Internal Revenue
bulletin

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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.

INCOME TAX

Rev. Rul. 2005–29, page 1080.

Insurance companies; interest rate tables. Prevailing state assumed interest rates are provided for the determination of reserves under section 807 of the Code for contracts issued in 2004 and 2005. Rev. Rul. 92–19 supplemented in part.

Rev. Rul. 2005–31, page 1084.

Designation of dividends; regulated investment company (RIC). This ruling provides guidance that allows a RIC, in making the dividend designations permitted by sections 852, 854, and 871 of the Code, to designate the maximum amount permitted under each provision even if the total amount so designated exceeds the total amount of the RIC's dividend distributions. It also allows individual shareholders of the RIC who are U.S. persons to apply designations to the dividends they receive from the RIC that differ from designations applied by shareholders who are nonresident aliens.

Notice 2005–35, page 1087.

Issuers of life insurance contracts that request to enter into a closing agreement with the Internal Revenue Service under Alternative B or C of Rev. Rul. 2005–6 may, in lieu of a paper submission, provide a CD-ROM diskette in read-only format listing the contracts that are the subject of the closing agreement.

Rev. Proc. 2005–28, page 1093.

This procedure provides the mechanism by which taxpayers may choose to forgo the normally required private letter ruling for switching from the fair market value method to the alternative tax book value method, within a certain limited time period. Section 864(e)(2) requires that interest expense be apportioned on the basis of assets for purposes of computing foreign source taxable income. Taxpayers may elect to compute the value of assets on the basis of fair market value or tax book value. In March 2004, Treasury and the IRS issued temporary and proposed regulations that contained a third method for determining the value of assets, the "alternative tax book value method."

Announcement 2005–35, page 1095.

This document contains corrections to temporary regulations (T.D. 9170, 2005–4 I.R.B. 363) that provide guidance concerning the applicability of section 1374 to S corporations that acquire assets in carryover basis transactions from C corporations on or after December 27, 1994, and to certain corporations that terminate S corporation status and later elect again to become S corporations.

EMPLOYEE PLANS

Notice 2005–39, page 1087.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities. The weighted average interest rate for May 2005 and the resulting permissible range of interest rates used to calculate current liability and to determine the required contribution are set forth.

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Notice 2005–40, page 1088.

Election to defer a net experience loss; notice to Pension Benefit Guaranty Corporation; notice to plan participants and beneficiaries; notice to employers; notice to labor organizations. This notice provides guidance regarding the election that can be made for certain multiemployer plans to defer charges with respect to certain net experience losses pursuant to section 412(b)(7)(F) of the Code and section 302(b)(7)(F) of the Employee Retirement Income Security Act of 1974 (ERISA), as well as certification and notification requirements.

Announcement 2005–36, page 1095.

EP opinion letters and advisory letters; GUST. This announcement is the formal closing of the GUST program for defined contribution pre-approved plans. The announcement states that after June 15, 2005, the Service will no longer accept those submissions. In addition, this announcement states that October 31, 2005, is the deadline for sponsors and practitioners of mass submitter plans and national sponsor plans for the initial six-year cycle for defined contribution pre-approved plans for the EGTRRA program.

Announcement 2005–37, page 1096.

Volume Submitter (VS) practitioners; certain plan amendments. This announcement explains the steps available to VS practitioners to make certain plan amendments on behalf of the adopting employers of their VS specimen plans.

EXEMPT ORGANIZATIONS

Announcement 2005–38, page 1097.

Beacon Ministries of North Carolina, Inc., of Creston, NC; Haysville Tiger Baseball Foundation of Haysville, KS; and National Center for Debt Elimination, Ltd., of North Huntingdon, PA, no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

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 807.—Rules for Certain Reserves

Insurance companies; interest rate tables. Prevailing state assumed interest rates are provided for the determination of reserves under section 807 of the Code for contracts issued in 2004 and 2005. Rev. Rul. 92–19 supplemented in part.

Rev. Rul. 2005–29

For purposes of § 807(d)(4) of the Internal Revenue Code, for taxable years beginning after December 31, 2003, this ruling supplements the schedules of prevailing state assumed interest rates set forth in Rev. Rul. 92–19, 1992–1 C.B. 227. This information is to be used by insurance companies in computing their reserves for (1) life insurance and supplementary total and permanent disability benefits, (2) individual annuities and pure endowments, and (3) group annuities and pure endowments. As § 807(d)(2)(B) requires that the interest rate used to compute these reserves be the greater of (1) the applicable federal interest rate, or (2) the prevailing state assumed interest rate, the table of applicable federal interest rates in Rev. Rul. 92–19 is also supplemented.

Following are supplements to schedules A, B, C, and D to Part III of Rev. Rul. 92–19, providing prevailing state assumed interest rates for insurance products with different features issued in 2004 and 2005, and a supplement to the table in Part IV of Rev. Rul. 92–19, providing the applicable federal interest rates under § 807(d) for 2004 and 2005. This ruling does not supplement Parts I and II of Rev. Rul. 92–19.

This is the thirteenth supplement to the interest rates provided in Rev. Rul. 92–19. Earlier supplements were published in Rev. Rul. 93–58, 1993–2 C.B. 241 (interest rates for insurance products issued in 1992 and 1993); Rev. Rul. 94–11, 1994–1 C.B. 196 (1993 and 1994); Rev. Rul. 95–4, 1995–1 C.B. 141 (1994 and 1995); Rev. Rul. 96–2, 1996–1 C.B. 141 (1995 and 1996); Rev. Rul. 97–2, 1997–1 C.B. 134 (1996 and 1997); Rev. Rul. 98–2, 1998–1 C.B. 259 (1997 and 1998); Rev. Rul. 99–10, 1999–1 C.B. 671 (1998 and 1999); Rev. Rul. 2000–17, 2000–1 C.B. 842 (1999 and 2000); Rev. Rul. 2001–11, 2001–1 C.B. 780 (2000 and 2001); Rev. Rul. 2002–12, 2002–1 C.B. 624 (2001 and 2002); Rev. Rul. 2003–24, 2003–1 C.B. 557 (2002 and 2003); and Rev. Rul. 2004–14, 2004–1 C.B. 511 (2003 and 2004).

Part III. Prevailing State Assumed Interest Rates — Products Issued in Years After 1982.*

Schedule A

STATUTORY VALUATION INTEREST RATES
BASED ON THE 1980 AMENDMENTS TO THE
NAIC STANDARD VALUATION LAW

A. Life insurance valuation:

Guarantee Duration (years)	Calendar Year of Issue 2005
10 or fewer	5.00**
More than 10 but not more than 20	4.75**
More than 20	4.50**

Source: Rates calculated from the monthly averages, ending June 30, 2004, of Moody's Composite Yield on Seasoned Corporate Bonds.

* The terms used in the schedules in this ruling and in Part III of Rev. Rul. 92–19 are those used in the Standard Valuation Law; the terms are defined in Rev. Rul. 92–19.

** As these rates exceed the applicable federal interest rate for 2005 of 4.44 percent, the interest rate to be used for this product under § 807 are those specified in this table.

Part III, Schedule B

STATUTORY VALUATION INTEREST RATES
BASED ON THE 1980 AMENDMENTS TO THE
NAIC STANDARD VALUATION LAW

B. Single premium immediate annuities and annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options:

Calendar Year of Issue	Valuation Interest Rate
2004	5.50*

Source: Rates calculated from the monthly averages, ending June 30, 2004, of Moody's Composite Yield on Seasoned Corporate Bonds (formerly known as Moody's Corporate Bond Yield Average — Monthly Average Corporates). The terms used in this schedule are those used in the Standard Valuation Law as defined in Rev. Rul. 92–19.

* As this prevailing state assumed interest exceeds the applicable federal interest rate for 2004 of 4.82 percent, the valuation interest rate of 5.50 percent is to be used for this product under § 807.

Part III, Schedule C22 — 2004

STATUTORY VALUATION INTEREST RATES
BASED ON NAIC STANDARD VALUATION LAW
FOR **2004** CALENDAR YEAR BUSINESS
GOVERNED BY THE 1980 AMENDMENT

C. Valuation interest rates for other annuities and guaranteed interest contracts that are valued on an issue year basis:

Cash Settlement Options?	Future Interest Guarantee?	Guarantee Duration (years)	Valuation Interest Rate For Plan Type		
			A	B	C
Yes	Yes	5 or fewer	5.50	5.00	4.75*
		More than 5, but not more than 10	5.50	5.00	4.75*
		More than 10, but not more than 20	5.00	4.75*	4.50*
		More than 20	4.50*	4.25*	4.25*
Yes	No	5 or fewer	5.75	5.00	4.75*
		More than 5, but not more than 10	5.50	5.00	4.75*
		More than 10, but not more than 20	5.25	4.75*	4.75*
		More than 20	4.75*	4.25*	4.25*
No	Yes or No	5 or fewer	5.50		
		More than 5, but not more than 10	5.50	NOT APPLICABLE	
		More than 10, but not more than 20	5.00		
		More than 20	4.50*		

Source: Rates calculated from the monthly averages, ending June 30, 2004, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As the applicable federal interest rate for 2004 of 4.82 percent exceeds this prevailing state assumed interest rate, the interest rate to be used for this product under § 807 is 4.82 percent.

Part III, Schedule D22 — 2004

STATUTORY VALUATION INTEREST RATES
BASED ON NAIC STANDARD VALUATION LAW
FOR **2004** CALENDAR YEAR BUSINESS
GOVERNED BY THE 1980 AMENDMENT

D. Valuation interest rates for other annuities and guaranteed interest contracts that are contracts with cash settlement options and that are valued on a change in fund basis:

Cash Settlement Options?	Future Interest Guarantee?	Guarantee Duration (years)	Valuation Interest Rate For Plan Type		
			A	B	C
Yes	Yes	5 or fewer	6.00	5.75	4.75*
		More than 5, but not more than 10	6.00	5.75	4.75*
		More than 10, but not more than 20	5.50	5.50	4.75*
		More than 20	5.00	5.00	4.25*
Yes	No	5 or fewer	6.25	6.00	5.00
		More than 5, but not more than 10	6.00	6.00	5.00
		More than 10, but not more than 20	5.75	5.50	4.75*
		More than 20	5.00	5.00	4.50*

Source: Rates calculated from the monthly averages, ending June 30, 2004, of Moody's Composite Yield on Seasoned Corporate Bonds.

*As the applicable federal interest rate for 2004 of 4.82 percent is equal to or exceeds this prevailing state assumed interest rate, the interest rate to be used for this product under § 807 is 4.82 percent.

Part IV. Applicable Federal Interest Rates

TABLE OF
APPLICABLE FEDERAL INTEREST RATES
FOR PURPOSES OF § 807

Year	Interest Rate
2004	4.82
2005	4.44

Sources: Rev. Rul. 2003–122, 2003–2 C.B. 1179 for the 2004 rate and Rev. Rul. 2004–106, 2004–49 I.R.B. 893.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 92–19 is supplemented by the addition to Part III of that ruling of prevailing state assumed interest rates under § 807 for certain insurance products issued in 2003 and 2004 and is further supplemented by an addition to the table in Part IV of Rev. Rul. 92–19 listing applicable federal interest rates. Parts I and II of Rev. Rul. 92–19 are not affected by this ruling.

DRAFTING INFORMATION

The principal author of this revenue ruling is Ann H. Logan of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, contact her at (202) 622–3970 (not a toll-free call).

Section 852.—Taxation of Regulated Investment Companies and Their Shareholders

In making the dividend designations permitted by sections 852(b)(3)(C) and (b)(5)(A) of the Internal Revenue Code, may a regulated investment company ("RIC") designate the maximum amount permitted under each provision even if the aggregate of all of the amounts so designated exceeds the total amount of the RIC's dividend distributions. See Rev. Rul. 2005-31, page 1084.

Section 854.—Limitations Applicable to Dividends Received From Regulated Investment Company

(Also: § 871, § 852.)

Designation of dividends; regulated investment company (RIC). This ruling provides guidance that allows a RIC, in making the dividend designations permitted by sections 852, 854, and 871 of the Code, to designate the maximum amount permitted under each provision even if the total amount so designated exceeds the total amount of the RIC's dividend distributions. It also allows individual shareholders of the RIC who are U.S. persons to apply designations to the dividends they receive from the RIC that differ from designations applied by shareholders who are nonresident aliens.

Rev. Rul. 2005–31

ISSUES

(1) In making the dividend designations permitted by §§ 852(b)(3)(C) and (b)(5)(A), 854(b)(1) and (2), and 871(k)(1)(C) and (2)(C) of the Internal Revenue Code, may a regulated investment company ("RIC") designate the maximum amount permitted under each provision even if the aggregate of all of the amounts so designated exceeds the total amount of the RIC's dividend distributions?

(2) May individual shareholders of the RIC who are United States persons apply designations to the dividends they receive from the RIC that differ from designations applied by shareholders who are nonresident alien individuals?

FACTS

R, a domestic corporation, is registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq*., as a management company and has elected to be treated as a RIC under subchapter M, part 1, of the Code. Some of the shareholders of *R* are individuals who are United States persons, and some of the shareholders are nonresident alien individuals. For its first taxable year beginning after December 31, 2004, *R*'s taxable income consists of $10,000*x* of dividend income (all of which is qualified dividend income within the meaning of § 1(h)(11)), $10,000*x* of interest income (all of which is qualified interest income within the meaning of § 871(k)(1)), $5,000*x* of net short-term capital gain, and $5,000*x* of net long-term capital gain. *R* has general and administrative expenses of $10,000*x*. *R* distributes $20,000*x* to its shareholders for the taxable year, of which $20*x* is received by shareholder *A*, an individual who is a United States person, and $20*x* is received by shareholder *B*, a nonresident alien individual who does not have any effectively connected income as defined in § 864(c).

LAW AND ANALYSIS

Section 854, as amended by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "JGTRRA"), Pub. L. No. 108–27, 117 Stat. 752, and the Working Families Tax Relief Act of 2004, Pub. L. No. 108–311, 118 Stat. 1166, provides rules for determining the amount distributed by a RIC to its shareholders that

may be treated by the shareholders as qualified dividend income under § 1(h)(11). Under § 1(h)(11), qualified dividend income received by an individual, estate, or trust is subject to a maximum tax rate of 15 percent. Section 854(b)(1)(C) provides that the aggregate amount that may be designated by a RIC as qualified dividend income for purposes of § 1(h)(11) generally shall not exceed the RIC's qualified dividend income for the taxable year. Section 854 does not require that this amount be reduced by expenses.

Section 871(k), as amended by the American Jobs Creation Act of 2004 (the "AJCA"), Pub. L. No. 108–357, 118 Stat. 1418, provides rules for determining the amount distributed by a RIC to its shareholders that may be treated by the shareholders as interest-related dividends or short-term capital gain dividends. Under § 871(k), an interest-related dividend or a short-term capital gain dividend received by a nonresident alien individual generally is not subject to United States withholding tax.

Section 871(k)(1)(C) limits the amount a RIC may designate as an interest-related dividend to the RIC's qualified net interest income for the taxable year. Section 871(k)(1)(D) defines qualified net interest income as a RIC's qualified interest income reduced by the deductions properly allocable to such income.

Section 871(k)(2)(C) limits the amount a RIC may designate as a short-term capital gain dividend to the RIC's qualified short-term gain for the taxable year. Section 871(k)(2)(D) defines qualified short-term gain as the excess of the RIC's net short-term capital gain for the year over the RIC's net long-term capital loss for such year, generally determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year. Section 1222(5) defines net short-term capital gain as the excess of short-term capital gains for the taxable year over short-term capital losses for such year. The Statement of Managers in the Conference Report accompanying the AJCA states, "In computing the amount of short-term capital gain dividends for the year, no reduction is made for the amount of expenses of the RIC allocable to such net gains." 1 H.R. Rep. No. 548, 108th Cong., 2d Sess. 166 (2004).

Section 852(b)(3) provides rules for determining the amount distributed by a RIC to its shareholders that may be treated by the shareholders as a capital gain dividend. Section 852(b)(3)(C) limits the amount a RIC may designate as a capital gain dividend to the RIC's net capital gain for the taxable year, generally determined without regard to any net capital loss or net long-term capital loss attributable to transactions after October 31 of such year. Section 1222(11) defines net capital gain as the excess of the net long-term capital gain for the taxable year over the net short-term capital loss for such year.

For purposes of determining the taxable income of a RIC under subchapter M, § 852(b) separates a RIC's net capital gain from its other income (identified as "investment company taxable income"). Section 852(b)(3) imposes a tax on the excess of the RIC's net capital gain over its deduction for dividends paid determined with reference to capital gains dividends only. A RIC is not allowed any deduction for expenses against its net capital gain. A RIC's investment company taxable income equals its taxable income (exclusive of net capital gain) reduced by allowable expenses and its deduction for dividends paid determined without regard to capital gains dividends and exempt-interest dividends. Thus, the basic pattern for taxing a RIC's income treats its expenses as allocable only to its investment company taxable income (exclusive of net capital gain).

In this situation, under § 852(b)(3)(C), the maximum amount *R* may designate as capital gain dividends is $5,000*x*, which is the amount of *R*'s net capital gain for the taxable year ($5,000*x* of net long-term capital gain less $0*x* of net short-term capital loss). Of the remaining distribution of $15,000*x* for the taxable year, *R* applies the rules of §§ 854 and 871 to determine the maximum amounts it may designate as qualified dividend income, short-term capital gain dividends, and interest-related dividends. Under § 854(b)(1)(C), the maximum amount *R* may designate as distributions of qualified dividend income is $10,000*x*, which is the amount of *R*'s qualified dividend income for the taxable year, unreduced by expenses. Under § 871(k)(2)(C), the maximum amount *R* may designate as short-term capital gain dividends is $5,000*x*, which is the amount of *R*'s net short-term capital gain unreduced by expenses allocable to that net gain. Under § 871(k)(1)(C), the maximum amount *R* may designate as interest-related dividends is $10,000*x* (the amount of *R*'s qualified interest income), less the amount of *R*'s expenses properly allocable to that income. Given the specific provisions of § 852(b)(3) precluding an allocation of expenses to reduce net capital gain, and taking into account the statement in the Conference Report that assumes that a portion of a RIC's expenses are allocable to its short-term gains, *R* may reasonably determine that its expenses should be allocated *pro rata* to the components of its income included in RIC taxable income (qualified dividends, interest, and short-term gains) and that the amount of its expenses properly allocable to interest income is $4,000*x*. Accordingly, the maximum amount *R* may designate as interest-related dividends is $6,000*x*.

The sum ($26,000*x*) of the maximum amounts computed above of capital gain dividends ($5,000*x*), distributions of qualified dividend income ($10,000*x*), short-term capital gain dividends ($5,000*x*), and interest-related dividends ($6,000*x*), exceeds the total amount distributed by *R* for the taxable year ($20,000*x*). If *R* uses these maximum amounts in making its dividend designations for the taxable year, the designations that are relevant for each of *A* and *B* will not exceed their respective dividend distributions. The reduced tax rate applicable to distributions of qualified dividend income, and thus the designation as such a distribution, apply to individual taxpayers who are United States persons and do not apply to income received by a nonresident alien individual unless the income is effectively connected with the conduct of a trade or business within the United States. In contrast, the exemption from United States withholding tax for interest-related dividends and short-term capital gain dividends received from a RIC applies only to dividends that are received by a nonresident alien individual and that are not effectively connected with the conduct of a trade or business within the United States.

There is no indication that Congress, in enacting the exemption from United States withholding tax in the AJCA for interest-related dividends and short-term capital gain dividends received from a RIC

by a nonresident alien individual, intended to reduce the benefits conferred by the JGTRRA for qualified dividend income received from the RIC by individuals who are United States persons. Similarly, there is no indication that Congress intended that the benefits conferred by the JGTRRA for qualified dividend income received from a RIC would apply to reduce the benefits conferred by the AJCA for interest-related dividends and short-term capital gains received from the RIC. To achieve the purposes of the provisions of both the AJCA and the JGTRRA, *R* may designate each of the maximum amounts described above, and *A* and *B* may apply different designations to their distributions.

Therefore, with respect to its dividend distributions of $20,000*x* for the taxable year, *R* may designate $5,000*x* as a capital gain dividend, $10,000*x* as a distribution of qualified dividend income, $6,000*x* as an interest related dividend, and $5,000*x* as a short-term capital gain dividend. These are, respectively, 25 percent, 50 percent, 30 percent, and 25 percent of the $20,000*x* distribution. If *R* makes these designations and properly advises its shareholders that these percentages apply to the distributions that each received, then *A* and *B* may apply the designations as follows. Of the $20*x* received by A from *R*, *A* may treat 25 percent ($5*x*) as a capital gain dividend and 50 percent ($10*x*) as qualified dividend income that is subject to a maximum tax rate of 15 percent. The remaining $5*x* is reportable as dividend income that is not qualified dividend income. Of the $20*x* received by *B* from *R*, *B* may treat 25 percent ($5*x*) as a capital gain dividend, 30 percent ($6*x*) as an interest-related dividend, and 25 percent ($5*x*) as a short-term capital gain dividend. The remaining $4*x* is dividend income that is not qualified dividend income. Assuming all other necessary conditions are satisfied, the $5*x* of capital gain dividends, the $6*x* of interest-related dividends, and $5*x* of short-term capital gain dividends are exempt from United States withholding tax.

HOLDINGS

(1) In making the dividend designations permitted by §§ 852(b)(3)(C) and (b)(5)(A), 854(b)(1) and (2), and 871(k)(1)(C) and 2(C), a RIC may designate the maximum amount permitted under each provision even if the aggregate of all of the amounts so designated exceeds the total amount of the RIC's dividend distributions.

(2) Individual shareholders of the RIC who are United States persons may apply designations to the dividends they receive from the RIC that differ from designations applied by shareholders who are nonresident alien individuals.

DRAFTING INFORMATION

The principal author of this revenue ruling is Sonja Kotlica of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Ms. Kotlica at (202) 622–3960 (not a toll-free call).

Section 861.—Income From Sources Within the United States

26 CFR 1.861-8T: Computation of taxable income from sources within the United States and from other sources and activities (temporary).
26 CFR 1.861–9T: Allocation and apportionment of interest expense (temporary).

May a taxpayer that uses the fair market value method of valuing its assets for expense apportionment purposes obtain, by following certain specific procedures, automatic consent to switch to the alternative tax book value method within a certain limited time period. See Rev. Proc. 2005-28, page 1093.

Section 864.—Definitions and Special Rules

26 CFR 1.861–8T: Computation of taxable income from sources within the United States and from other sources and activities (temporary).
26 CFR 1.861–9T: Allocation and apportionment of interest expense (temporary).

May a taxpayer that uses the fair market value method of valuing its assets for expense apportionment purposes obtain, by following certain specific procedures, automatic consent to switch to the alternative tax book value method within a certain limited time period. See Rev. Proc. 2005-28, page 1093.

Section 871.—Tax on Nonresident Alien Individuals

In making the dividend designations permitted by sections 871(k)(1)(C) and (2)(C) of the Internal Revenue Code, may a regulated investment company ("RIC") designate the maximum amount permitted under each provision even if the aggregate of all of the amounts so designated exceeds the total amount of the RIC's dividend distributions. See Rev. Rul. 2005-31, page 1084.

Part III. Administrative, Procedural, and Miscellaneous

Electronic Submission of Lists Identifying Contracts Subject to Closing Agreements Under Rev. Rul. 2005–6

Notice 2005–35

This notice provides procedures under which a list identifying the contracts subject to a closing agreement under Rev. Rul. 2005–6, 2005–6 I.R.B. 471, may be submitted to the Internal Revenue Service in electronic format.

Rev. Rul. 2005–6 provides that for purposes of determining whether a contract qualifies as a life insurance contract under § 7702 of the Internal Revenue Code, and as a modified endowment contract (MEC) under § 7702A, charges for qualified additional benefits (QABs) must be taken into account under the expense charge rule of § 7702(c)(3)(B)(ii). The revenue ruling provides three alternatives to life insurance contract issuers whose compliance systems do not currently account for charges for QABs under the expense charge rule of § 7702(c)(3)(B)(ii). Under Alternatives B and C of the ruling an issuer may request relief in the form of a closing agreement under which contracts will not be treated as having failed the requirements of § 7702(a) or as MECs under § 7702A by reason of improperly accounting for charges for existing QABs. The issuer's request for a closing agreement must include a list identifying the contracts for which relief is requested.

The Internal Revenue Service has learned that, in some cases, a list identifying the contracts subject to a closing agreement may be sufficiently large that it could be burdensome for issuers to provide the list on paper. Accordingly, an issuer may submit the list electronically, in read-only format, on either a CD-ROM or diskette. Adobe Portable Document format is a suitable format. Other formats may be arranged on a case-by-case basis. The issuer must provide a total of 3 CD-ROMs or diskettes, one for each of the three (3) copies of the closing agreement.

The principal author of this notice is Melissa S. Luxner of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Melissa S. Luxner at (202) 622–3970 (not a toll-free call).

Weighted Average Interest Rates Update

Notice 2005–39

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code. In addition, it provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II), and the weighted average interest rate and permissible ranges of interest rates based on the 30-year Treasury securities rate.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004, provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 or 2005 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004–34, 2004–18 I.R.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices.

The composite corporate bond rate for April 2005 is 5.55 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

Month	For Plan Years Beginning in: Year	Corporate Bond Weighted Average	90% to 100% Permissible Range
May	2005	5.97	5.38 to 5.97

30-YEAR TREASURY SECURITIES WEIGHTED AVERAGE INTEREST RATE

Section 417(e)(3)(A)(ii)(II) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)–1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

Section 404(a)(1) of the Code, as amended by the Pension Funding Equity Act of 2004, permits an employer to elect to disregard subclause (II) of

§ 412(b)(5)(B)(ii) to determine the maximum amount of the deduction allowed under § 404(a)(1).

The rate of interest on 30-year Treasury securities for April 2005 is 4.65 percent. Pursuant to Notice 2002–26, 2002–1 C.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

The following 30-year Treasury rates were determined for the plan years beginning in the month shown below.

For Plan Years Beginning in: Month	Year	30-Year Treasury Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
May	2005	5.03	4.52 to 5.28	4.52 to 5.53

Drafting Information

The principal authors of this notice are Paul Stern and Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Stern may be reached at 1–202–283–9703. Mr. Montanaro may be reached at 1–202–283–9714. The telephone numbers in the preceding sentences are not toll-free.

Election for Multiemployer Plan to Defer Net Experience Loss Charge

Notice 2005–40

I. Purpose and Background

This notice sets forth guidance regarding the election that can be made for certain multiemployer plans to defer charges with respect to net experience losses pursuant to § 412(b)(7)(F) of the Internal Revenue Code (Code) and section 302(b)(7)(F) of the Employee Retirement Income Security Act of 1974 (ERISA), as added by section 104 of the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108–218.

Section 412 of the Code sets forth minimum funding standards that apply to defined benefit plans. The minimum funding standards are implemented by a series of charges and credits to a funding standard account as described in § 412(b). One of the charges to the funding standard account specified in § 412(b) pertains to net experience losses. Section 412(b)(2)(B)(iv) requires that net experience losses for any plan year be amortized in equal annual installments. The amortization period for net experience losses for multiemployer plans is 15 years.

Section 412(b)(7)(F) provides an election for certain multiemployer plans that permits the deferral of a portion of the amortization charge arising from the net experience loss for the first plan year beginning after December 31, 2001 (the 2002 loss). The § 412(b)(7)(F) election to defer a portion of the amortization charge of the 2002 loss is available for an eligible multiemployer plan (as that term is described below) with respect to plan years beginning after June 30, 2003, and before July 1, 2005. Section 412(b)(7)(F)(iii) contains restrictions on plan amendments that increase benefit liabilities during the period the § 412(b)(7)(F) deferral election is in effect.

Section 302 of ERISA contains minimum funding standard requirements that are parallel to those under § 412 of the Code, and section 302(b)(7)(F) of ERISA provides an election that is parallel to the election under § 412(b)(7)(F) of the Code. Under section 101 of Reorganization Plan No. 4 of 1978, 1979–1 C.B. 480, the Secretary of the Treasury has sole interpretive authority over the subject matter addressed in this Notice 2005–40. Accordingly, unless otherwise specified, all references in this Notice 2005–40 to § 412 of the Code also apply to the parallel provisions of section 302 of ERISA.

Section 302(b)(7)(F)(vi) of ERISA requires that, if a plan sponsor elects to defer a net experience loss charge under section 302(b)(7) of ERISA and § 412(b)(7) of the Code for any plan year, the plan administrator must provide written notices of the election to: (1) the participants and beneficiaries under the plan, (2) each labor organization representing such participants or beneficiaries, (3) each employer that has an obligation to contribute under the plan, and (4) the Pension Benefit Guaranty Corporation (PBGC). The notices must be provided within 30 days of the filing of the election for such year, and the notices of the election must include specified information. Section 104(a)(2) of PFEA amended section 502(c)(4) of ERISA to provide that, if any person fails to provide any of these notices required under section 302(b)(7)(F)(vi) of ERISA on a timely basis that person may be liable to the Department of Labor (DOL) for a penalty of up to $1,000 a day from the date of the failure to provide the proper notice.

Section 1.412(c)(3)–1(d)(1)(i) of the Income Tax Regulations provides that, except as otherwise provided by the Commissioner, a reasonable funding method does not anticipate changes in plan benefits that become effective, whether or not retroactively, in a future plan year or that become effective after the first day of, but during, a current plan year.

Rev. Rul. 77–2, 1977–1 C.B. 120, provides guidance regarding the minimum funding requirements with respect to a change in the benefit structure of a qualified pension plan that becomes effective during a plan year. Section 2.02 of Rev. Rul. 77–2 provides that, in the case of a change in the benefit structure that becomes effective as of a date during a plan year (but subsequent to the first day in such plan year), the charges and credits to the funding standard account shall not reflect the change in such benefit structure for the portion of such plan year prior to

the effective date of such change, and shall reflect the change in such benefit structure for the portion of the plan year subsequent to the effective date of the change. Section 3 of Rev. Rul. 77–2 provides that, in determining the charges and credits for the plan year, in lieu of using the rule of section 2.02 of Rev. Rul. 77–2, a plan is permitted to disregard a change in benefit structure that is adopted after the valuation date for the year.

Section 412(c)(8) of the Code provides that any amendment applying to a plan year that is adopted after the close of the plan year but no later than 2½ months after the close of the plan year and that does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment relates is, at the election of the plan administrator, deemed to have been made on the first day of such plan year (subject to additional restrictions on plan amendments that reduce benefits). Pursuant to Rev. Rul. 79–325, 1979–2 C.B. 190, and Rev. Proc. 94–42, 1994–1 C.B. 717, § 412(c)(8) also applies to plan amendments adopted during the plan year to which the amendment relates.

II. Questions and Answers

A. *Plans That Are Eligible to Defer a Net Experience Loss Charge*

Q–1. Which plans are eligible for the election to defer a net experience loss charge under § 412(b)(7)(F) for a plan year?

A–1. A plan is eligible for the election to defer a net experience loss charge under § 412(b)(7)(F) for a plan year if it is a multiemployer plan within the meaning of § 414(f) of the Code that is an eligible multiemployer plan as described in Q&A–2 of this notice for the plan year.

Q–2. Which plans are eligible multiemployer plans for a plan year?

A–2. A plan is an eligible multiemployer plan for a plan year if it satisfies all of the following conditions: (1) for the first plan year beginning after December 31, 2001, the plan had a net investment loss of at least 10 percent, as determined pursuant to Q&A–4 of this notice, (2) the plan's enrolled actuary makes a certification in accordance with Q&A–6 of this notice that the plan is projected to have an accumulated funding deficiency within the meaning of § 412(a) for any plan year beginning after June 30, 2003, and before July 1, 2006, and (3) the plan is not ineligible for the election pursuant to § 412(b)(7)(F)(v) for the plan year, as described in Q&A–3 of this notice.

Q–3. Which plans are ineligible for the election under § 412(b)(7)(F)(v) for a plan year?

A–3. For a plan year a plan is ineligible for an election under § 412(b)(7)(F)(v) if: (1) for any taxable year beginning during the 10-year period preceding the particular plan year, any employer required to contribute to the plan failed to timely pay any excise tax under § 4971 with respect to that plan; or (2) for any plan year beginning after June 30, 1993, and before the particular plan year, (a) the average contribution required to be made to the plan by all employers did not exceed 10 cents per hour, (b) no employer contributions were required, (c) a waiver of the minimum funding standards under § 412(d) was granted or (d) an extension of the amortization period under § 412(e) was granted.

Q–4. How is it determined whether the plan had a net investment loss of at least 10 percent for the first plan year beginning after December 31, 2001?

A–4. A plan had a net investment loss of at least 10 percent for the first plan year beginning after December 31, 2001, if the plan's net investment return for that plan year as determined under Q&A–5 of this notice was less than or equal to negative 10 percent.

Q–5. How is the net investment return for a plan year determined for purposes of Q&A–4 of this notice?

A–5. For purposes of determining whether a plan had a net investment loss of at least 10 percent for the first plan year beginning after December 31, 2001, the net investment return for a plan year is equal to the amount determined using the following formula: $2I_{(m)}/(A+B-I_{(m)})$. Under this formula, A equals the fair market value of plan assets at the beginning of the plan year, B equals the fair market value of plan assets at the end of the plan year, and $I_{(m)}$ equals B-(A+C-D), where C equals the total amount of contributions made during the plan year and D equals the total amount of benefit distributions made during that plan year.

Q–6. What rules must the plan's enrolled actuary apply in projecting, for purposes of the certification required under § 412(b)(7)(F)(iv)(II), that the plan will have an accumulated funding deficiency for a specific plan year?

A–6. In order to certify that a plan will have an accumulated funding deficiency for a specific plan year, the plan's enrolled actuary must project the charges and credits to the plan's funding standard account through the end of that specific plan year using valuation data and results from the most recently completed valuation. The projection of charges and credits is made using actuarial assumptions that applied in the actuarial valuation for the last plan year ending before April 10, 2004. For example, if a plan has a beginning of the year valuation date, the enrolled actuary must assume that the investment return for a year will equal the product of the market value of assets as measured for purposes of the most recently completed valuation and the assumed interest rate under § 412(b)(5)(A) used for the valuation for the last plan year ending before April 10, 2004, and must then determine the actuarial value of assets under the asset valuation method that is part of the plan's funding method. In addition, the enrolled actuary must assume that there will be no new entrants to the plan and no plan amendments after the most recently completed valuation (other than new entrants or plan amendments taken into account under that valuation) and must disregard the effect of any election for the current plan year or future plan year to defer a net experience loss charge that is made in accordance with this notice.

B. *Effect of a § 412(b)(7)(F) Deferral Election*

Q–7. What is the effect of an election for a plan year under § 412(b)(7)(F)?

A–7. The effect of an election for a plan year under § 412(b)(7)(F) is to defer up to 80 percent of the otherwise applicable amortization charge under § 412(b)(2)(B)(iv) with respect to the net experience loss for the first plan year beginning after December 31, 2001. Thus, the amount that is deferred is not charged to the funding standard account for the year of the election, but is instead charged to the funding standard account for a

later year. The amount of the amortization charge that is deferred under the § 412(b)(7)(F) election, increased with interest pursuant to Q&A–9 of this notice, must be charged to the funding standard account for either of the two plan years that immediately succeed the plan year for which the election is made, as selected by the plan sponsor. A plan for which the election is made is subject to the limitations on benefit increases described in Q&A–19 through Q&A–29 of this notice.

Q–8. For what plan years can an eligible multiemployer plan make a § 412(b)(7)(F) deferral election?

A–8. The § 412(b)(7)(F) deferral election is only permitted to be made for plan years that begin after June 30, 2003, and before July 1, 2005. A separate election is permitted for each plan year.

Q–9. What interest rate applies to an amortization charge that is deferred under the § 412(b)(7)(F) election?

A–9. The interest rate described in § 6621(b) applies to the amount deferred under a § 412(b)(7)(F) election. This interest rate applies until the valuation date for the plan year in which the amount deferred is charged.

C. *Method of Making a § 412(b)(7)(F) Deferral Election*

Q–10. Who makes the § 412(b)(7)(F) deferral election for a plan year with respect to a net experience loss charge of an eligible multiemployer plan?

A–10. The joint board of trustees of an eligible multiemployer plan (or its authorized delegate) makes the § 412(b)(7)(F) deferral election for a plan year.

Q–11. How is the § 412(b)(7)(F) deferral election made for a plan year?

A–11. A § 412(b)(7)(F) deferral election for a plan year is made by filing the election with the Service. The election must include (1) the name of the plan sponsor, (2) the tax identification number of the plan sponsor, (3) the name of the plan, (4) the number of the plan, (5) the plan year of the election to defer a net experience loss charge, (6) the amount of net experience loss charge being deferred, (7) the plan year to which that net experience loss charge is being deferred, and (8) a statement that the notice requirements of section 302(b)(7)(F) of ERISA have been or will be satisfied. In addition, the election must be accompanied by the § 412(b)(7)(F)(iv)(II) certification from the plan's enrolled actuary that the plan is projected to have an accumulated funding deficiency that is made in accordance with Q&A–6 of this notice. The § 412(b)(7)(F) deferral election that is filed for a plan year is permitted to include a certification that an amendment is a fully funded amendment as described in Q&A–27 of this notice.

The address for filing elections and certifications with the Service is as follows:

Internal Revenue Service
Commissioner, Tax Exempt and
Government Entities Division
Attention: SE:T:EP:RA:T
Deferral of Net Experience Loss
Charge Election and/or Amendment
Certification
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

Q–12. When must the § 412(b)(7)(F) deferral election for a plan year be filed with the Service?

A–12. In general, a § 412(b)(7)(F) deferral election for a plan year must be filed with the Service before the end of the plan year. However, an election made after the end of the plan year will nonetheless be treated as timely filed for a plan year if it is filed with the Service by June 30, 2005.

D. *Notification Requirements*

Q–13. Who must be provided notice that a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge has been filed with the Service?

A–13. Each participant of the electing eligible multiemployer plan, each beneficiary receiving benefits under the plan, each labor organization representing the participants and beneficiaries under the plan, each employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained, and the PBGC must be provided written notice that a § 412(b)(7)(F) election to defer a net experience loss charge has been filed with the Service. The determination of which participants, beneficiaries, labor organizations and employers are required to receive the notice is permitted to be made as of any one date within the plan year for which the election is made.

Q–14. How does a plan provide notice of the § 412(b)(7)(F) deferral election for a plan year to parties other than the PBGC?

A–14. A plan satisfies the requirement to provide notice of a § 412(b)(7)(F) deferral election to parties other than the PBGC for a plan year if the notice is mailed to the last known address of each participant, beneficiary, labor organization, and employer who must be provided notice of the § 412(b)(7)(F) deferral election pursuant to Q&A–13 of this notice.

Q–15. How is notice of a § 412(b)(7)(F) deferral election for a plan year made to the PBGC?

A–15. All notifications to the PBGC must be furnished in a manner consistent with the requirements of Part 4000 of the PBGC's regulations (29 CFR Part 4000).

Q–16. When must the notice be provided that a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge has been filed with the Service?

A–16. Notice of a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge must be provided within 30 days of filing the election with the Service.

Q–17. What must be contained in the notice that a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge has been filed with the Service?

A–17. A notice that a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge has been filed with the Service must set forth certain information described in section 302(b)(7)(F)(vi) of ERISA and the context in which the information is being provided. If the notice includes the following language with the appropriate insertions this requirement is satisfied:

1. As permitted under the Pension Funding Equity Act of 2004, the Board of Trustees of [enter name of eligible multiemployer plan] has made a special election that reduces the amount of contributions that are required to be made for [enter plan year of election]. The reduction in contributions is [enter amount]. This amount, with interest, will be added to the contribution required to be made for the [enter plan year to which the amount deferred is to be charged] plan year.

2. If a multiemployer plan becomes insolvent, the following benefit payments are guaranteed by the PBGC. [Insert the description of the benefit payments guaranteed by the PBGC as contained in the heading under "Benefit Payments Guaranteed by the PBGC" in the Appendix to proposed rules issued by the DOL under § 2520.101–4 at 70 Fed. Reg. 6306, 6312 (Feb. 4, 2005).]

Q–18. What is the sanction if a plan administrator fails to comply with the notice requirement?

A–18. The DOL may assess a civil penalty of not more than $1,000 a day for each violation by any person of the notice requirements of section 302(b)(7)(F)(vi) of ERISA.

E. *Restrictions on Benefit Increases*

Q–19. What are the restrictions on plan amendments for a plan for which the § 412(b)(7)(F) deferral election for a plan year is made?

A–19. Section 412(b)(7)(F)(iii) of the Code provides a restriction on benefit increases in the case of a plan making a § 412(b)(7)(F) deferral election for a plan year. If a § 412(b)(7)(F) deferral election for a plan year is in effect, the § 412(b)(7)(F)(iii) benefit restriction generally prohibits the adoption of any plan amendment that increases benefit liabilities (including a plan amendment increasing an early retirement benefit or retirement-type subsidy, changing the accrual of benefits in a manner that results in increased accruals, or changing the rate at which benefits become nonforfeitable in a manner that results in faster vesting). However, the § 412(b)(7)(F)(iii) benefit restriction does not apply if (1) the amendment is the result of a collective bargaining agreement in effect on April 10, 2004, or (2) the enrolled actuary certifies in accordance with Q&A–27 of this notice that the amendment is a fully funded amendment as described in Q&A–21 of this notice.

Annual cost-of-living adjustments to statutory limits that are implemented pursuant to plan terms that were adopted before April 10, 2004, are not treated as plan amendments that are subject to the requirements of § 412(b)(7)(F)(iii). Thus, annual cost-of-living adjustments to the § 401(a)(17) limit and the § 415(b)(1)(A) dollar limit that are automatically put into effect pursuant to plan terms that were adopted before April 10, 2004, are not treated as plan amendments to which the § 412(b)(7)(F)(iii) benefit restrictions apply.

Q–20. For what plan years does the § 412(b)(7)(F)(iii) benefit restriction apply?

A–20. The § 412(b)(7)(F)(iii) benefit restriction applies to each § 412(b)(7)(F) deferral election that is made and applies for the period the deferral is in effect. Thus, for example, if the plan sponsor with a calendar plan year makes the § 412(b)(7)(F) election to defer a net experience loss charge for the 2004 plan year (with the amount instead charged in the 2006 plan year), a plan amendment that increases benefit liabilities is not permitted in 2004 unless it is required pursuant to a collective bargaining agreement in effect on April 10, 2004 (regardless of when a corresponding plan amendment is made), or it is a fully funded amendment as described in Q&A–21 of this notice. Furthermore, the same restriction on plan amendments increasing benefit liabilities applies in 2005 regardless whether the § 412(b)(7)(F) deferral election is made for 2005.

For purposes of determining whether a plan amendment is subject to a § 412(b)(7)(F)(iii) benefit restriction, a plan amendment is considered adopted at the later of the time it is adopted or made effective. Thus, a plan amendment with different benefit increases that become effective during different plan years is considered adopted during each plan year in which each benefit increase becomes effective (but no earlier than the plan year for which the amendment is added to the plan).

Q–21. What is a fully funded amendment that is not prohibited by the benefit restrictions of § 412(b)(7)(F)(iii)?

A–21. An amendment is a fully funded amendment if it includes terms that require that contributions to the plan will exceed the § 412(b)(7)(F)(iii) minimum amount described in Q&A–22 of this notice for the period described in Q&A–23 of this notice. A plan amendment is permitted to satisfy this requirement by reflecting the formula for the § 412(b)(7)(F)(iii) minimum amount set forth in Q&A–22. Alternatively, a plan amendment is permitted to satisfy this requirement by providing for a dollar amount of contributions or for some other method of determining contributions, provided that the amount of contributions specified in the plan exceeds the § 412(b)(7)(F)(iii) minimum amount. For purposes of determining whether an amendment is a fully funded amendment and for purposes of an enrolled actuary's certification under Q&A–27 of this notice, the terms of a collective bargaining agreement pursuant to which a plan is maintained are deemed to be included in plan terms.

Q–22. How is the § 412(b)(7)(F)(iii) minimum amount determined?

A–22. The § 412(b)(7)(F)(iii) minimum amount is equal to the sum of the minimum required contribution under § 412 determined as if the amendment had not been made (taking into account the § 412(b)(7)(F) deferral election to defer a net experience loss charge) plus the incremental amendment amount. The incremental amendment amount is equal to the difference between the required minimum contribution under § 412 that would have been due taking into account the amendment and the required minimum contribution under § 412 that would have been due disregarding the amendment. The determination of the required minimum contribution under § 412 that would have been due taking into account the amendment must be computed in accordance with the special rules set forth in Q&A–24 of this notice.

Q–23. For what years must an amendment provide that the § 412(b)(7)(F)(iii) minimum amounts are required to be contributed in order to be a fully funded amendment?

A–23. In order to be a fully funded amendment, an amendment must provide that the § 412(b)(7)(F)(iii) minimum amount is required to be contributed for each plan year in the period an election to defer a net experience loss charge is in effect. For example, if a plan sponsor with a calendar plan year made a § 412(b)(7)(F) deferral election to defer a net experience loss charge for the 2004 plan year, with the amount instead charged in the 2006 plan year, and adopted a plan amendment increasing benefit liabilities in 2004, the amendment is a fully funded plan amendment only if the § 412(b)(7)(F)(iii)

minimum amounts are required to be contributed in 2004 and 2005. For rules regarding the treatment of a credit balance generated as a result of contributions made with respect to the § 412(b)(7)(F)(iii) minimum amount for the prior plan year, see Q&A–26 of this notice.

Q–24. If an amendment is adopted after the first day of the plan year, what special rules apply in determining the required minimum contribution under § 412 that would have been due taking into account the amendment?

A–24. For purposes of determining the incremental amendment amount, if an amendment is adopted after the first day of the plan year, the calculation of the required minimum contribution under § 412 that would have been due taking into account the amendment generally is made as if the amendment had been adopted and made effective on the first day of the plan year (*i.e.*, the amendment must be fully reflected in plan costs for this purpose). However, if the amendment does not provide for benefit increases attributable to service prior to the beginning of the plan year, and is not effective as of the first day of the plan year, the determination of the required minimum contribution under § 412 that would have been due taking into account the amendment is permitted to be made in accordance with the rules of section 2.02 of Rev. Rul. 77–2.

Q–25. How does the § 412(b)(7)(F)(iii) minimum amount affect the application of the minimum funding requirements of § 412?

A–25. The § 412(b)(7)(F)(iii) minimum amount does not affect the computation of minimum required contributions under § 412. If an amount in excess of minimum required contributions is contributed for a plan year on account of the § 412(b)(7)(F)(iii) minimum amount, the plan's funding standard account will reflect a credit balance on account of the excess.

Q–26. How does a credit balance generated as a result of contributions made with respect to the § 412(b)(7)(F)(iii) minimum amount for the first plan year a § 412(b)(7)(F) deferral election is in effect affect the computation of the § 412(b)(7)(F)(iii) minimum amount for the second plan year a § 412(b)(7)(F) deferral election is in effect?

A–26. If an amendment was adopted in a plan year for which the § 412(b)(7)(F) deferral election was made, the credit balance resulting from the excess of the § 412(b)(7)(F)(iii) minimum amount for that plan year over the minimum required contribution for that plan year must be disregarded in computing the § 412(b)(7)(F)(iii) minimum amount for the second plan year the § 412(b)(7)(F) deferral election is in effect. Thus, for example, if a plan sponsor with a calendar plan year made a § 412(b)(7)(F) deferral election to defer a net experience loss charge for the 2004 plan year, with the amount instead charged in the 2006 plan year, and then adopts a plan amendment increasing benefit liabilities in 2004, the credit balance resulting from the excess of the § 412(b)(7)(F)(iii) minimum amount for the 2004 plan year over the minimum required contribution for the 2004 plan year must be disregarded in computing the § 412(b)(7)(F)(iii) minimum amount for 2005. However, if the contributions made for the 2004 plan year exceed the § 412(b)(7)(F)(iii) minimum amount for that plan year, the credit balance attributable to that excess can be taken into account in determining the § 412(b)(7)(F)(iii) minimum amount for 2005.

Q–27. How does the plan's enrolled actuary certify that an amendment is a fully funded amendment?

A–27. The plan's enrolled actuary certifies that an amendment is a fully funded amendment by filing a certification with the Service that, following the adoption of the plan amendment, the plan includes terms to the effect that contributions to the plan while the net experience loss charge deferral election is in effect will exceed the § 412(b)(7)(F)(iii) minimum amount described in Q&A–22 of this notice. The certification may be based either on plan terms incorporating the formula described in Q&A–22 of this notice or on plan terms providing for either an amount of contributions or an alternative formula for contributions under which contributions for the plan year will exceed the § 412(b)(7)(F)(iii) minimum amount. The certification must also provide the derivation of the § 412(b)(7)(F)(iii) minimum amount as well as the amount of contributions required under the terms of the plan (if determined under an alternative formula).

If the certification that an amendment is a fully funded amendment has not been included with the § 412(b)(7)(F) deferral election described in Q&A–11 of this notice, a separate certification must be filed by the due date for the filing of Form 5500 for the plan year (or June 30, 2005, if later). The certification must be filed at the address described in Q&A–11 of this notice.

Q–28. What is the effect of the adoption of an amendment that increases benefit liabilities in violation of the § 412(b)(7)(F)(iii) benefit restrictions?

A–28. The adoption of an amendment that increases benefit liabilities in violation of the § 412(b)(7)(F)(iii) benefit restrictions will invalidate a § 412(b)(7)(F) deferral election beginning with the plan year the amendment is adopted.

Q–29. What are the consequences of failure to contribute the amount required under a fully funded amendment?

A–29. If the contributions required under the terms of a fully funded amendment are not made on or before the due date for contributions for the plan year, the failure to contribute the § 412(b)(7)(F)(iii) minimum amount invalidates the § 412(b)(7)(F) deferral election.

III. Paperwork Reduction Act

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1935.

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

The collection of information in this notice is in Q&A–11, Q&A–14, Q&A–15, Q&A–17, and Q&A–27 of section II. This information is required to enable delegates of the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue Service to monitor and make valid determinations with respect to whether a multiemployer plan may elect to defer certain charges to the multiemployer plan's funding standard account. As a result of such elections, the net ex-

perience loss of a multiemployer plan's funding standard account will be deferred and charges for these multiemployer plans will be based on amounts specified under § 412(b)(7) of the Code and section 302(b)(7) of ERISA. Such an election may cause the excise tax for failure to meet the minimum funding standards not to be incurred. The likely respondents are businesses and other for-profit institutions or nonprofit institutions.

The estimated total annual reporting and/or recordkeeping burden is 960 hours.

The estimated annual burden per respondent/recordkeeper varies from 60 to 180 hours, depending on individual circumstances, with an estimated average of 80 hours. The estimated number of respondents and/or recordkeepers is 12.

The estimated frequency of responses is occasional.

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

Drafting Information

The principal authors of this notice are Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division and Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). Mr. Rubin may be reached at 202–283–9888 (not a toll-free number).

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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, §§ 864; 1.861–8T; 1.861–9T.)

Rev. Proc. 2005–28

SECTION 1. PURPOSE

This revenue procedure sets forth the administrative procedure under which a taxpayer described in § 3 of this revenue procedure may obtain automatic consent to change from the fair market value method to the alternative tax book value method of valuing assets for purposes of apportioning expenses pursuant to § 1.861–9T(g) of the Temporary Income Tax Regulations. Accordingly, taxpayers that change from the fair market value method to the alternative tax book value method pursuant to this revenue procedure will be treated as expressly authorized by the Commissioner to change methods. This automatic consent procedure applies to changes in apportionment method requested for taxable years beginning on or after March 26, 2004, but before March 26, 2006, and for which a return has not previously been filed.

SECTION 2. BACKGROUND

.01 Section 864(e)(2) of the Internal Revenue Code provides that allocation and apportionment of interest expense is made on the basis of assets rather than on the basis of gross income. For this purpose, §§ 1.861–8T(c)(2) and 1.861–9T(g)(1)(ii) of the temporary regulations permit a taxpayer to elect to compute the value of its assets under either the tax book value method or the fair market value method. A taxpayer using the tax book value method may elect to change to the fair market value method at any time. *See* Rev. Proc. 2003–37, 2003–1 C.B. 950. However, § 1.861–8T(c)(2) provides that a taxpayer electing to use the fair market value method must continue to use that method unless expressly authorized by the Commissioner to change methods.

.02 On March 26, 2004, the Treasury Department and the Internal Revenue Service (IRS) published temporary regulations in the Federal Register (T.D. 9120, 2004–19 C.B. 881 [69 FR 15673]). These regulations amended §1.861–9T by adding §1.861–9T(i). Section 1.861–9T(i) provides an alternative method of determining the tax book value of assets (the "alternative tax book value method"). Prior to the issuance of the temporary regulations, a taxpayer could value assets under one of two methods: the fair market value method and the regular tax book value method. The alternative tax book value method set forth in the temporary regulations is a third method which allows a taxpayer to elect to determine the tax book value of its tangible property that is subject to a depreciation deduction under § 168 as though all such property had been depreciated using the straight line method, conventions, and recovery periods of the alternative depreciation system of § 168(g). The alternative tax book value method therefore provides a taxpayer with the option of determining the adjusted bases of both foreign and domestic assets under one consistent depreciation method and helps minimize basis disparities that may arise under the regular tax book value method. The alternative tax book value method applies solely for purposes of apportioning expenses (including the calculation of the alternative minimum tax foreign tax credit pursuant to § 59(a) of the Code) under the asset method described in § 1.861–9T(g).

.03 Section 1.861–9T(i)(2)(i) generally allows a taxpayer to elect to value its assets using the alternative tax book value method with respect to any taxable year beginning on or after March 26, 2004. However, under § 1.861–8T(c)(2), a taxpayer using the fair market value method must obtain the consent of the Commissioner to change methods, including a change to the alternative tax book value method.

.04 The preamble to the temporary regulations states that the Treasury Department and the IRS intend to issue a revenue procedure to provide temporary rules granting taxpayers automatic consent to change from the fair market value method to the alternative tax book value method. Accordingly, this revenue procedure provides temporary rules for obtaining automatic consent to change from the fair market value method to the alternative tax book value method of valuing assets pursuant to § 1.861–9T(g)(1)(ii). Notwithstanding these temporary rules for obtaining automatic consent, a taxpayer may request, under the regular ruling process, the consent of the Commissioner to change from the fair market value method to the regular tax book value method or the alternative tax book value method. These temporary rules do not affect the ability of taxpayers currently valuing assets under the regular tax book value method to make a change to the alternative tax book value method with respect to any taxable year beginning on or after March 26, 2004.

SECTION 3. SCOPE

.01 This revenue procedure applies to any taxpayer requesting to change from the fair market value method to the alternative tax book value method of asset valua-

tion for a taxable year beginning on or after March 26, 2004, but before March 26, 2006, for which no return has previously been filed.

SECTION 4. APPLICATION

.01 A taxpayer within the scope of this revenue procedure is granted the consent of the Commissioner to change to the alternative tax book value method provided that the other conditions of this § 4 are satisfied.

.02 A corporation described in § 3.01 shall request to change to the alternative tax book value method on a timely filed Form 1118 by selecting that asset valuation method on Part II of Schedule H and attaching to Form 1118 the statement set forth in § 4.04. In the case of such taxpayers electronically filing Form 1118, the statement must be included in the electronic version of Form 1118.

.03 A taxpayer, other than a corporation, described in § 3.01 shall request to change to the alternative tax book value method on a timely filed Form 1116 by attaching to Form 1116 the statement set forth in § 4.04. In the case of such taxpayers electronically filing Form 1116, the statement must be entered into the Election Explanation Record of the electronic version of Form 1040, Form 1041, or other relevant form.

.04 The statement referred to in §§ 4.02 and 4.03 shall provide as follows: "For the immediately preceding tax year, [name of taxpayer] valued assets for expense apportionment purposes using the fair market value method. Pursuant to Rev. Proc. 2005–28, [name of taxpayer] is changing from the fair market value method to the alternative tax book value method of asset valuation. This change to the alternative tax book value method applies prospectively beginning with [name of taxpayer]'s [XXXX] taxable year."

.05 Any taxpayer that changes to the alternative tax book value method under this revenue procedure must maintain all documentation necessary to establish its change in valuation methods and its eligibility for the benefits of this revenue procedure.

SECTION 5. EFFECTIVE DATE

.01 This revenue procedure is effective for requests to change from the fair market value method to the alternative tax book value method for taxable years beginning on or after March 26, 2004, but before March 26, 2006, for which no return has previously been filed.

SECTION 6. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1944.

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

The collections of information in this revenue procedure are in § 4. They are required to enable the IRS to determine whether the taxpayer is eligible for an automatic change from the fair market value method to the alternative tax book value method. The information will also inform revenue agents as to the years for which the alternative tax book value method is being adopted. The collections of information are required in order to obtain the benefit of the alternative tax book valuation method. The likely respondents are businesses.

The estimated total annual reporting and/or recordkeeping burden is 100 hours. The estimated annual burden per respondent and/or recordkeeper is an estimated average of .5 hours. The estimated number of respondents and/or recordkeepers is 200. The estimated frequency of response is occasional.

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

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Margaret A. Hogan of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Margaret A. Hogan at (202) 622–3850 (not a toll-free call).

Part IV. Items of General Interest

Section 1374 Effective Dates; Correction

Announcement 2005–35

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects temporary regulations (T.D. 9170, 2005–4 I.R.B. 363) that were published in the **Federal Register** on Wednesday, December 22, 2004 (69 FR 76612). The document contains temporary regulations providing guidance concerning the applicability of section 1374 to S corporations that acquire assets in carryover basis transactions from C corporations on or after December 27, 1994, and to certain corporations that terminate S corporation status and later elect again to become S corporations.

DATES: This document is effective on December 22, 2004.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (T.D. 9170) that are the subject of this correction are under section 1374 of the Internal Revenue Code.

Need for Correction

As published, the temporary regulations (T.D. 9170) contain errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1 — INCOME TAXES

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

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

Par. 2. The section heading and text of §1.1374–8T is revised to read as follows:

§1.1374–8T 1374(d)(8) transactions (temporary).

(a)(1) [Reserved]. For further guidance, see §1.1374–8(a).

(2) Section 1374(d)(8) applies to any section 1374(d)(8) transaction, as defined in paragraph (a)(1) of this section, that occurs on or after December 27, 1994, without regard to the date of the corporation's election to be an S corporation under section 1362.

(b) through (d) [Reserved]. For further guidance, see §1.1374–8(b) through (d).

Cynthia 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 May 4, 2005, 8:45 a.m., and published in the issue of the Federal Register for May 5, 2005, 70 F.R. 23790)

Closing of the GUST Program for Defined Contribution Pre-Approved Plans

Announcement 2005–36

The Service announced the opening of the initial (*i.e.*, EGTRRA[1]) six-year amendment/approval cycle for defined contribution pre-approved (*i.e.*, master and prototype (M&P) and volume submitter (VS)) plans in Rev. Proc. 2005–16, 2005–10 I.R.B. 674. Effective on February 17, 2005, Rev. Proc. 2005–16 modified and superseded Rev. Proc. 2000–20, 2000–1 C.B. 553. Accordingly, pursuant to this Announcement 2005–36, the GUST[2] defined contribution pre-approved program will close as of June 15, 2005.

Applications for:

- New defined contribution pre-approved non-mass submitter and mass submitter (*i.e.*, identical adopters and minor modifiers) plans, and
- New sponsors and practitioners of defined contribution non-mass submitter and mass submitter (*i.e.*, identical adopters and minor modifiers) plans

may be submitted through June 15, 2005. Any application for a defined contribution pre-approved plan (as described in the preceding two bullets) postmarked after June 15, 2005, will be returned along with the user fee. In addition, any application for a defined contribution pre-approved plan which previously received a GUST opinion or advisory letter (except for plans described in the second bullet) will be returned along with the user fee.

In the case of submissions described in the preceding two bullets that were previously returned after Rev. Proc. 2005–16 was issued, the applicants are permitted to resubmit their pre-approved applications, but not later than June 15, 2005. M&P sponsors and VS practitioners should send their applications to the respective Service offices which processed previous GUST applications.

The Service will announce at a later date the closing of the GUST programs for defined benefit pre-approved plans and for individually designed plans.

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[1] Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16

[2] The term "GUST" refers to the following:
- the Uruguay Round Agreements Act, Pub. L. 103–465;
- the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353;
- the Small Business Job Protection Act of 1996, Pub. L. 104–188;
- the Taxpayer Relief Act of 1997, Pub. L. 105–34;
- the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206; and
- the Community Renewal Tax Relief Act of 2000, Pub. L. 106–554.

The GUST remedial amendment period generally ended on the later of February 28, 2002, or the end of a plan's 2001 plan year. However, for certain plans eligible for an extended GUST remedial amendment period under Rev. Proc. 2000–20, 2000–1 C.B. 553, the period generally ended on September 30, 2003.

Submission Deadlines for Initial Six-Year Cycle for Defined Contribution Pre-Approved Plans for EGTRRA Program

In the draft revenue procedure attached to Announcement 2004–71, 2004–40 I.R.B. 569, the Service proposed October 31, 2005, as the end of the submission period for sponsors and practitioners of mass submitter plans and national sponsor plans. Pursuant to this Announcement 2005–36, the deadline for mass submitter plan and national sponsor plan applications is October 31, 2005. Rev. Proc. 2005–16 stated that the end of the submission period for sponsors and practitioners of defined contribution pre-approved plans is January 31, 2006; this later deadline, however applies only for submissions of defined contribution non-mass submitter pre-approved plans.

Authority of Volume Submitter Practitioner to Amend for Adopting Employers

Announcement 2005–37

Section 15.05 of Rev. Proc. 2005–16, 2005–10 I.R.B. 674, effective February 17, 2005, permits a Volume Submitter (VS) plan to include a provision ("implementing amendment") that authorizes the VS practitioner to amend the plan on behalf of adopting employers. This announcement explains how a VS practitioner adopts the implementing amendment, describes the type of amendments that can be made on behalf of adopting employers, provides practitioners with interim relief of 60 days to adopt the implementing amendment in certain cases, and contains sample language for the implementing amendment.

Procedures for adopting implementing amendment

There are 3 steps to implement these procedures:

- The VS practitioner must send an authorization form and a copy of the proposed amendment to each adopting employer. The authorization form should inform the employer that if it does not accept this implementing amendment or adopt another pre-approved plan, the employer's plan will become an individually designed plan. The authorization form should also require the employer to state whether it accepts or rejects the practitioner's authority to amend on its behalf.
- Each employer must return the completed form to the practitioner, signed and dated.
- Generally, the VS practitioner should not adopt the implementing amendment for a plan until it receives responses from all adopting employers. However, interim relief for certain amendments is provided below.

For a defined contribution VS plan, the implementing amendment will be reviewed as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16 (EGTRRA) submission of the VS plan under Rev. Proc. 2005–16 if the plan is amended by the date the VS practitioner submits a timely application for an advisory letter. (Applications are due October 31, 2005, for mass submitter and national sponsor applications and January 31, 2006, for other defined contribution pre-approved plans.) With respect to a defined benefit VS plan, which has a later submission date, the implementing amendment will also be reviewed as part of the EGTRRA submission if the plan is amended by the date the VS practitioner submits a timely application for a defined benefit plan.

Types of Amendments Made for Adopting Employers

Section 15.05 of Rev. Proc. 2005–16 provides that the authority to amend on behalf of employers extends to changes in the Code, regulations, revenue rulings, and other statements published by the Service, including model, sample or other required good faith amendments, and corrections of prior approved plans. The practitioner must make all required and discretionary amendments for adopting employers. Depending on the circumstances, the employer may also need to sign the amendments. For example, the employer would sign a good faith amendment that requires the adopting employer to choose some optional provisions. As described in section 15.05, if the employer makes certain amendments causing it to be considered an individually designed plan, the practitioner's authority to amend on behalf of that particular employer no longer applies.

Interim Relief for Certain Automatic Rollover Amendments

Under Notice 2005–5, 2005–3 I.R.B. 337, plan amendments complying with automatic rollover provisions under § 401(a)(31)(B) of the Code must be adopted by the end of the first plan year ending on or after March 28, 2005. It is possible certain practitioners may have amended VS plans on behalf of employers to comply with the automatic rollover provisions before amending the VS plan to include an implementing amendment. If this was done, the VS practitioner should comply with the above procedures by receiving the signed authorization form from all of the employers and adopting the implementing amendment giving the practitioner the general authority to make amendments for adopting employers (see sample language below) within 60 calendar days of May 9, 2005. This implementing amendment should be effective as of the date the practitioner first made the specific plan amendment on behalf of employers to comply with the automatic rollover provisions. For example, a practitioner who, on or after February 17, 2005, but before May 9, 2005, adopted a plan amendment on behalf of employers to reduce the mandatory cash-out amount to $1000, must comply with the procedures described above except that for purposes of this specific amendment reducing the mandatory cash-out amount, the practitioner will be deemed to have received timely authorization if the practitioner receives the signed authorization form from all of the employers and adopts the implementing amendment within 60 calendar days of May 9, 2005.

Sample Plan Language — Implementing Amendment

Practitioners may or may not be able to adopt this sample language verbatim, depending on the circumstances.

The practitioner will amend the plan on behalf of all adopting employers, including those employers who have adopted the

plan prior to this amendment, for changes in the Code, regulations, revenue rulings, other statements published by the Internal Revenue Service, including model, sample or other required good faith amendments, but only if their adoption will not cause such plan to be individually designed, and for corrections of prior approved plans. These amendments will be applied to all employers who have adopted the plan.

The practitioner will no longer have the authority to amend the plan on behalf of any adopting employer as of either: (1) the date the Service requires the employer to file Form 5300 as an individually designed plan as a result of an employer amendment to the plan to incorporate a type of plan not allowable in the Volume Submitter program, as described in Rev. Proc. 2005–16, or (2) as of the date the plan is otherwise considered an individually designed plan due to the nature and extent of the amendments. If the employer is required to obtain a determination letter for any reason in order to maintain reliance on the advisory letter, the practitioner's authority to amend the plan on behalf of the adopting employer is conditioned on the plan receiving a favorable determination letter.

The VS practitioner will maintain, or have maintained on its behalf, a record of the employers that have adopted the plan, and the VS practitioner will make reasonable and diligent efforts to ensure that adopting employers have actually received and are aware of all plan amendments and that such employers adopt new documents when necessary. This amendment supersedes other provisions of the plan to the extent those other provisions are inconsistent with this amendment.

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

Announcement 2005–38

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on May 23, 2005, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Beacon Ministries of North Carolina, Inc.
Creston, NC

Haysville Tiger Baseball Foundation
Haysville, KS

National Center for Debt Elimination, Ltd.
North Huntingdon, PA

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletins 2005–1 through 2005–21

Announcements:

Court Decisions:

Notices:

Notices— Continued:

Proposed Regulations:

Revenue Procedures:

Revenue Rulings:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2004–27 through 2004–52 is in Internal Revenue Bulletin 2004–52, dated December 27, 2004.

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

Bulletins 2005–1 through 2005–21

Announcements:

2001-77
Modified by
Rev. Proc. 2005-16, 2005-10 I.R.B. *674*

Notices:

88-30
Obsoleted by
Notice 2005-4, 2005-2 I.R.B. *289*

88-132
Obsoleted by
Notice 2005-4, 2005-2 I.R.B. *289*

89-29
Obsoleted by
Notice 2005-4, 2005-2 I.R.B. *289*

89-38
Obsoleted by
Notice 2005-4, 2005-2 I.R.B. *289*

97-19
Obsoleted in part by
Notice 2005-36, 2005-19 I.R.B. *1007*

98-34
Obsoleted in part by
Notice 2005-36, 2005-19 I.R.B. *1007*

2002-45
Amplified by
Rev. Rul. 2005-24, 2005-16 I.R.B. *892*

2004-22
Modified and superseded by
Notice 2005-30, 2005-14 I.R.B. *827*

2004-38
Obsoleted by
T.D. 9186, 2005-13 I.R.B. *790*

2004-80
Clarified and modified by
Notice 2005-22, 2005-12 I.R.B. *756*
Updated by
Notice 2005-17, 2005-8 I.R.B. *606*

2005-4
Modified by
Notice 2005-24, 2005-12 I.R.B. *757*

2005-17
Clarified and modified by
Notice 2005-22, 2005-12 I.R.B. *756*

Proposed Regulations:

REG-149519-03
Corrected by
Ann. 2005-11, 2005-5 I.R.B. *451*

REG-163314-03
Corrected by
Ann. 2005-32, 2005-19 I.R.B. *1012*

REG-114726-04
Corrected by
Ann. 2005-10, 2005-5 I.R.B. *450*

REG-152945-04
Corrected by
Ann. 2005-34, 2005-19 I.R.B. *1014*

Revenue Procedures:

84-58
Superseded by
Rev. Proc. 2005-18, 2005-13 I.R.B. *798*

98-16
Modified and superseded by
Rev. Proc. 2005-11, 2005-2 I.R.B. *307*

2000-20
Modified and superseded by
Rev. Proc. 2005-16, 2005-10 I.R.B. *674*

2001-22
Superseded by
Rev. Proc. 2005-12, 2005-2 I.R.B. *311*

2002-9
Modified and amplified by
Rev. Proc. 2005-9, 2005-2 I.R.B. *303*

2003-32
Amplified and superseded by
Rev. Proc. 2005-20, 2005-18 I.R.B. *990*

2004-1
Superseded by
Rev. Proc. 2005-1, 2005-1 I.R.B. *1*

2004-2
Superseded by
Rev. Proc. 2005-2, 2005-1 I.R.B. *86*

2004-3
Superseded by
Rev. Proc. 2005-3, 2005-1 I.R.B. *118*

2004-4
Superseded by
Rev. Proc. 2005-4, 2005-1 I.R.B. *128*

2004-5
Superseded by
Rev. Proc. 2005-5, 2005-1 I.R.B. *170*

2004-6
Superseded by
Rev. Proc. 2005-6, 2005-1 I.R.B. *200*

Revenue Procedures— Continued:

2004-7
Superseded by
Rev. Proc. 2005-7, 2005-1 I.R.B. *240*

2004-8
Superseded by
Rev. Proc. 2005-8, 2005-1 I.R.B. *243*

2004-13
Superseded by
Rev. Proc. 2005-27, 2005-20 I.R.B. *1050*

2004-16
Modified and superseded by
Rev. Proc. 2005-25, 2005-17 I.R.B. *962*

2004-18
Obsoleted in part by
Rev. Proc. 2005-15, 2005-9 I.R.B. *638*

2004-24
Obsoleted by
Rev. Proc. 2005-22, 2005-15 I.R.B. *886*

2004-35
Corrected by
Ann. 2005-4, 2005-2 I.R.B. *319*

2004-60
Superseded by
Rev. Proc. 2005-10, 2005-3 I.R.B. *341*

2005-6
Modified by
Rev. Proc. 2005-16, 2005-10 I.R.B. *674*

2005-8
Modified by
Rev. Proc. 2005-16, 2005-10 I.R.B. *674*

2005-9
Modified by
Rev. Proc. 2005-17, 2005-13 I.R.B. *797*

Revenue Rulings:

69-516
Obsoleted by
T.D. 9182, 2005-11 I.R.B. *713*

76-96
Suspended in part by
Rev. Rul. 2005-28, 2005-19 I.R.B. *997*

77-415
Obsoleted by
T.D. 9182, 2005-11 I.R.B. *713*

77-479
Obsoleted by
T.D. 9182, 2005-11 I.R.B. *713*

79-335
Modified and superseded by
Rev. Rul. 2005-30, 2005-20 I.R.B. *1015*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2004–27 through 2004–52 is in Internal Revenue Bulletin 2004–52, dated December 27, 2004.

Revenue Rulings— Continued:

82-34
Obsoleted by
T.D. 9182, 2005-11 I.R.B. *713*

92-19
Supplemented in part by
Rev. Rul. 2005-29, 2005-21 I.R.B. *1080*

92-63
Modified and superseded by
Rev. Rul. 2005-3, 2005-3 I.R.B. *334*

95-63
Modified and superseded by
Rev. Rul. 2005-3, 2005-3 I.R.B. *334*

2004-43
Revoked by
Rev. Rul. 2005-10, 2005-7 I.R.B. *492*

2004-103
Superseded by
Rev. Rul. 2005-3, 2005-3 I.R.B. *334*

Treasury Decisions:

8408
Corrected by
Ann. 2005-28, 2005-17 I.R.B. *969*

9130
Corrected by
Ann. 2005-29, 2005-17 I.R.B. *969*

9165
Corrected by
Ann. 2005-31, 2005-18 I.R.B. *996*

9166
Corrected by
Ann. 2005-33, 2005-19 I.R.B. *1013*

9170
Corrected by
Ann. 2005-13, 2005-8 I.R.B. *627*
Ann. 2005-35, 2005-21 I.R.B. *1095*

9187
Corrected by
Ann. 2005-25, 2005-15 I.R.B. *891*