductible, or (ii) $2,650. For calendar year 2005, the monthly limitation on deductions under § 223(b)(2)(B) for an individual with family coverage under a high deductible plan as of the first day of such month is 1/12 of the lesser of (i) the annual deductible, or (ii) $5,250.

(2) *High deductible health plan*. For calendar year 2005, a high deductible health plan is defined under § 223(c)(2)(A) as a health plan with an annual deductible that is not less than $1,000 for self-only coverage or $2,000 for family coverage, and the annual out-of pocket expenses (deductibles, co-payments, and other amounts, but not premiums) do not exceed $5,100 for self-only coverage or $10,200 for family coverage.

.23 *Treatment of Dues Paid to Agricultural or Horticultural Organizations*. For taxable years beginning in 2005, the limitation under § 512(d)(1) (regarding the exemption of annual dues required to be paid by a member to an agricultural or horticultural organization) is $127.

.24 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns*.

(1) *Low cost article*. For taxable years beginning in 2005, the unrelated business income of certain exempt organizations under § 513(h)(2) does not include a "low cost article" of $8.30 or less.

(2) *Other insubstantial benefits*. For taxable years beginning in 2005, the $5, $25, and $50 guidelines in section 3 of Rev. Proc. 90–12, 1990–1 C.B. 471 (as amplified and modified), for disregarding the value of insubstantial benefits received by a donor in return for a fully deductible charitable contribution under § 170, are $8.30, $41.50, and $83, respectively.

.25 *Funeral Trusts*. For a contract entered into during calendar year 2005 for a "qualified funeral trust," as defined in § 685, the trust may not accept aggregate contributions by or for the benefit of an individual in excess of $8,200.

.26 *Expatriation to Avoid Tax*. For calendar year 2005, an individual with "average annual net income tax" of more than $127,000 for the 5 taxable years ending before the date of the loss of United States citizenship under § 877(a)(2)(A) is subject to tax under § 877(b).

.27 *Valuation of Qualified Real Property in Decedent's Gross Estate*. For an estate of a decedent dying in calendar year 2005, if the executor elects to use the special use valuation method under § 2032A for qualified real property, the aggregate decrease in the value of qualified real property resulting from electing to use § 2032A that is taken into account for purposes of the estate tax may not exceed $870,000.

.28 *Annual Exclusion for Gifts*.

(1) For calendar year 2005, the first $11,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under § 2503 made during that year.

(2) For calendar year 2005, the first $117,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under §§ 2503 and 2523(i)(2) made during that year.

.29 *Passenger Air Transportation Excise Tax*. For calendar year 2005, the tax under § 4261(b) on the amount paid for each domestic segment of taxable transportation by air is $3.20. For calendar year 2005, the tax under § 4261(c) on any amount paid (whether within or without the United States) for any transportation of any person by air, if such transportation begins or ends in the United States, generally is $14.10. However, for a domestic segment beginning or ending in Alaska or Hawaii as described in § 4261(c)(3), the tax only applies to departures and is at the rate of $7.

.30 *Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures*. For taxable years beginning in 2005, the annual per person, family, or entity dues limitation to qualify for the reporting exception under § 6033(e)(3) (and section 5.05 of Rev. Proc. 98–19, 1998–1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is $88 or less.

.31 *Notice of Large Gifts Received from Foreign Persons*. For taxable years beginning in 2005, recipients of gifts from certain foreign persons may be required to report these gifts under § 6039F if the aggregate value of gifts received in a taxable year exceeds $12,375.

.32 *Persons Against Which a Federal Tax Lien Is Not Valid*. For calendar year 2005, a federal tax lien is not valid against (i) certain purchasers under § 6323(b)(4) who purchased personal property in a casual sale for less than $1,200, or (ii) a mechanic's lien or under § 6323(b)(7) that repaired or improved certain residential property if the contract price with the owner is not more than $6,020.

.33 *Property Exempt from Levy*. For calendar year 2005, the value of property exempt from levy under § 6334(a)(2) (fuel, provisions, furniture, and other household personal effects, as well as arms for personal use, livestock, and poultry) may not exceed $7,200. The value of property exempt from levy under § 6334(a)(3) (books and tools necessary for the trade, business, or profession of the taxpayer) may not exceed $3,600.

.34 *Interest on a Certain Portion of the Estate Tax Payable in Installments*. For an estate of a decedent dying in calendar year 2005, the dollar amount used to determine the "2-percent portion" (for purposes of calculating interest under § 6601(j)) of the estate tax extended as provided in § 6166 is $1,170,000.

.35 *Attorney Fee Awards*. For fees incurred in calendar year 2005, the attorney fee award limitation under § 7430(c)(1)(B)(iii) is $150 per hour.

.36 *Periodic Payments Received under Qualified Long-Term Care Insurance Contracts or under Certain Life Insurance Contracts*. For calendar year 2005, the stated dollar amount of the *per diem* limitation under § 7702B(d)(4) (regarding periodic payments received under a qualified long-term care insurance contract or periodic payments received under a life insurance contract that are treated as paid by reason of the death of a chronically ill individual) is $240.

SECTION 4. EFFECTIVE DATE

.01 *General Rule*. Except as provided in section 4.02, this revenue procedure applies to taxable years beginning in 2005.

.02 *Calendar Year Rule*. This revenue procedure applies to transactions or events occurring in calendar year 2005 for purposes of sections 3.07 (low-income housing credit), 3.09 (pipeline construction industry optional expense substantiation rules), 3.15 (private activity bond volume cap), 3.16 (safe harbor rules for broker commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow), 3.22 (health savings accounts), 3.23 (funeral trusts), 3.24 (expatriation to avoid tax), 3.25 (valuation of qualified real property in decedent's gross estate), 3.26 (annual exclusion for gifts), 3.27 (passenger air transportation excise tax), 3.30 (persons against which a federal tax lien is not valid), 3.31 (property exempt from levy), 3.32 (interest on a certain portion of the estate tax payable in installments), 3.33 (attorney fee awards), and 3.34 (periodic payments received under qualified long-term care insurance contracts or under certain life insurance contracts).

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Marnette M. Myers of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Myers at (202) 622–4920 (not a toll-free call).

Part IV. Items of General Interest

Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

Announcement 2004-95

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Sanchez, Wayne L.	Derby, KS	Attorney	Indefinite from July 12, 2004
Gatti, John T.	Orlando, FL	Enrolled Agent	Indefinite from July 16, 2004
Hall, Beverly J.	Newberg, OR	Enrolled Agent	Indefinite from July 26, 2004
Spencer, Robert E.	Wilmington, NC	Enrolled Agent	Indefinite from August 11, 2004

Name	Address	Designation	Date of Suspension
Lebaron, Betty J.	Mesa, AZ	Enrolled Agent	Indefinite from August 17, 2004
Worrell, Douglas	Streamwood, IL	Attorney	Indefinite from August 23, 2004
Singleton, Stan R.	Derby, KS	Attorney	Indefinite from August 30, 2004
Halpern, Barbara	Weston, CT	CPA	Indefinite from September 15, 2004
Johnson, Jeanne M.	Hoquiam, WA	Enrolled Agent	Indefinite from September 27, 2004
Fisher, Robert	Holbrook, AZ	Enrolled Agent	Indefinite from October 5, 2004
Valdez II, Arthur	Albuquerque, NM	CPA	Indefinite from October 19, 2004
Wilshire Jr., Raymond B.	Fort Worth, TX	Enrolled Agent	Indefinite from December 1, 2004

Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Daly, Thomas J.	Elmsford, NY	CPA	Indefinite from August 20, 2004
Jewett, Jerry A.	Fremont, OH	Attorney	Indefinite from September 8, 2004
Kyllo, Harry N.	Portland, OR	CPA	Indefinite from September 9, 2004

Name	Address	Designation	Date of Suspension
Pearl, David S.	Reisterstown, MD	Attorney	Indefinite from September 21, 2004
Graugnard, Paul E.	Alexandria, LA	Attorney	Indefinite from September 21, 2004
Thomas, Robert C.	Natchitoches, LA	Attorney	Indefinite from September 21, 2004
Culver Jr., Allan J.	Bel Air, MD	Attorney	Indefinite from September 21, 2004
Christovich, Michael	New Orleans, LA	Attorney	Indefinite from September 27, 2004
Turner, Haiden W.	Farmers Branch, TX	CPA	Indefinite from September 27, 2004
Tuttle, Heidi	Unionville, CT	Attorney	Indefinite from September 27, 2004
Oberhauser Jr., Louis	Wayzata, MN	Attorney	Indefinite from September 27, 2004
Nelson, John A.	Wilmar, MN	Attorney	Indefinite from September 27, 2004
Judd Jr., John K.	Taft, CA	CPA	Indefinite from September 30, 2004
McGrady, Michael S.	Hankins, NY	Attorney	Indefinite from October 1, 2004
Wahl-Taylor, Kimberly	Council Bluffs, IA	Attorney	Indefinite from October 4, 2004
Haneberg III, Elmer C.W.	Chicago, IL	Attorney	Indefinite from October 6, 2004
McDonald, Michael G.	Methuen, MA	Attorney	Indefinite from October 6, 2004
Mason Jr., Maurice	Dracut, MA	Attorney	Indefinite from October 6, 2004

Name	Address	Designation	Date of Suspension
Aaron, Stanley R.	Baton Rouge, LA	Attorney	Indefinite from October 6, 2004
McFarland, Sheila E.	Chicago, IL	Attorney	Indefinite from October 6, 2004
Deutchman, Murray L.	Barnesville, MD	Attorney	Indefinite from October 6, 2004
Wolfert, Marvin L.	Foxboro, MA	Attorney	Indefinite from October 6, 2004
Andricopoulos, Maureen	Chelmsford, MA	Attorney	Indefinite from October 6, 2004
Ezuruike, Maurice	Austin, TX	Attorney	Indefinite from October 6, 2004
Jones, Thomas C.	Dekalb, IL	Attorney	Indefinite from October 6, 2004
Yopp, L. Gregory	Louisville, KY	Attorney	Indefinite from October 6, 2004
Waples, Alan N.	Burlington, IA	Attorney	Indefinite from October 6, 2004
Ghitelman, Gayle S.	Brookline, MA	Attorney	Indefinite from October 6, 2004
Bulas Jr., Luis	Hollywood, FL	Enrolled Agent	Indefinite from October 15, 2004
Earl, Thomas J.	Moses Lake, WA	Attorney	Indefinite from October 8, 2004
George, Gary R.	Milwaukee, WI	Attorney	Indefinite from October 8, 2004
Jordan, David M.	San Antonio, TX	Attorney	Indefinite from October 8, 2004
Young III, George G.	Havertown, PA	Attorney	Indefinite from October 8, 2004
Tanner, Martin	Salt Lake City, UT	Attorney	Indefinite from October 8, 2004

Name	Address	Designation	Date of Suspension
Jensen, Georg	Cheyenne, WY	Attorney	Indefinite from October 8, 2004
Slowiaczek, Peter A.	Lakewood, WA	Attorney	Indefinite from October 8, 2004
Fennell, David E.	New Castle, WA	Attorney	Indefinite from October 8, 2004
Gish, Robert	Basin, WY	Attorney	Indefinite from October 8, 2004
Ramirez, Silverio	Roselle, NJ	Attorney	Indefinite from October 8, 2004
Flaherty, Patrick J.	Traverse City, MI	CPA	Indefinite from October 19, 2004
Vanden Berg, Steven	Mason City, IA	Attorney	Indefinite from October 25, 2004
Johnson, Jamis M.	Salt Lake City, UT	Attorney	Indefinite from October 25, 2004
Braskey, James F.	Frostburg, MD	Attorney	Indefinite from October 25, 2004
Mills, Laurence A.	Wellesley, MA	Attorney	Indefinite from October 26, 2004

Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Dayandayan, Angel Y.	Irvine, CA	Enrolled Agent	July 27, 2004
Summers, Todd W.	Stockton, CA	Enrolled Agent	August 10, 2004
Barrett Sr., Jeffrey J.	Catskill, NY	CPA	August 31, 2004
Davis, Charles W.	San Francisco, CA	Enrolled Agent	September 28, 2004
Giles, Benjamin M.	Wichita, KS	CPA	September 30, 2004

Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Lim, Edgar E.	St. Louis, MO	Attorney	August 2, 2004 to July 31, 2007

Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation.

The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Gleason, Daniel J.	Franklin, TN	September 30, 2004

Consent Disbarment From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to disbarment from such practice. The Director, Office of Professional Responsibility, in his discretion, may disbar an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent disbarment from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Disbarment
Fort, Gala J.	Las Vegas, NV	CPA	Indefinite from October 19, 2004

Public Hearings on the Advance Pricing Agreement Program

Announcement 2004–98

A public hearing with Chief Counsel Donald L. Korb and Associate Chief Counsel (International) Hal Hicks will be held from 1:00 p.m. to 4:00 p.m. on Tuesday, February 1, 2005, and again from 1:00 p.m. to 4:00 p.m. on Tuesday, February 22, 2005, in the auditorium (room 7129) on the 7th floor of the IRS main building at 1111 Constitution Avenue, NW, Washington, DC. The purpose of the hearing is to solicit comments regarding the operation of the Advance Pricing Agreement program within the Office of Associate Chief Counsel (International) and suggestions for strengthening the program's performance as part of Chief Counsel's commitment to promoting IRS audit currency.

Speakers may address their comments to any aspect of the APA program. Written comments in advance or in lieu of attendance at the hearing also are welcome. In an effort to provide some structure to the discussion, the first day's session will focus on comments on the general administration and operation of the program. The second day's session will continue the first day's discussion and also will focus on comments on technical issues related to APAs.

Without limiting the areas for comment, comments are specifically invited on the following topics:

Day 1 — February 1, 2005

- the state of, and ideas for improving, the accessibility of the APA program to taxpayers;
- the state of, and ideas for improving, timeliness and efficiency in handling APA matters;
- the state of, and ideas for improving, handling of APA cases in particular industries; and
- the state of, and ideas for improving, the effectiveness of the APA program generally in furthering the interests of sound tax administration.

Day 2 — February 22, 2005

- continuation of Day 1 discussion;
- the state of, and ideas for improving, the critical assumption language and/or other features of the standard APA contract;
- the appropriateness/feasibility of updating an agreed arm's length range or point to reflect events occurring during the APA term (*e.g.*, by tying the range or point to an external or internal benchmark); and
- the appropriateness/feasibility of reflecting in the legal and economic analyses underlying an APA the impact that the execution of the APA may have on the relationship between the APA taxpayer and its related party.

Any person wishing to reserve time to speak at the hearing should contact Brenda Robinson by telephone at (202) 435–5220 (not a toll-free number) or by fax at (202) 435–5238 and indicate his or her affiliation, if any, and how long he or she requests to speak. Persons reserving time should also submit an outline of topics to be discussed, sent to the fax number or mailing address below for receipt at least two business days before the hearing. Persons who have not reserved time will have an opportunity to speak at the end of the hearing, time permitting. Persons wishing to comment in writing should send written comments to Brenda Robinson by fax at (202) 435–5238 or by mail at 1111 Constitution Avenue, NW, CC:INTL:APA, MA2–266, Washington, DC 20224.

Due to building security procedures, persons attending the public hearing must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. To have your name placed on the building access list to attend the hearing, contact Brenda Robinson at (202) 435–5220 (not a toll-free number) or by fax at (202) 435–5238.

The principal author of this announcement is Matthew Frank of the Office of Associate Chief Counsel (International). For further information regarding this announcement, contact Matthew Frank at (202) 435–5222 (not a toll-free call).

Treatment of Disregarded Entities Under Section 752; Hearing

Announcement 2004–99

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing for proposed rulemaking.

SUMMARY: This document provides notice of a public hearing for proposed regulations (REG–128767–04, 2004–39 I.R.B. 534) that provide rules under section 752 for taking into account certain obligations of a business entity that is disregarded as separate from its owner under section 856(i), 1361(b)(3), or §§301.7701–1 through 301.7701–3 (disregarded entity) for purposes of characterizing and allocating partnership liabilities.

DATES: The public hearing is scheduled for Friday, January 14, 2005, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Friday, December 24, 2004.

ADDRESSES: The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: Publications and Regulations Branch CC:PA:LPD:PR (REG-128767–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 4 p.m. to: Publications and Regulations Branch CC:PA:LPD:PR (REG–128767–04), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Submit outlines electronically directly to the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at: *http://www.regulations.gov*. (IRS-REG–128767–04).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed regulations (REG-128767–04) that was published in the **Federal Register** on August, 12, 2004 (69 FR 49832).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written or electronic comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by December 24, 2004.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this document.

Cynthia E. Grigsby,
Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on November 29, 2004, 8:45 a.m., and published in the issue of the Federal Register for November 30, 2004, 69 F.R. 69557)

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.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2004–1 through 2004–26 is in Internal Revenue Bulletin 2004–26, dated June 28, 2004.

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