Internal Revenue
bulletin

Bulletin No. 2006-51
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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

Notice 2006–100, page 1109.

This notice provides guidance to employers and payers on their reporting and wage withholding requirements for calendar years 2005 and 2006 with respect to deferrals of compensation and amounts includible in gross income under section 409A of the Code. Notice 2005–1 modified. Notice 2005–94 superseded.

Notice 2006–110, page 1127.

Charitable contributions by payroll deductions. This notice explains how taxpayers that make charitable contributions by payroll deductions may meet the recordkeeping requirements of section 170(f)(17) of the Code, as added by the Pension Protection Act of 2006. The notice also provides that taxpayers may rely on this notice to comply with the new requirements until subsequent regulations are effective.

EMPLOYEE PLANS

Notice 2006–107, page 1114.

Diversification; transition rules; defined contribution plans. This notice provides transitional rules with respect to the diversification requirements of publicly traded securities for certain defined contribution plans, requests comments on the transitional guidance (as well as comments for regulations), and contains a model notice that employers may give their affected employees.

EXEMPT ORGANIZATIONS

Notice 2006–109, page 1121.

This notice provides interim guidance to certain section 501(c)(3) organizations and related taxpayers regarding new legislation in the Pension Protection Act of 2006 (Act) applicable to private foundations, supporting organizations, and charitable organizations that maintain donor advised funds. The notice also solicits comments regarding this guidance and other provisions under the Act that might impact similarly situated taxpayers.

Announcement 2006–99, page 1139.

A list is provided of organizations now classified as private foundations.

SELF-EMPLOYMENT TAX

Notice 2006–108, page 1118.

This notice contains a proposed revenue ruling and requests comments concerning the proposed holding that Conservation Reserve Program (CRP) rental payments (including incentive payments) from the United States Department of Agriculture to (1) a farmer actively engaged in the trade or business of farming who enrolls land in CRP and fulfills the CRP contractual obligations personally and to (2) an individual not otherwise actively engaged in the trade or business of farming who enrolls land in CRP and fulfills the CRP contractual obligations by arranging for a third party to perform the required activities are both includible in net income from self-employment for purposes of the Self-Employment Contributions Act (SECA) tax and not excluded from net income from self-employment as rentals from real estate.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 1129.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

Announcement 2006–98, page 1139.
This document contains a correction to proposed regulations (REG–103039–05, 2006–49 I.R.B. 1057) by cross-reference to temporary regulations relating to the disclosure of reportable transactions by material advisors.

Announcement 2006–100, page 1141.
This announcement alerts the public regarding updated procedures for closing cases involving listed transactions when settlement on listed transactions was not able to be reached in the Office of Appeals.

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.

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Part III. Administrative, Procedural, and Miscellaneous

Reporting and Wage Withholding Under Internal Revenue Code § 409A

Notice 2006–100

I. PURPOSE

This notice provides guidance to employers and payers on their reporting and wage withholding requirements for calendar years 2005 and 2006 with respect to deferrals of compensation and amounts includible in gross income under § 409A of the Internal Revenue Code. This notice does not affect the application of § 3121(v)(2) or an employer's reporting obligations under § 31.3121(v)(2)–1 of the Employment Tax Regulations. In addition, this notice provides guidance to service providers on their income tax reporting and tax payment requirements with respect to amounts includible in gross income under § 409A for 2005 and 2006.

II. BACKGROUND

A. The American Jobs Creation Act of 2004

Section 885 of the American Jobs Creation Act of 2004, Pub. Law No. 108–357, 118 Stat. 1418 (the Act), added § 409A, which provides, *inter alia*, that all amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income, unless certain requirements are met. Section 885(b) of the Act amended the Code to impose the following reporting and wage withholding requirements with respect to deferrals of compensation within the meaning of § 409A.

- The Act amended §§ 6041 and 6051 to require that an employer or payer report all deferrals for the year under a nonqualified deferred compensation plan on a Form W–2 *(Wage and Tax Statement)* or a Form 1099–MISC *(Miscellaneous Income)*, regardless of whether such deferred compensation is includible in gross income under § 409A(a).
- The Act amended § 3401(a) to provide that the term "wages" includes any amount includible in the gross income of an employee under § 409A.
- The Act amended § 6041 to require that a payer report amounts includible in gross income under § 409A that are not treated as wages under § 3401(a).

B. Notice 2005–1

On December 20, 2004, the IRS issued Notice 2005–1, 2005–1 C.B. 274 (published as modified on January 6, 2005), which provides guidance with respect to the application of § 409A. Additionally, in accordance with the amendments made by § 885(b) of the Act, Notice 2005–1 provides the following with respect to reporting and wage withholding requirements for deferred amounts:

- An employer should report to an employee the total amount of deferrals for the year under a nonqualified deferred compensation plan in box 12 of Form W–2 using code Y. See Q&A–29.
- An employer should report amounts includible in gross income under § 409A and in wages under § 3401(a) in box 1 of Form W–2 as wages paid to the employee during the year and subject to income tax withholding. An employer should also report such amounts in box 12 of Form W–2 using code Z. See Q&A–33.
- A payer should report to a nonemployee the total amount of deferrals for the year under a nonqualified deferred compensation plan in box 15a of Form 1099–MISC. See Q&A–30.
- A payer should report amounts includible in gross income under § 409A and not treated as wages under § 3401(a) as nonemployee compensation in box 7 of Form 1099–MISC. A payer should also report such amounts in box 15b of Form 1099–MISC. See Q&A–35.

C. Proposed Regulations

On September 29, 2005, the IRS issued proposed regulations (REG–158080–04, 2005–2 C.B. 786) regarding the application of § 409A. See 70 Fed. Reg. 57930 (Oct. 4, 2005). The proposed regulations incorporate and expand on the guidance provided in Notice 2005–1. As stated in the preamble to the proposed regulations, taxpayers may rely on the proposed regulations for periods preceding the effective date of the final regulations. However, the proposed regulations do not affect the applicability of this notice (and generally do not affect the application of other guidance issued with respect to § 409A, including Notice 2005–1).

D. Notice 2005–94

On December 27, 2005, the IRS issued Notice 2005–94, 2005–2 C.B. 1208, which provided the following guidance to employers and payers on their reporting and withholding obligations with respect to deferrals of compensation and amounts includible in gross income under § 409A during calendar year 2005:

- The notice waived employers' and payers' reporting requirements under §§ 6041 and 6051 for calendar year 2005 with respect to annual deferrals of compensation within the meaning of § 409A.
- The notice provided that for 2005 employers are not required to include in the total amount of wages as defined in § 3401(a) amounts includible in gross income of an employee under § 409A that the employee neither actually nor constructively received during the 2005 calendar year. Additionally, the notice suspended employers' reporting requirements for calendar year 2005 with respect to such amounts.
- The notice suspended payers' reporting requirements for 2005 with respect to amounts includible in the gross income of a nonemployee under § 409A that the nonemployee neither actually nor constructively received during the 2005 calendar year.
- The notice provided that future published guidance may require an employer or payer to file a corrected information return and to furnish a

corrected payee statement for calendar year 2005 reporting any previously unreported amounts includible in gross income under § 409A.

- For service providers, the notice provided that the IRS will not assert penalties under §§ 6651(a)(1) and (2), 6654, and 6662, with respect to amounts includible in gross income under § 409A for calendar year 2005 if the service provider reports and pays any taxes due with respect to such amounts in accordance with subsequent published guidance. The notice stated that such subsequent guidance would provide a period during which the service provider may report and pay such taxes due without incurring such penalties.

III. INTERIM EMPLOYER AND PAYER REPORTING AND WAGE WITHHOLDING PROVISIONS

This section provides guidance on employers' and payers' reporting and wage withholding requirements for calendar years 2005 and 2006 with respect to annual deferrals of compensation within the meaning of § 409A and with respect to amounts includible in gross income under § 409A.

A. 2005 and 2006 Annual Deferrals

1. Amounts Reportable on Form W–2

For calendar years 2005 and 2006, an employer is not required to report amounts deferred during the year under a nonqualified deferred compensation plan subject to § 409A in box 12 of Form W–2 using code Y.

2. Amounts Reportable on Form 1099–MISC

For calendar years 2005 and 2006, a payer is not required to report amounts deferred during the year under a nonqualified deferred compensation plan subject to § 409A in box 15a of Form 1099–MISC.

B. Reporting and Withholding on Amounts Includible in Gross Income under § 409A

Section 3401(a) provides that for income tax withholding purposes the term "wages" includes any amount includible in gross income of an employee under § 409A, and payment of such amount is treated as having been made in the taxable year in which the amount is includible in gross income. Thus, for calendar year 2006, an employer must treat amounts includible in gross income under § 409A as wages for income tax withholding purposes. An employer is required to report such amounts as wages paid on line 2 of Form 941, *Employer's Quarterly Federal Tax Return*, and in box 1 of Form W–2. An employer must also report such amounts as § 409A income in box 12 of Form W–2 using code Z. If the employee has received other regular wages from the employer during the calendar year, amounts includible in gross income under § 409A are supplemental wages for purposes of determining the amount of income tax required to be deducted and withheld under § 3402(a). *See* Publication 15 for the withholding rules with respect to supplemental wages. The amount required to be withheld is not increased on account of the additional income taxes imposed under § 409A(a)(1)(B). Employees should thus be aware that estimated tax payments may be required to avoid penalties under § 6654.

For nonemployees, § 6041(g)(2) requires a payer to report to a nonemployee any amount that is includible in gross income under § 409A that is not treated as wages under § 3401(a). Thus, for calendar year 2006, a payer must report amounts includible in gross income under § 409A and not treated as wages under § 3401(a) as nonemployee compensation in box 7 of Form 1099–MISC. A payer must also report such amounts as § 409A income in box 15b of Form 1099–MISC.

1. Calculation of Amounts Includible in Income under § 409A(a) — In General

Section 409A(a)(1)(A)(i) provides that if at any time during a taxable year a nonqualified deferred compensation plan fails to meet the requirements of § 409A(a)(2), (3) or (4), all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. Accordingly, for purposes of this notice, the amount includible in gross income under § 409A(a) and required to be reported by the employer or payer equals the portion of the total amount deferred under the plan that, as of December 31, 2006, is not subject to a substantial risk of forfeiture as defined in Notice 2005–1, Q&A–10, or the proposed regulations, and has not been included in income in a previous year, plus any amounts of deferred compensation paid or made available to the service provider under the plan during the calendar year 2006. For purposes of this paragraph, an employer or payer may treat an amount as previously included in income if properly reported by the employer or payer on a 2005 Form W–2, Form 1099–MISC, or Form W–2c or corrected Form 1099–MISC. Thus, amounts properly reported on a 2005 Form W–2 or Form 1099–MISC, or Form W–2c or corrected Form 1099–MISC should not be reported again on a 2006 Form W–2 or Form 1099–MISC. For the definition of a plan, including the plan aggregation rules, see Notice 2005–1, Q&A–9, and proposed § 1.409A–1(c).

Amounts includible in gross income under § 409A(a) include only amounts deferred that are subject to § 409A. Accordingly, for purposes of this section III.B.1., references to amounts deferred under a plan, including references to account balances, refer solely to amounts deferred that are subject to § 409A and not, for example, to amounts deferred that were earned and vested prior to January 1, 2005 and that are not otherwise subject to § 409A due to the application of the effective date provisions. For rules regarding the application of the effective date provisions of § 409A to nonqualified deferred compensation plans, see Notice 2005–1, Q&A–16 to Q&A–18, and proposed § 1.409A–6.

The provisions of this notice addressing the calculation of the amounts includible in income are intended as interim guidance only. The Treasury Department and the IRS are currently formulating general guidance with respect to the calculation of the amounts includible in income, as well as other related issues. For information regarding the submission of comments on these topics, see section V. of this notice.

2. Wage Payment Date of Amounts Includible in Income under § 409A(a)

Amounts includible in gross income under § 409A(a) in 2006 that are either actually or constructively received (disregarding the application of § 409A) by an employee during the calendar year 2006, are considered a payment of wages by the employer when received by the employee for purposes of withholding, depositing, and reporting the income tax at source on wages under § 3401(a).

Amounts includible in gross income under § 409A(a) in 2006 that are neither actually nor constructively received (disregarding the application of § 409A) by the employee during the calendar year 2006, are treated as a payment of wages on December 31, 2006 for purposes of withholding, depositing, and reporting the income tax at source on wages under § 3401(a). If as of December 31, 2006 the employer does not withhold income tax from the employee on such wages, or withholds less than the amount of income taxes required to be withheld under § 3402 from the employee, the employee will receive credit under § 31 for 2006 if the employer follows one of two possible options. Under the first option, notwithstanding § 31.6205–1(c)(4), the employer withholds or recovers from the employee the amount of the undercollection after December 31, 2006 and before February 1, 2007, and reports as wages for the quarter ending December 31, 2006 such amounts that were neither actually nor constructively received but are includible in income under § 409A on Form 941 for that quarter and in box 1 of the employee's Form W–2 for 2006. Under the second option, the employer pays the income tax withholding liability on behalf of the employee (without deduction from the employee's wages or other reimbursement by the employee), and reports the gross amount of wages and the income tax withholding liability for the quarter ending December 31, 2006 as including such amounts that were neither actually nor constructively received but are includible in income under § 409A as well as the wages resulting from paying the income tax on the employee's behalf on Form 941 and in box 1 of the employee's Form W–2 for 2006. See Rev. Rul. 58–113, 1958–1 C.B. 362, for methods of computing gross wages when paying income tax on behalf of an employee. In addition, for purposes of the deposit requirements associated with such wages, if the income tax withholding liability with respect to such wages is paid to the IRS by the due date of the Form 941 for the quarter ending December 31, 2006 on which the wages are reported, then the amount of income tax withholding liability will be considered to have been deposited in accordance with the rules of § 31.6302–1(c). Thus, penalties for failure to deposit taxes under § 6656 will not be imposed with respect to such amount.

3. 2006 Amounts Includible in Income under § 409A(a)

The following sections provide guidance for calculating the total amount deferred under the plan as of December 31, 2006 for purposes of determining the amount required to be included in gross income under § 409A(a) in accordance with the rules described in section III.B.1. of this notice.

a. Account Balance Plans

For plans subject to § 3121(v)(2) that are account balance plans as defined in § 31.3121(v)(2)–1(c)(1)(ii)(A), the amount deferred as of December 31, 2006 equals the amount that would be treated as an amount deferred under § 31.3121(v)(2)–1(c)(1) on December 31, 2006 if the entire account balance (including all principal amounts, adjusted for income, gain or loss credited to the employee's account) as of December 31, 2006 were treated as a principal amount credited to the employee's account on December 31, 2006. These same rules apply for purposes of determining the amount reported on Form 1099–MISC for calendar year 2006 with respect to a nonemployee participating in a plan that would be subject to § 3121(v)(2) if the nonemployee service provider were an employee and that otherwise is an account balance plan as defined in § 31.3121(v)(2)–1(c)(1)(ii)(A).

b. Nonaccount Balance Plans — Amounts that are Reasonably Ascertainable

For plans subject to section 3121(v)(2) that are nonaccount balance plans as defined in § 31.3121(v)(2)–1(c)(2)(i), where the amount deferred is reasonably ascertainable within the meaning of § 31.3121(v)(2)–1(e)(4), the amount deferred as of December 31, 2006 equals the present value of all future payments to which the employee has obtained a legally binding right as of December 31, 2006, calculated in accordance with § 31.3121(v)(2)–1(c)(2) as if the employee had obtained all of such rights on December 31, 2006. Section 31.3121(v)(2)–1(e)(4)(i)(B) provides that an amount deferred is considered reasonably ascertainable on the first date on which the amount, form, and commencement date of the benefit payments attributable to the amount deferred are known, and the only actuarial or other assumptions regarding future events or circumstances needed to determine the amount deferred are interest and mortality. An amount does not fail to be reasonably ascertainable if alternative forms or commencement dates are available that provide an actuarially equivalent benefit to the normal benefit commencing at the normal commencement date. These same rules apply for purposes of determining the amount reported on Form 1099–MISC for calendar year 2006 with respect to a nonemployee participating in a plan that would be subject to § 3121(v)(2) if the nonemployee service provider were an employee and that otherwise is a nonaccount balance plan as defined in § 31.3121(v)(2)–1(c)(2)(i).

c. Amounts Deferred Under Stock Rights Covered by § 409A

For a plan that is not subject to § 3121(v)(2) and is a stock right as defined in proposed § 1.409A–1(l), the amount deferred as of December 31, 2006 equals the amount that the service provider would be required to include in income if the stock right were immediately exercisable and exercised on December 31, 2006. In general, this will mean with respect to a stock right outstanding as of December 31, 2006, the amount deferred as of December 31, 2006 equals the fair market value of the underlying stock less the sum of the exercise price and any amount paid by the service provider for the stock right.

d. Other Deferred Amounts

For all deferred amounts not addressed in section III.B.2.a., b., or c. of this notice, the amount deferred as of December 31, 2006 must be determined under a reasonable, good faith application of a reasonable, good faith method. For this purpose, a reasonable, good faith application of a reasonable, good faith method generally must reflect reasonable, good faith assumptions with respect to any contingencies as to the timing or amount of any payment. Generally, the use of an assumption with respect to a contingency that results in the amount deferred being the lowest potential value of the future payment will be presumed not to be a reasonable, good faith assumption unless clear and convincing evidence demonstrates that the assumption is reasonable. For example, where a payment may be made in more than one form, the assumption that the payment will be made in the least valuable form will be presumed not to be a reasonable, good faith assumption unless clear and convincing evidence demonstrates otherwise. If a portion of a deferred amount can be calculated under section III.B.2.a., b., or c. of this notice, a reasonable, good faith method of calculation will in fact be a combination of two methods. The method applicable under section III.B.2.a., b., or c. of this notice must be applied to the portion, and the balance of the deferred amount must be determined under a reasonable good faith method.

e. Mandatory bifurcation

For purposes of the application of this section, the portion of a nonqualified deferred compensation plan that qualifies as an account balance plan under § 31.3121(v)(2)–1(c)(1)(ii), or would qualify as an account balance plan if the service provider were an employee, and provides that the amount payable to the service provider under the portion is determined independently of the amount payable under the other portion of the plan, must be treated separately as an account balance plan. *Cf.* § 31.3121(v)(2)–1(c)(1)(iii)(B).

4. 2005 Amounts Includible in Gross Income under § 409A(a)

Employers and payers, including employers and payers who relied on Notice 2005–94 for calendar year 2005, which suspended employers' and payers' reporting requirements with respect to deferrals of compensation includible in gross income under § 409A, are required to file an original or a corrected information return and furnish an original or a corrected payee statement (Form W–2 or 1099–MISC) for calendar year 2005 reporting any previously unreported amounts includible in gross income under § 409A for calendar year 2005 as determined under guidance provided by this notice for calendar year 2006. (If the employer or payer paid no wages or income to the service provider in 2005 other than amounts taxable under § 409A, the payer will be preparing an original Form W–2 or Form 1099–MISC, not a Form W–2c or a corrected Form 1099–MISC for 2005.) Failure to file information returns and furnish payee statements as specified in this notice may result in liability for penalties under §§ 6721 and 6722. The original or corrected information return and the original or corrected payee statement for calendar year 2005 must be filed and furnished by the deadlines applicable for filing an information return and furnishing a payee statement reporting amounts includible in income in calendar year 2006. (Generally, this means the original or corrected information return must be filed by February 28, 2007, and the original or corrected payee statement must be furnished by January 31, 2007. *See* the 2006 instructions for Form W–2 and Form 1099.) An employer or payer who is required to file an original or a corrected information return and furnish an original or a corrected payee statement for calendar year 2005 must calculate the amounts includible in gross income using the rules provided in this notice. An employer or payer is not liable for income tax withholding under § 3403 or penalties for 2005 with respect to any previously unreported amounts of gross income includible under § 409A reported on an original Form W–2 or Form 1099–MISC, or Form W–2c or a corrected Form 1099–MISC for 2005 in accordance with the guidance provided by this notice.

5. Amounts Includible in Income under § 409A(b)

Section 409A(b)(1) provides generally that in the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, such assets shall be treated as property transferred in connection with the performance of services for purposes of § 83 whether or not such assets are available to satisfy claims of general creditors at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States.

Section 409A(b)(2) provides that in the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of § 83 with respect to such compensation as of the earlier of the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or the date on which assets are so restricted, whether or not such assets are available to satisfy claims of general creditors.

Section 409A(b)(3) as amended by the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780), provides that if, during a restricted period with respect to a single-employer defined benefit pension plan, assets are set aside or reserved in, or transferred to, a trust or other arrangement for purposes of paying deferred compensation for an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or a member of its controlled group, or a nonqualified deferred compensation plan of the plan sponsor or a member of its controlled group provides that assets will become restricted to the provision of benefits, or assets are so restricted, in connection with such restricted period (or similar financial measure determined by the Secretary), the assets are treated as a transfer of property for purposes of § 83 whether or not such assets are available to satisfy claims of general creditors.

Section 409A(b)(4), as amended by the Pension Protection Act, provides that for each taxable year that assets treated as transferred under § 409A(b) remain set aside in a trust or other arrangement subject to § 409A(b)(1) or (2), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

Notice 2006–33, 2006–15 I.R.B. 754, April 10, 2006, provides transition guidance related to the application of § 409A(b) to certain arrangements outstanding as of March 21, 2006. Under that relief, amounts transferred to trusts under the arrangement on or before March 21, 2006 that triggered the income inclusion and additional taxes under § 409A(b), or arrangements that otherwise triggered the income inclusion and additional taxes under § 409A(b) on or before March 21, 2006, generally are treated as not having triggered the inclusion or additional tax provisions of § 409A(b), provided that the arrangements become compliant with § 409A(b) before January 1, 2008. Nothing in this notice is intended to modify that relief.

However, where amounts have been transferred to a trust under an arrangement that triggers the income inclusion and additional taxes under § 409A(b), or the arrangement otherwise triggers the income inclusion and additional taxes under § 409A(b), and the transfer is not eligible for the relief in Notice 2006–33 (for example because the transfer occurred after March 21, 2006), employers and payers must make a reasonable, good faith application of a reasonable, good faith method to determine the amount includible in income for purposes of reporting. In addition, employers must treat the amount as wages for purposes of § 3401. Amounts includible in income under § 409A(b) that are not eligible for the relief in Notice 2006–33 are treated as wages paid on the date the deemed transfer of property under § 83 described in § 409A(b) would be required to be included in income under the rules of § 83, for purposes of withholding, depositing and reporting the income tax at source on wages under § 3401(a).

C. Protection from Future Additional Reporting or Withholding for 2005 and 2006

An employer or payer who complies with the rules of this notice regarding computing amounts includible in gross income under § 409A and withholding and reporting for calendar years 2005 and 2006 will not be liable for additional income tax withholding or penalties, or be required to file a subsequent corrected information return or furnish a corrected payee statement, as a result of future published guidance with respect to the computation of amounts includible in gross income under § 409A. If it is subsequently determined that the employer did not apply the rules of this notice in determining amounts includible in gross income under § 409A and in wages under § 3401(a) for calendar years 2005 or 2006 as provided in this notice, any recalculation of these amounts will result in additional liability for income tax withholding under § 3403 for these years, plus any applicable penalties. In addition, an employer or payer who does not apply the rules of this notice in determining amounts includible in gross income under § 409A and in wages under § 3401(a) for calendar years 2005 or 2006 will be required to file an original or a corrected information return and furnish an original or a corrected payee statement. For purposes of determining any amount includible in income under § 409A in a subsequent year, an amount will not be treated as previously included in income unless the amount has been reported appropriately on an information return and payee statement, or has been included in income by the service provider in a previous year.

IV. SERVICE PROVIDER REQUIREMENTS WITH RESPECT TO AMOUNTS INCLUDIBLE IN GROSS INCOME UNDER § 409A

This section provides guidance on service providers' income tax reporting and tax payment requirements for calendar years 2005 and 2006 with respect to deferrals of compensation that are includible in gross income under § 409A.

A. Amounts Required to be Included in Income

A service provider must report as income and pay any taxes due relating to amounts includible in gross income under § 409A for calendar year 2006. In addition, if a service provider has not reported as income and paid any tax due relating to amounts includible in gross income under § 409A for calendar year 2005, calculated in accordance with this notice, the service provider must file an amended return and pay any taxes due relating to such amounts. If the service provider files an amended return and pays any taxes due relating to such amounts calculated in accordance with this notice, the IRS will not assert penalties under §§ 6651(a)(1) and (2), 6654, and 6662. If the service provider is required to file an amended return for 2005 in order to report amounts includible in income under § 409A, the service provider must file such amended return and pay any additional taxes owing by the due date for the service provider's 2006 income tax return, including extensions, in order to avoid penalties.

For purposes of determining the amount required to be included in income under § 409A, the same standards apply to a service provider as apply to an employer or payer when calculating the amount required to be reported, provided that an amount is treated as previously included in income only if the amount has been included in the service provider's income in a previous taxable year (regardless of whether reported on a Form W–2 or 1099–MISC). Accordingly, an employee or other service provider must calculate the amounts required to be included in gross income under the same methods and standards as set forth in section III. Whether a service provider has complied with the requirements of this notice is determined independently of whether the employer or payer has complied with the requirements of this notice. Thus, if the service provider includes in income the same amount reported by the employer or payer, the service provider has not necessarily complied with the terms of this notice.

If the service provider does not report and pay taxes due with respect to amounts includible in gross income under § 409A for calendar year 2005 or 2006 in

accordance with the guidance contained in this notice, the IRS may assert additional income taxes and penalties under §§ 6651(a)(1) and (2), 6654, and 6662 if it is determined that the amount of taxes reported and paid for calendar year 2005 or 2006 was underreported or underpaid. Interest imposed under Chapter 67 of the Code will apply to any underpayments of tax resulting from a service provider's failure to include amounts includible in gross income under § 409A for calendar year 2005 or 2006. For purposes of determining the amount includible in income under § 409A in a subsequent year, the service provider may treat an amount as previously included in income only if the service provider has actually included the amount in gross income in a previous year.

B. Calculation of Additional Tax under § 409A(a)(1)(B)(i)(I)

Section 409A(a)(1)(B)(i)(I) provides that if compensation is required to be included in gross income under § 409A(a)(1)(A), the tax imposed on such income is increased by the sum of two additional taxes equal to the amount of interest determined under § 409A(a)(1)(B)(ii) plus an amount equal to 20% of the compensation which is required to be included in gross income. Section 409A(a)(1)(B)(ii) provides that the amount of interest is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

Section 885(d)(1) of the Act provides that § 409A generally applies to amounts deferred after December 31, 2004. Section 885(d)(2)(B) of the Act provides that amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004. Accordingly, for purposes of the calculation of the additional tax under § 409A(a)(1)(B)(ii), taxpayers may treat amounts deferred under a plan that were originally deferred on or before January 1, 2005 but became subject to § 409A due to the material modification of the plan after October 3, 2004 as deferred on January 1, 2005.

V. REQUEST FOR COMMENTS

The provisions of this notice are intended as interim guidance only. The Treasury Department and the IRS are currently formulating general guidance with respect to the income inclusion requirements, the additional taxes, and the reporting and withholding requirements of § 409A. The Treasury Department and the IRS request comments on all aspects of these requirements, including but not limited to the topics addressed in this notice.

Comments must be submitted by March 18, 2007. All materials submitted will be available for public inspection and copying.

Comments may be submitted to Internal Revenue Service, CC:PA:LPD:RU (Notice 2006–100), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk at 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:RU (Notice 2006–100), Room 5203. Submissions may also be sent electronically via the internet to the following email address: *Notice.comments@irscounsel.treas.gov*. Include the notice number (Notice 2006–100) in the subject line.

VI. EFFECT ON OTHER DOCUMENTS

Notice 2005–94 is superseded. Notice 2005–1 is modified.

VII. EFFECTIVE DATE

This notice is effective with respect to employers' and payers' reporting and wage withholding requirements and with respect to service providers' filing requirements and tax payment obligations relating to amounts includible in gross income under § 409A for calendar years 2005 and 2006.

VIII. DRAFTING INFORMATION

The principal author of this notice is Don M. Parkinson of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Governments Entities), although other Treasury and IRS officials participated in its development. For further information on the provisions of this notice addressing the calculation of the amount includible in income under § 409A, contact Stephen Tackney at (202) 927–9639; for further information on other provisions of this notice, including the reporting and withholding provisions contained in this notice, contact Mr. Parkinson at (202) 622–6040 (not toll-free numbers).

Diversification Requirements for Qualified Defined Contribution Plans Holding Publicly Traded Employer Securities

Notice 2006–107

I. PURPOSE

This notice provides transitional guidance on § 401(a)(35) of the Internal Revenue Code, added by section 901 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (PPA '06), which provides diversification rights with respect to publicly traded employer securities held by a defined contribution plan. This notice also states that Treasury and the Service expect to issue regulations under § 401(a)(35) that incorporate the transitional relief in this notice and requests comments on the transitional guidance in this notice and on the topics that need to be addressed in the regulations.

II. BACKGROUND

Section 401(a)(35), as added by section 901 of PPA '06, provides that, to remain qualified under § 401(a), a defined contribution plan (other than certain employee stock ownership plans) must provide applicable individuals with the right to divest employer securities in their accounts and reinvest those amounts in certain diversified investments. Section 901 also added a parallel provision, section 204(j), to the Employee Retirement Income Se-

curity Act of 1974 (ERISA).[1] In addition, section 101(m) of ERISA, as added by section 507 of PPA '06, requires a plan to provide applicable individuals with a notice describing diversification rights under section 204(j) of ERISA and providing information on the importance of diversifying investments.

The diversification requirements of § 401(a)(35) are generally effective with respect to plan years beginning after December 31, 2006, subject to certain special effective date rules, including a special rule with respect to plans maintained pursuant to a collective bargaining agreement. See section 901(c) of PPA '06. The notice requirements of section 101(m) of ERISA are effective with respect to plan years beginning after December 31, 2006.

III. TRANSITIONAL GUIDANCE

This Part III provides transitional guidance with respect to § 401(a)(35). The transitional guidance provided in this Part III applies pending the issuance of further guidance.

A. *Scope of Application.*

Section 401(a)(35) imposes diversification requirements for defined contribution plans that hold publicly traded employer securities. Section 401(a)(35)(G)(iv) provides that the term employer security has the meaning given such term by section 407(d)(1) of ERISA. Under § 401(a)(35)(G)(v), the term *publicly traded employer securities* means employer securities which are readily tradable on an established securities market. For this purpose, if a plan holds employer securities that are not publicly traded, then, except as provided in Treasury regulations, those employer securities are nevertheless treated as publicly traded employer securities if any employer corporation, or any member of the controlled group of corporations that includes an employer corporation, has issued a class of stock that is a publicly traded employer security. For this purpose, an employer corporation means any corporation that is an employer maintaining the plan and a controlled group of corporations has the meaning given under § 1563(a), except that 50% is substituted for 80% wherever it occurs in § 1563.[2]

However, under this notice, a plan (and an investment option described in the last paragraph of Part IIIC of this notice) is not treated as holding employer securities to which § 401(a)(35) applies with respect to any securities held by either an investment company registered under the Investment Company Act of 1940 or a similar pooled investment vehicle that is regulated and subject to periodic examination by a State or Federal agency and with respect to which investment in the securities is made both in accordance with the stated investment objectives of the investment vehicle and independent of the employer and any affiliate thereof, but only if the holdings of the investment company or similar investment vehicle are diversified so as to minimize the risk of large losses.

In addition, § 401(a)(35) does not apply to an employee stock ownership plan (ESOP) if (1) there are no contributions held in the plan (or earnings thereunder) which are elective deferrals, employee after-tax contributions, or matching contributions that are subject to § 401(k) or (m) and (2) the plan is, for purposes of § 414(l) and §1.414(l)–1 of the Income Tax Regulations, a separate plan from any other plan maintained by the employer. Thus, an ESOP is subject to § 401(a)(35) if either the ESOP holds any contributions to which § 401(k) or (m) applies (or earnings thereon) or the ESOP is a portion of a plan that holds any amounts that are not part of the ESOP.

B. *Applicable Individuals Who Have Diversification Rights.*

Section 401(a)(35) provides applicable individuals with diversification rights with respect to publicly traded employer securities held in the plan under subparagraphs (B) and (C) of § 401(a)(35). The diversification rights under subparagraph (B) of § 401(a)(35) apply with respect to elective deferrals and employee contributions (and earnings thereon) and are required to be available to (1) any participant, (2) any alternate payee who has an account under the plan, and (3) any beneficiary of a deceased participant. For this purpose, employee contributions include both employee after-tax contributions and rollover contributions held under the plan. The diversification rights under subparagraph (C) of § 401(a)(35) apply with respect to other employer contributions (and earnings thereon) and are required to be available to each applicable individual who is either (1) a participant who has completed at least three years of service, (2) an alternate payee who has an account under the plan with respect to a participant who has completed at least three years of service, or (3) a beneficiary of a deceased participant. For purposes of this notice, persons who are entitled to receive diversification rights are termed "applicable individuals."

For purposes of § 401(a)(35)(C) and § 401(a)(35)(H) (the transitional rule described in paragraph E of this Part III), the date on which a participant completes three years of service occurs immediately after the end of the third vesting computation period provided for under the plan that constitutes the completion of a third year of service under § 411(a)(5). However, for a plan that uses the elapsed time method of crediting service for vesting purposes (or a plan that provides for immediate vesting without using a vesting computation period or the elapsed time method of determining vesting), the date on which a participant completes three years of service is the third anniversary of the participant's date of hire.

C. *Basic Divestiture Rules.*

An applicable individual is required to be permitted to elect to direct the plan to divest any publicly traded employer securities held in his or her account under the plan and to reinvest an equivalent amount in other investment options offered under the plan with respect to the portion of the account that is subject to subparagraph (B) or (C) of § 401(a)(35) to the extent applicable. This diversification right only applies when publicly traded employer securities are held under the plan and allocated to the participant's or beneficiary's account.

Under § 401(a)(35)(D)(i), the investment options offered must include not less than three investment options, other than

[1] Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in this notice for purposes of section 204(j) of ERISA. Thus, the transitional guidance provided in this notice with respect to § 401(a)(35) also applies for purposes of section 204(j) of ERISA.

[2] See §401(a)(35)(F)(ii) for an exception that applies to certain controlled groups with publicly traded securities.

employer securities, to which the applicable individual may direct the proceeds of the divestment of employer securities, and each investment option must be diversified and have materially different risk and return characteristics. For this purpose, investment options that satisfy the requirements of § 2550.404c–1(b)(3) of the Department of Labor Regulations are treated as being diversified and having materially different risk and return characteristics.

D. *Restrictions or Conditions on Divestiture Rights.*

1. *Conditions or Restrictions*. Under § 401(a)(35)(D)(ii)(I), a plan is not treated as failing to meet the requirements of § 401(a)(35) merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly. Section 401(a)(35)(D)(ii)(II) prohibits a plan from imposing restrictions or conditions with respect to the investment of employer securities that are not imposed on the investment of other assets of the plan. For purposes of this prohibition in § 401(a)(35)(D)(ii)(II), except as described below in this Part IIID, a restriction or condition with respect to employer securities includes: (1) a restriction on an applicable individual's rights to divest an investment in employer securities that is not imposed on an investment that is not in employer securities; and (2) a benefit that is conditioned on investment in employer securities. Thus, the following are examples of prohibited restrictions or conditions:

- A plan allows applicable individuals the right to divest employer securities on a periodic basis (such as quarterly), but permits divestiture of another investment on a more frequent basis (such as daily). However, see paragraph 4 of this Part IIID for a transitional rule.

- A plan under which a participant who divests his or her account of employer securities receives less favorable treatment (such as a lower rate of matching contributions) than a participant whose account remains invested in employer securities.

Similarly, the following are examples of restrictions or conditions that are not prohibited by § 401(a)(35)(D)(ii)(II), provided that the limitations apply without regard to a prior exercise of rights to divest employer securities:

- A provision that limits the extent to which an individual's account balance can be invested in employer securities. Thus, a provision that does not allow more than 10% of an individual's account balance to be invested in employer securities is permitted.

- A provision under which an employer securities investment fund is closed, *i.e.*, other amounts invested under the plan cannot be transferred into an investment in a class of employer securities (and no contributions are permitted to be invested in that class of employer securities).

However, a provision under which, if a participant divests his or her account balance with respect to investment in a class of employer securities, the participant is not permitted for a period of time thereafter to reinvest in that class of employer securities is a restriction that is prohibited by § 401(a)(35)(D)(ii)(II), because this limitation takes into account a prior exercise of rights to divest employer securities.

2. *Permitted Restrictions*. A restriction imposed by reason of the application of securities laws or a restriction that is reasonably designed to ensure compliance with such laws is not an impermissible restriction or condition under § 401(a)(35)(D)(ii)(II). Thus, for example, for purposes of ensuring compliance with Rule 10b–5 of the Securities and Exchange Commission, a plan may limit divestiture rights for participants who are subject to Section 16(b) of the Securities Exchange Act of 1934 to a period (such as 3 to 12 days) following publication of the employer's quarterly earnings statements. In addition, an impermissible restriction or condition under § 401(a)(35)(D)(ii)(II) does not include the imposition of fees on other investment options under the plan merely because fees are not imposed with respect to investments in employer securities. Further, a plan may restrict the application of otherwise applicable diversification rights under the plan for up to 90 days following an initial public offering of the employer's stock.

3. *Transition Rule Through March 30, 2007 for Continuation of Existing Restrictions or Conditions*. For the period from January 1, 2007, through March 30, 2007, a plan does not impose a restriction or condition prohibited by § 401(a)(35)(D)(ii)(II) merely because the plan restricts diversification rights with respect to employer securities pursuant to a plan provision that was in effect on December 18, 2006. However, any such restriction that continues to be imposed on or after March 31, 2007, violates § 401(a)(35)(D)(ii)(II).

4. *Transition Rule for 2007 for Grandfathered Investments*. For the period prior to January 1, 2008, a plan does not impose a restriction or condition prohibited by § 401(a)(35)(D)(ii)(II) merely because the plan, as in effect on December 18, 2006, (1) does not impose an otherwise applicable restriction on a stable value fund or (2) allows applicable individuals the right to divest employer securities on a periodic basis, but permits divestiture of another investment on a more frequent basis, provided that the other investment is not a generally available investment (*e.g.*, the other investment is only available to a fixed class of participants). However, any such restriction that continues to be imposed after December 31, 2007, violates § 401(a)(35)(D)(ii)(II).

E. *Transition Rule under § 401(a)(35)(H).*

Section 401(a)(35)(H) provides a special transition rule under which, for employer securities acquired in a plan year beginning before January 1, 2007, the diversification rights under subparagraph (C) of §401(a)(35) only apply to the applicable percentage of the number of shares of those securities. The applicable percentage is 33% for the first plan year to which § 401(a)(35) applies, 66% for the second plan year, and 100% for all subsequent plan years. If a plan holds more than one class of securities, § 401(a)(35)(H) applies separately with respect to each class. This transition rule does not apply to a participant who, before the first plan year beginning after December 31, 2005, had attained age 55 and completed at least three years of service.

F. *Notice under Section 101(m) of ERISA.*

In addition to amending the Code and ERISA to provide applicable individuals with the divestiture rights discussed in this notice, PPA '06 also added section 101(m) to ERISA, which requires plans to notify applicable individuals of these rights. Specifically, plan administrators must provide a notice to applicable individuals not later than 30 days before the first date on which the individuals are eligible to exercise their rights. The notice must set forth the diversification rights provided under § 401(a)(35) and describe the importance of diversifying the investment of retirement account assets. Section 101(m) of ERISA is effective for plan years beginning after December 31, 2006.

Although some plans will be required to comply with § 401(a)(35) as early as January 1, 2007, the Department of Labor has advised Treasury and the Service that section 101(m) of ERISA does not require plans to furnish notices before January 1, 2007. Pursuant to this interpretation, plans with plan years beginning on or after January 1, 2007, but before February 1, 2007, are not required to furnish the model notice included herein (or a notice otherwise meeting the requirements of section 101(m) of ERISA) earlier than January 1, 2007. The Department, however, encourages plans to furnish notice on the earliest possible date.

G. *Model Notice.*

Section 507(c) of PPA '06 directs the Secretary of the Treasury to prescribe a model notice for purposes of section 101(m) of ERISA[3]. The model below is being issued pursuant to that directive.

The model may have to be adapted to reflect particular plan provisions. For example, changes would generally be necessary if either the plan has more than one class of employer securities, the plan provides the same diversification rights for participants without regard to whether they have three years of service, some of the plan's investment options are closed, the plan receives participant elections electronically, or the transition rule at § 401(a)(35)(H) is being applied.

Notice of Your Rights Concerning Employer Securities

This notice informs you of an important change in Federal law that provides specific rights concerning investments in employer securities (company stock). Because you may now or in the future have investments in company stock under the [*insert name of plan*], you should take the time to read this notice carefully.

Your Rights Concerning Employer Securities

For plan years beginning after December 31, 2006, the Plan must allow you to elect to move any portion of your account that is invested in company stock from that investment into other investment alternatives under the Plan. This right extends to all of the company stock held under the Plan, except that it does not apply to your account balance attributable to [*identify any accounts to which the rights apply only after three years of service*] until you have three years of service. [*Insert description of any advance notice requirement before a diversification election becomes effective.*] You may contact the person identified below for specific information regarding this new right, including how to make this election. In deciding whether to exercise this right, you will want to give careful consideration to the information below that describes the importance of diversification. All of the investment options under the Plan are available to you if you decide to diversify out of company stock.

The Importance of Diversifying Your Retirement Savings

To help achieve long-term retirement security, you should give careful consideration to the benefits of a well-balanced and diversified investment portfolio. Spreading your assets among different types of investments can help you achieve a favorable rate of return, while minimizing your overall risk of losing money. This is because market or other economic conditions that cause one category of assets, or one particular security, to perform very well often cause another asset category, or another particular security, to perform poorly. If you invest more than 20% of your retirement savings in any one company or industry, your savings may not be properly diversified. Although diversification is not a guarantee against loss, it is an effective strategy to help you manage investment risk.

In deciding how to invest your retirement savings, you should take into account all of your assets, including any retirement savings outside of the Plan. No single approach is right for everyone because, among other factors, individuals have different financial goals, different time horizons for meeting their goals, and different tolerances for risk. Therefore, you should carefully consider the rights described in this notice and how these rights affect the amount of money that you invest in company stock through the Plan.

It is also important to periodically review your investment portfolio, your investment objectives, and the investment options under the Plan to help ensure that your retirement savings will meet your retirement goals.

For More Information

If you have any questions about your rights under this new law, including how to make this election, contact [*enter name and contact information*].

[3] Section 101(m) of ERISA is under the jurisdiction of the Department of Labor.

IV. REGULATIONS

The Service and Treasury plan to issue regulations under § 401(a)(35) and those regulations will be consistent with the transitional guidance issued in this notice.

V. COMMENTS REQUESTED

Comments are requested on § 401(a)(35), including the issues raised in Part III of this notice and issues that should be addressed in regulations. Any comments received on the notice rules, including the model notice above, will be provided to the Department of Labor.

Written comments should be submitted by March 18, 2007. Send submissions to CC:PA:LPD:DRU (Notice 2006–107), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered to CC:PA:LPD:DRU (Notice 2006–107), Room 5203, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, comments may be submitted via the Internet at *notice.comments@irscounsel.treas.gov* (Notice 2006–107). All comments will be available for public inspection.

VI. *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 1545–2049. 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 the model notice provision of IIIF. This information is required under section 507 of PPA'06. This information will be used to allow individual plans to comply with applicable law. The likely respondents are businesses or other for-profit institutions, and small businesses or organizations.

The estimated total annual reporting and/or recordkeeping burden is 7,725 hours.

The estimated annual burden per respondent and/or recordkeeper varies from 1 minute to 3 hours, depending on individual circumstances, with an estimated average of 3/4's of an hour. The estimated number of respondents and/or recordkeepers is 10,300.

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 drafter of this notice is Robert Gertner 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 (877) 829–5500 (a toll-free number) between the hours of 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday. Mr. Gertner may be reached at (202) 283–9888 (not a toll-free number).

Application of the Self-Employment Contributions Act (SECA) Tax to Payments Made by the U.S. Department of Agriculture (USDA) Under the Conservation Reserve Program (CRP)

Notice 2006–108

I. Overview and Purpose

This notice sets forth a proposed revenue ruling concerning the application of the Self-Employment Contributions Act (SECA) tax to payments made by the U.S. Department of Agriculture (USDA) under the Conservation Reserve Program (CRP), 16 U.S.C. 3831. CRP was authorized in 1985. It is one of several programs administered by the USDA that provide payments in exchange for diverting land from agricultural use to other uses.

The Service has previously issued an announcement addressing the SECA tax treatment of payments made by the USDA under land diversion programs. Announcement 83–43, 1983–10 I.R.B. 29, provides guidance in a Question and Answer format related to land diversion programs sponsored by the USDA for purposes of special use valuation under section 2032A of the Code, estate tax deferral under section 6166 of the Code, and the SECA tax. In Q&A 3, the Service stated that a farmer who receives cash or a payment in kind from the USDA for participation in a land diversion program is liable for self-employment tax on the cash or payment in kind received. The announcement was consistent with guidance provided in Rev. Rul. 60–32, 1960–1 C.B. 23, with respect to two earlier land diversion programs conducted under the Soil Bank Act. Both the announcement and the revenue ruling concluded that participants in the land diversion programs were subject to SECA taxes on their payments if the participants were otherwise operating a farm or materially participating in the production of commodities on a farm operated by others.

However, Rev. Rul. 60–32 also states that participants in land diversion programs are not subject to SECA tax on the payments, if they do not operate a farm or materially participate in farming activities. The material participation factor is relevant for SECA under these circumstances only with respect to the exception from net income from self-employment provided in section 1402(a)(1) for rentals from real property. Some taxpayers may have read the reference to material participation as implying that the rental exception could potentially apply to payments under a land diversion program.

More recently, the treatment of CRP payments for purposes of SECA, and more specifically, the potential application of the rental exception under section 1402(a)(1) was addressed by the Court of Appeals for the Sixth Circuit in *Wuebker v. Commissioner*, 205 F.3d 897 (6th Cir. 2000). The Court held that CRP payments were net income from self-employment because they were received in exchange for performing tasks "that are intrinsic to the farming trade or business" such as tilling, seeding, fertilizing and weed control. Moreover, notwithstanding the fact that the CRP statutes labeled the payments as "rent", the court concluded the payments are not rent

for tax purposes because they are not payments for use or occupation of the property. The court stated that "the essence of the program is to prevent participants from farming the property and to require them to perform various activities in connection with the land, both at the start of the program and continuously throughout the life of the contract, with the government's access limited to compliance inspections." *Id.* at 904. Thus, under the Court's reasoning, CRP payments do not fall within the exception that excludes rent from net income from self-employment provided by section 1402(a).

Like the 1983 announcement and the 1960 revenue ruling, *Wuebker* addresses CRP recipients who are engaged in the business of farming while also receiving CRP payments. The IRS has received questions asking whether CRP payments are subject to SECA if the recipient is retired or not otherwise actively engaged in farming. This proposed revenue ruling is intended to respond to those questions. In addition, in light of the fact that the USDA no longer operates programs under the Soil Bank Act, and to remove any confusion that may arise from its holding, the proposed revenue ruling would obsolete Rev. Rul. 60–32. The IRS and Treasury are soliciting comments regarding the proposed revenue ruling. The Department of the Treasury and the Internal Revenue Service anticipate issuing a final revenue ruling after the comments have been considered.

II. Proposed Revenue Ruling

Section 1402.—Definitions

26 CFR 1.1402(a)–1: Definition of net earnings from self-employment.
(Also: Section 1401.)

Rev. Rul. XXXX–XX

ISSUE

Whether Conservation Reserve Program (CRP) rental payments (including incentive payments) by the U.S. Department of Agriculture (USDA) to (1) a farmer actively engaged in the trade or business of farming who enrolls land in CRP and fulfills the CRP contractual obligations personally or to (2) an individual not otherwise actively engaged in the trade or business of farming who enrolls land in CRP and fulfills the CRP contractual obligations by arranging for a third party to perform the required activities, are included in net earnings from self-employment for purposes of the Self-Employment Contributions Act (SECA) tax and not excluded from net income from self-employment as rentals from real estate.

FACTS

Situation 1.

A is engaged in the business of farming on land that A owns. A farms a portion of his cropland and has enrolled the remaining portion of his cropland in the CRP program. The CRP, 16 U.S.C. §§ 3801, 3831–3836, is a voluntary program under which the USDA through the Commodities Credit Corporation makes annual payments to participants. Participants include farm owners and operators who agree to place environmentally sensitive cropland in conserving uses for 10 to 15 years. Participants receive an annual "rental" payment (including incentive payments) and cost sharing assistance to establish and maintain approved groundcover, and participants agree to plant grasses, trees, and other conserving cover crops, restore wetlands and establish buffers. Generally, a participant is eligible to enroll land in CRP if the participant has owned or operated the land for at least twelve months prior to the close of the CRP sign up period. Land is eligible for placement in CRP if it is cropland or marginal pasture land.

A meets the eligibility requirements with respect to the portion of his land he is seeking to enroll in CRP. A enters into a 10 year CRP contract with the USDA for the primary purpose of earning a profit from the land. The terms of A's CRP contract require that A will receive payments if A will (1) implement a conservation plan, (2) establish vegetative cover, (3) not engage in or allow grazing, harvesting, or other commercial use of the CRP land, (4) not use the land for agricultural purposes except as permitted by the USDA, (5) not harvest, sell, nor otherwise make commercial use of trees on the CRP land, (6) control on the CRP land all weeds, insects, pests, and other undesirable species to ensure the establishment and maintenance of the approved cover, and (7) file annual CRP reports. In order to implement the conservation plan, the terms of the contract require significantly more activities to be performed in the first year of the contract than in the later years. A personally completes the activities required under the CRP contract for tilling, seeding, fertilizing, and weed control using his own farm equipment. A also satisfies the other requirements of the contract. In return, A receives CRP rental payments each year during the contract term. A also receives cost sharing payments based on the costs A incurs in performing A's obligations under the CRP contract.

Situation 2.

The facts are the same as in Situation 1, except that B, who owns the land, ceases all activities related to the business of farming in the year before he enters into the CRP contract. In the next calendar year B rents out a portion of his land to another farmer and enters into a 10-year CRP contract with respect to the remaining portion of his land. B arranges for a third party to perform the tilling, seeding, fertilizing and weed control required under the CRP contract and to fulfill the other contractual requirements. In return, B receives CRP rental payments each year during the contract term. B also receives cost sharing payments based on the costs B incurs in implementing CRP on the land.

LAW

Section 1401 of the Internal Revenue Code (Code) imposes a tax on the self-employment income of every individual (SECA tax). The term "self-employment income" is defined in section 1402(b) as the net earnings from self-employment derived by an individual, with certain limitations.

Section 1402(a) defines an individual's "net earnings from self-employment" as the gross income derived by an individual from any trade or business carried on by such individual, also with certain limitations. Section 1402(a)(1) generally excludes from the computation of "net earnings from self-employment" rentals from real estate and from personal property leased with the real estate (including

such rentals paid in crop shares) together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer, with an exception. Under this exception, any income derived by the owner or tenant of land must be included in the computation of "net earnings from self-employment" if—

(A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and

(B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity.

Section 1402(c) provides that the term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), less allowable deductions.

Section 1.1402(c)–1 of the Income Tax Regulations generally provides that in order for an individual to have net earnings from self-employment, he must carry on a trade or business, either as an individual or as a member of a partnership. Whether or not he is engaged in carrying on a trade or business will depend upon all of the facts and circumstances in the particular case.

In considering whether an individual is engaged in a trade or business, the United States Supreme Court has stated that "to be engaged in a trade or business, the taxpayer must be involved in the activity with continuity and regularity, and the taxpayer's primary purpose for engaging in the activity must be for income or profit. A sporadic activity...does not qualify." *Commissioner v. Groetzinger*, 480 U.S. 23, 35 (1987). The question of whether a taxpayer is engaged in a trade or business requires an examination of the relevant facts in each case. *Id.* at 36.

In *Wuebker v. Commissioner*, 205 F.3d 897 (6th Cir. 2000), the Sixth Circuit held that CRP payments received by a farmer actively engaged in the business of farming were includible in self-employment income. The court concluded that their "agreement . . . required them to perform several ongoing tasks with respect to the land enrolled in the CRP, the very land they already owned and had previously farmed." The Sixth Circuit noted that the taxpayers were required under the CRP contract to perform tasks intrinsic to the farming trade or business (*e.g.*, tilling, seeding, fertilizing, and weed control) that required the use of their farming equipment. *Id.* at 903. In addition, under the court's view, the CRP payments were not payments of rent for the use or occupancy of property and therefore were not rentals from real estate excluded from SECA by section 1402(a)(1). The Court observed that the essence of the CRP program is to prevent participants from farming enrolled property and to require the participants to perform various activities in connection with the land continuously throughout the life of the contract with the government's access limited to inspections. *Id.* at 904. Furthermore, the Sixth Circuit looked to the "substance, rather than the form, of the transaction" in determining that the income derived from the CRP contract is includible in self-employment income earned in lieu of farm income, for which SECA tax was due.

Under section 126(a), gross income does not include the excludable portion of payments received under certain conservation programs. Revenue Ruling 2003–59, 2003–1 C.B. 1014, holds that all or a portion of cost sharing payments received under the CRP are eligible for the exclusion from gross income permitted by section 126. The ruling also holds that rental payments and incentive payments received under the CRP are not cost sharing payments and therefore are not excludable from gross income.

ANALYSIS

Under *Groetzinger*, an activity will be a trade or business if the taxpayer "is involved in the activity with continuity and regularity and . . . the taxpayer's primary purpose for engaging in the activity must be for income or profit." Participation in a CRP contract is a trade or business for both A and B. The participant is obligated to perform a number of activities, including but not limited to tilling, seeding, fertilizing, and weed control. Although more extensive activities are required at the beginning of the contract term than later, the obligation to perform activities extends throughout the ten-year period, giving participation in CRP the continuity and regularity necessary to be considered a trade or business. Also, both A and B enrolled land in the CRP program to earn a profit. Participation in a CRP contract meets the criteria to be a trade or business irrespective of whether the participant performs the required activities personally or arranges for his obligations to be satisfied by a third party. Thus, the trade or business treatment is the same for A and B even though A meets the CRP requirements for maintenance of the land himself whereas B arranges for someone else to do it. Furthermore, the CRP meets the criteria to be a trade or business based on the activities required directly under the program and without being affected by whether the participant is otherwise engaged in farming or any other trade or business. Finally, although 16 U.S.C. section 3801(a)(13) refers to some of these payments as "rent", the treatment of these payments under the Code depends upon their substance. CRP rental payments are not payments for the right to use or occupy real property. CRP rental payments are made in exchange for conducting activities that meet the commitments of a CRP contract. Therefore, CRP rental payments are not excluded from net income from self-employment under section 1402(a)(1) as rentals from real estate. See *Wuebker*. Thus, for both A and B, the CRP rental payments are includible in their net income from self-employment.

To the extent that a cost sharing payment is excluded from gross income under section 126, that portion of the payment would also be excluded from the gross income derived by an individual from the trade or business carried on by the individual. Consequently, to the extent such payment is excluded from gross income under section 126, the payment is also excluded from net earnings from self-employment.

HOLDING

CRP rental payments (including incentive payments) from USDA to a (1) farmer actively engaged in the trade or business of farming who enrolls land in CRP and fulfills the CRP contractual obligations personally and to (2) an individual not otherwise actively engaged in the trade or business of farming who enrolls land in CRP and fulfills the CRP contractual obligations by arranging for a third party to perform the required activities are both includible in net income from self-employment for purposes of the SECA tax and not excluded from net income from self-employment as rentals from real estate.

EFFECT ON OTHER REVENUE RULINGS

Revenue Ruling 60–32 is obsoleted.

III. Request for Comments

Comments are requested regarding the interaction of the proposed revenue ruling with the treatment of CRP payments under other Code provisions, such as sections 2032A and 6166. The comments will be available for public inspection and copying. Comments must be submitted by March 19, 2007. Comments should reference Notice 2006–108, and be addressed to:

Internal Revenue Service
Office of the Associate Chief Counsel
(Tax Exempt and Government Entities)
CC:TEGE
1111 Constitution Ave., N.W.,
Rm. 4000
Washington, DC 20224
Attn: Elliot Rogers

In addition, comments may be submitted electronically via the Internet by sending them in an e-mail to *notice.comments@irscounsel.treas.gov* and specifying the comments concern Notice 2006–108.

DRAFTING INFORMATION

The principal authors of this notice are Marie Cashman and Elliot Rogers of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from Treasury and the Service participated in its development. For further information regarding this notice, contact Mr. Rogers at (202) 622–6040 (not a toll-free call).

Interim Guidance Regarding Supporting Organizations and Donor Advised Funds

Notice 2006–109

Section 1. PURPOSE

This notice provides interim guidance regarding the application of certain requirements enacted as part of the Pension Protection Act of 2006, Pub. L. No. 109–208, 120 Stat. 780 (2006) ("PPA"), that affect supporting organizations, donor advised funds, and private foundations that make grants to supporting organizations.

Sections 1231, 1241, 1242, 1243, and 1244 of the PPA add sections 509(f), 4943(f), 4958(c)(3), 4966, and 4967, to the Internal Revenue Code ("Code"), and amend sections 509(a)(3)(B), 4942(g)(4), and 4945(d)(4)(A) of the Code. The amendments to section 509(a)(3) and the addition of section 509(f) prescribe new requirements for supporting organizations. The addition of section 4943(f) defines the terms "Type III supporting organization" and "functionally integrated Type III supporting organization." The amendments to sections 4942 and 4945 affect private foundations that make grants or similar payments to supporting organizations under certain circumstances. The amendments to section 4958, among other things, subject substantial contributors and persons related to them (as described in section 4958(c)(3)(B)) to new excise taxes if they engage in certain types of transactions with supporting organizations with which they have a relationship. New section 4966 imposes an excise tax on a sponsoring organization that maintains donor advised funds if it makes certain distributions from a donor advised fund. New section 4967 imposes excise taxes on certain distributions from a donor advised fund that provide more than an incidental benefit to a donor, a donor-advisor, or related persons (as described in sections 4967(d) and 4958(f)(7)).

This notice provides guidance on four aspects of the application of these new provisions of the Code. First, Section 3 provides criteria for private foundations that might make distributions to supporting organizations that can be used to determine for purposes of sections 4942(g)(4) and 4945(d)(4) whether an organization is a Type I, Type II, or functionally integrated Type III supporting organization. Section 3 also provides criteria for determining whether a supporting organization, or any of its supported organizations, are controlled by disqualified persons. Section 3 also provides similar guidance with respect to section 4966 for donor advised funds that make grants to supporting organizations. Second, Section 4 clarifies the date of applicability for the new section 4958(c)(3) excise tax on certain excess benefit transactions involving supporting organizations. Third, pursuant to the authority under new section 4966(d)(2)(C), Section 5.01 excludes certain employer-sponsored disaster relief funds from the definition of donor-advised fund. Fourth, Section 5.02 clarifies how the Internal Revenue Service ("Service") will apply the new section 4966(a) excise taxes with respect to payments made pursuant to educational grants awarded prior to the date of enactment of the PPA.

This notice is intended to address a limited number of issues which require immediate guidance. The Service and the Department of Treasury ("Treasury") expect to issue further guidance, including regulations, under these provisions of the PPA. The rules provided in this notice apply until further guidance is issued. This notice does not affect the substantive standards for tax exemption under section 501(c)(3). This notice also invites comments from the public regarding this notice and suggestions for future guidance implementing statutory changes under the PPA.

Section 2. BACKGROUND

Organizations that are organized and operated exclusively for charitable, religious, educational or other specified purposes are generally exempt from income tax under section 501(a) as organizations described in section 501(c)(3). Section 509(a) divides section 501(c)(3) organizations into two subcategories: private foundations and organizations that are not

private foundations, which are commonly known as public charities. To be categorized as a public charity and not a private foundation, an organization must be described in section 509(a). To be described in section 509(a)(1) or (2), an organization must receive a substantial amount of public support to fund its operations. To be described in section 509(a)(3), an organization must have a particular type of structural relationship with a publicly supported section 501(c)(3), (4), (5) or (6) organization.

Private foundations are subject to a different regime of excise taxes than are public charities. For example, private foundations are subject to excise tax if they do not make at least a minimum level of qualifying distributions each year. Private foundations are also subject to excise tax if they make certain taxable expenditures. Taxable expenditures include, but are not limited to, certain grants to organizations unless the private foundation exercises expenditure responsibility with respect to the grants as required by section 4945(h) and Treas. Reg. section 53.4945–5(b).

Section 170(c) describes organizations eligible to receive charitable contributions that are deductible for income tax purposes.

.01 Donor Advised Funds and Supporting Organizations before the PPA

Donor Advised Funds

Prior to the PPA, the Code did not define the term donor advised fund. However, the term was commonly understood to refer to component funds of certain community trusts. See Treas. Reg. section 1.170A–9(e)(10) and (11). The term was also commonly understood to refer to an account established by one or more donors but owned and controlled by a public charity to which such donors or other individuals designated by the donors could provide nonbinding recommendations regarding distributions from the account or regarding investment of the assets in the account.

Supporting Organizations

Section 509(a)(3) excludes from the definition of private foundation certain organizations that support certain publicly supported organizations. The Treasury regulations under section 509(a)(3) refer to these organizations as supporting organizations. To be described in section 509(a)(3), an organization must meet several tests: (1) it must be organized and operated exclusively for the benefit of specified publicly supported organizations (generally, public charities); (2) it must have one of three types of relationships with its publicly supported organizations; and (3) it must not be controlled, directly or indirectly, by disqualified persons (as defined in section 4946 other than foundation managers) with respect to such supporting organization.

In general, supporting organizations have been identified by the type of relationship they have with their publicly supported organizations. A supporting organization that is operated, supervised or controlled by one or more publicly supported organizations is commonly known as a Type I supporting organization. A supporting organization supervised or controlled in connection with one or more publicly supported organizations is commonly known as a Type II supporting organization. A supporting organization that is operated in connection with one or more publicly supported organizations is commonly known as a Type III supporting organization.

.02 Donor Advised Funds Under the PPA

Definition of a Donor Advised Fund

Under new section 4966(d)(2), a donor advised fund is defined as a fund or account owned and controlled by a sponsoring organization, which is separately identified by reference to contributions of a donor or donors, and with respect to which the donor, or any person appointed or designated by such donor ("donor advisor"), has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of the funds.

A sponsoring organization is defined under new section 4966(d)(1) as a section 170(c) organization that is not a governmental organization (referenced in section 170(c)(1) and (2)(A)) or a private foundation and maintains one or more donor advised funds.

Pursuant to new section 4966(d)(2)(B), the term donor advised fund does not include a fund or account: (1) that makes distributions only to a single identified organization or governmental entity or (2) with respect to which a donor advises a sponsoring organization regarding grants for travel, study or similar purposes if:

a. the donor's, or the donor advisor's, advisory privileges are performed in his capacity as a member of a committee whose members are appointed by the sponsoring organization,

b. no combination of donors or donor advisors (or related persons) directly or indirectly control the committee, and

c. all grants are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the sponsoring organization's board of directors.

Thus, a sponsoring organization that owns and controls a fund that meets these criteria may award a scholarship from the fund to a natural person without subjecting the sponsoring organization or its managers to excise taxes under new section 4966.

Taxable Distribution

New section 4966 imposes an excise tax on a sponsoring organization for each taxable distribution it makes from a donor advised fund. It also imposes an excise tax on the agreement of any fund manager of the sponsoring organization to the making of a distribution, knowing that it is a taxable distribution. The tax on taxable distributions applies to distributions occurring in taxable years beginning after August 17, 2006.

In general, under new section 4966(c), a taxable distribution is any distribution from a donor advised fund to any natural person, or to any other person if (i) the distribution is for any purpose other than one specified in section 170(c)(2)(B), or (ii) the sponsoring organization maintaining the donor advised fund does not exercise expenditure responsibility with respect to such distribution in accordance with section 4945(h).

Under new section 4966(c)(2), a taxable distribution does not include a distribution from a donor advised fund to: (1) any organization described in section 170(b)(1)(A) (other than a disqualified

supporting organization), (2) the sponsoring organization of such donor advised fund, or (3) any other donor advised fund.

Under new section 4966(d)(4), a disqualified supporting organization includes a Type III supporting organization that is not functionally integrated and any Type I, Type II, or functionally integrated Type III supporting organization where the donor or donor advisor (and any related parties) directly or indirectly controls a supported organization of the supporting organization.

Prohibited Benefit

New section 4967 imposes an excise tax if a donor, donor advisor, or a person related to a donor or donor advisor of a donor advised fund (as described in sections 4967(d) and 4958(f)(7)) provides advice as to a distribution that results in any such person receiving, directly or indirectly, a more than incidental benefit. The excise tax is imposed on any person who advises as to the distribution or who receives the benefit. A separate excise tax may be imposed on a fund manager who agreed to the making of the distribution. The new excise tax under section 4967 applies to taxable years beginning after August 17, 2006.

Secretarial Authority

New section 4966(d)(2)(C) grants the Secretary authority to exempt certain funds from treatment as donor advised funds if either (1) the fund or account is advised by a committee not directly or indirectly controlled by the donor or donor advisor (and any related parties), or (2) such fund or account benefits a single identified charitable purpose.

.03 Supporting Organizations Under the PPA

Supporting Organization Definition

The PPA incorporates the previously informal nomenclature used to distinguish among types of supporting organizations into the statute. Thus, new section 4966(d)(4)(B)(i) defines a Type I supporting organization as a supporting organization that is operated, supervised, or controlled by one or more section 509(a)(1) or 509(a)(2) organizations. New section 4966(d)(4)(B)(ii) defines a Type II supporting organization as a supporting organization that is supervised or controlled in connection with one or more section 509(a)(1) or 509(a)(2) organizations. (See also sections 4942(g)(4)(B)(i) and (ii) for parallel definitions of Type I and Type II supporting organizations). Finally, new section 4943(f)(5)(A) defines a Type III supporting organization as a supporting organization that is operated in connection with a section 509(a)(1) or (2) organization.

New section 4943(f)(5)(B) defines a functionally integrated Type III supporting organization as one which is not required under regulations established by the Secretary to make payments to supported organizations due to the activities of the organization related to performing the functions of, or carrying out the purposes of, such supported organizations.

New section 509(f)(2), which is effective August 17, 2006, prohibits certain supporting organizations from accepting gifts or contributions from certain persons associated with the supported organization of such supporting organization. This provision provides that any organization that would otherwise meet the requirements of a Type I or Type III supporting organization will be excluded under this provision if it accepts any gift or contribution from a person who directly or indirectly controls (either alone or together with related persons described in section 509(f)(2)(B)(ii) and (iii)) the governing body of a supported organization of such supporting organization or from a related person described in section 509(f)(2)(B).

New Rules Regarding Section 4958 Excess Benefit Transactions and Supporting Organizations

Section 4958 imposes an excise tax on certain persons if they engage in one or more excess benefit transactions. New section 4958(c)(3) provides that any grant, loan, compensation, or other similar payment from a supporting organization to a substantial contributor or persons related to the substantial contributor (as described in section 4958(c)(3)(B)) is treated as an excess benefit transaction. In addition, any loan from a supporting organization to certain disqualified persons is treated as an excess benefit transaction. The entire amount of the payment to such persons constitutes an excess benefit subject to an excise tax under section 4958. This excise tax applies to transactions occurring after July 25, 2006.

Under new section 4958(c)(3)(C), a substantial contributor includes any person who contributed or bequeathed an aggregate amount of more than $5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received. A substantial contributor also includes the creator of a trust.

.04 New Restrictions on Grants Made by Private Foundations to Supporting Organizations

The PPA amended section 4942(g) to deny qualifying distribution treatment to grants by non-operating private foundations to (1) Type III supporting organizations that are not functionally integrated and (2) to Type I, Type II, and functionally integrated Type III supporting organizations if a disqualified person of the private foundation directly or indirectly controls such supporting organization or a supported organization of the supporting organization. The PPA also amended section 4945(d)(4)(A) to treat grants to the above entities by all private foundations as taxable expenditures unless the private foundation exercises expenditure responsibility with respect to the grants.

Section 3. GRANTOR RELIANCE STANDARDS FOR GRANTS TO CERTAIN SUPPORTING ORGANIZATIONS

.01 Treatment of Grants from Private Foundations or Donor Advised Funds to Supporting Organizations

As stated in Section 2.04, the enactment of the PPA imposes certain limitations if a private foundation makes a grant to (1) a Type III supporting organization that is not functionally integrated, or (2) a Type I, Type II, or functionally integrated Type III supporting organization if one or more disqualified persons of the private foundation directly or indirectly controls such supporting organization or one of its supported

organizations. Specifically, for non-operating foundations, the grant is not a qualifying distribution under section 4942. For all private foundations, the grant is a taxable expenditure under section 4945 if the private foundation does not exercise expenditure responsibility with respect to the grant.

Similarly, the PPA treats as a taxable distribution any distribution from a donor advised fund to (1) a Type III supporting organization that is not functionally integrated, or (2) any other supporting organization if the fund's donor or donor advisor (and any related parties) directly or indirectly controls a supported organization of the grantee if the sponsoring organization does not exercise expenditure responsibility with respect to such distribution.

Until further guidance is issued, for purposes of sections 4942, 4945, and 4966 (as applicable) a grantor, acting in good faith, may rely on information from the IRS Business Master File ("BMF") or the grantee's current IRS letter recognizing the grantee as exempt from federal income tax and indicating the grantee's public charity classification in determining whether the grantee is a public charity under section 509(a)(1), (2), or (3). In addition, a grantor, acting in good faith, may rely on a written representation from a grantee and specified documents as described in A. and B. below in determining whether the grantee is a Type I, Type II, or functionally integrated Type III supporting organization. The good faith requirement is not satisfied if the collected specified documents are inconsistent with the written representation. In each case, the grantor must verify that the grantee is listed in Publication 78, *Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986*, or obtain a copy of the current IRS letter recognizing the grantee as exempt from federal income tax.

A. To establish that a grantee is a Type I or a Type II supporting organization, a grantor, acting in good faith, may rely on a written representation signed by an officer, director or trustee of the grantee that the grantee is a Type I or Type II supporting organization, provided that:

   i. the representation describes how the grantee's officers, directors, or trustees are selected, and references any provisions in governing documents that establish a Type I (operated, supervised, or controlled by) or a Type II (supervised or controlled in connection with) relationship (as applicable) between the grantee and its supported organization(s); and

   ii. the grantor collects and reviews copies of governing documents of the grantee (and, if relevant, of the supported organization(s)).

B. To establish that a grantee is a functionally integrated Type III supporting organization a grantor, acting in good faith, may rely on a written representation signed by an officer, director or trustee of the grantee that the grantee is a functionally integrated Type III supporting organization, provided that:

   i. the grantee's representation identifies the one or more supported organizations with which the grantee is functionally integrated;

   ii. the grantor collects and reviews copies of governing documents of the grantee (and, if relevant, of the supported organization(s)), and any other documents that set forth the relationship of the grantee to its supported organizations, if such relationship is not reflected in the governing documents; and

   iii. the grantor collects and reviews a written representation signed by an officer, director or trustee of each of the supported organizations with which the grantee represents that it is functionally integrated describing the activities of the grantee and confirming, consistent with Section 3.02 of this notice, that but for the involvement of the grantee engaging in activities to perform the functions of, or to carry out the purposes of, the supported organization, the supported organization would normally be engaged in those activities itself.

As an alternative to relying on a written representation from a grantee and specified documents as described in A. or B. above, a grantor may rely on a reasoned written opinion of counsel of either the grantor or the grantee concluding that the grantee is a Type I, Type II, or functionally integrated Type III supporting organization.

A private foundation considering a grant to a Type I, Type II, or functionally integrated Type III supporting organization may need to obtain a list of the grantee's supported organizations from the grantee to determine whether any of the supported organizations is controlled by disqualified persons of the private foundation. *See* Section 3.02, below, for the definition of control that may be used. If such control exists, the grant may not be a qualifying distribution and the foundation may be required to exercise expenditure responsibility with respect to the grant.

Similarly, a sponsoring organization considering a grant from a donor advised fund to a Type I, Type II, or functionally integrated Type III supporting organization may need to obtain a list of the grantee's supported organizations from the grantee to determine whether any of the supported organizations is controlled by the fund's donor or donor advisor (and any related parties). *See* Section 3.02, below, for the definition of control that may be used. If such control exists, the sponsoring organization will be required to exercise expenditure responsibility.

.02 Standards for Determining Control and for Defining "Functionally Integrated Type III Supporting Organization"

The Service and the Treasury Department intend to issue regulations regarding the meaning of "control" under sections 4942(g)(4)(A) and 4966(d)(4)(A) and the definition of a "functionally integrated Type III supporting organization" under section 4943(f)(5)(B). Until those regulations are issued, a grantor may rely on the standards described below for purposes of sections 4942, 4945 and 4966 (as applicable). Although regulations may adopt different standards from those referenced below, those regulations will apply to

grants made by private foundations and sponsoring organizations no sooner than the date that the regulations are proposed. The standards set forth below will apply with respect to any grants made prior to that date.

In determining whether a disqualified person with respect to a private foundation controls a supporting organization or one of its supported organizations, the control standards established in Treas. Reg. section 53.4942(a)–3(a)(3) will apply. Under these standards, an organization is controlled by one or more disqualified persons with respect to a foundation if any such persons may, by aggregating their votes or positions of authority, require the supporting or supported organization to make an expenditure, or prevent the supporting organization or the supported organization from making an expenditure, regardless of the method by which the control is exercised or exercisable.

Similarly, in determining whether a donor or donor advisor or a person related to a donor or donor advisor (as described in sections 4967(d) and 4958(f)(7)) of any donor advised fund controls a supported organization of the grantee, the control standards established in Treas. Reg. section 53.4942(a)–3(a)(3) will apply. Under these standards, a supported organization is controlled by one or more donor or donor advisors (and any related parties) of any donor advised fund if any such persons may, by aggregating their votes or positions of authority, require a supported organization to make an expenditure, or prevent a supported organization from making an expenditure, regardless of the method by which the control is exercised or exercisable.

Also, solely for purposes of a representation or opinion of counsel on which a grantor may rely, an organization will be considered a functionally integrated Type III supporting organization if it would meet the test set forth in Treas. Reg. section 1.509(a)–4(i)(3)(ii).

Section 4. APPLICABILITY DATE FOR EXCESS BENEFIT TRANSACTIONS BY SUPPORTING ORGANIZATIONS

As stated in Section 2.03, under section 4958(c), as amended by the PPA, any grant, loan, compensation, or other similar payment by a supporting organization to a substantial contributor or a person related to a substantial contributor (as described in section 4958(c)(3)(B)), and any loan provided by a supporting organization to certain disqualified persons, is treated automatically as an excess benefit transaction, with the entire amount paid to the substantial contributor or disqualified person and those related to them treated as an excess benefit. The statute provides that this new rule applies to transactions occurring after July 25, 2006.

Treasury and the IRS understand that before the PPA was enacted on August 17, 2006, a supporting organization may have entered into a binding contract or other legal obligation to pay substantial contributors, or persons related to substantial contributors, for goods or services, or to provide a loan to a disqualified person. At the time the supporting organization entered into these contracts or other legal obligations, the payments required under them were not necessarily considered excess benefit transactions.

To address the change to the law under the PPA, the IRS will not consider any payment made pursuant to a written contract that was binding on August 17, 2006 as an excess benefit transaction under new section 4958(c)(3), provided that (1) such contract was binding at all times after August 17, 2006 and before payment is made, (2) the contract is not modified during such period, and (3) the payment under the contract is made on or before August 17, 2007. Termination of the contract does not constitute a modification for this purpose.

Similarly, relief is provided with respect to certain arrangements that are not governed by a binding written contract described in the preceding paragraph. With respect to any such arrangement involving an employment relationship in existence, or other legal obligation in effect, on August 17, 2006, the IRS will not consider any payment pursuant to such an arrangement as an excess benefit transaction under new section 4958(c)(3), provided that (1) the terms of such arrangement are not modified after August 17, 2006, (2) any services are performed and any goods are delivered as required by the arrangement no later than December 31, 2006, and (3) the payment is made no later than August 17, 2007. Termination of the arrangement does not constitute a modification for this purpose.

The applicability dates set forth in this section affect only liability for excise taxes under new section 4958(c)(3). Notwithstanding any relief provided in this section, if the supporting organization pays in excess of reasonable compensation for services or in excess of fair market value for goods, it jeopardizes continued tax exemption under section 501(c)(3), and the individuals receiving the payments may be subject to excise taxes under section 4958. In addition, any relief provided by this section does not alter whether a transaction is an excess benefit transaction under section 4958(c)(1).

Section 5. DONOR ADVISED FUNDS

New section 4966(c)(1)(A) imposes an excise tax on all distributions to natural persons from donor advised funds effective for taxable years beginning after August 17, 2006. However, pursuant to the authority described in Section 2.02 above, certain funds or accounts are excepted from the definition of donor advised fund.

.01 Employer-Sponsored Disaster Relief Assistance Programs

The definition of donor advised fund in section 4966(d)(2)(A) encompasses all funds and accounts owned or controlled by a sponsoring organization separately identified with reference to the contribution of a donor or donors for which the donor, or anyone appointed by the donor, has or reasonably expects to have, advisory privileges. Section 4966(d)(2)(C) grants the Secretary the authority to exempt a fund or account (a "fund") from the definition of donor advised fund.

Certain employers may establish disaster relief funds at a community foundation or other public charity to provide disaster relief grants to employees or their family members who are the victims of a major disaster. The sponsoring organization may receive contributions to these funds from both the employer and its employees. If these employer-sponsored disaster relief funds are within the definition of donor advised funds, any distribution from these funds to employees or their family members would be subject to excise tax under new section 4966.

Pursuant to the authority under 4966(d)(2)(C), the IRS and Department of Treasury exclude from the definition of

donor advised fund any employer-sponsored disaster relief fund that meets the following requirements:

a. the fund serves a single identified charitable purpose, which is to provide relief from one or more qualified disasters within the meaning of section 139(c)(1), (2), or (3);[1]

b. the fund serves a large or indefinite class (a "charitable class");

c. recipients of grants from the fund are selected based on objective determinations of need;

d. the selection of recipients of grants from the fund is made using either an independent selection committee or adequate substitute procedures to ensure that any benefit to the employer is incidental and tenuous. The selection committee is independent if a majority of the members of the committee consists of persons who are not in a position to exercise substantial influence over the affairs of the employer;

e. no payment is made from the fund to or for the benefit of:

   i. any director, officer, or trustee of the sponsoring organization of the fund, or

   ii. members of the fund's selection committee; and

f. the fund maintains adequate records that demonstrate the recipients' needs for the disaster relief assistance provided.

Satisfaction of these requirements does not affect the determination of whether any payments made from the fund might result in taxable compensation to the employees.

.02 Applicability Date for Educational Grants

As provided in Section 2.02 above, under new section 4966, distributions to natural persons from a donor advised fund are subject to an excise tax. The PPA provides that section 4966 applies to certain distributions (including certain educational grants) made in taxable years beginning after August 17, 2006. The excise tax applies irrespective of whether the grant is excludable from the recipient's income as a scholarship or fellowship under section 117.

The IRS and Department of Treasury understand that certain educational grants may have been committed to an individual on or before the date of enactment, the payments of which extend beyond August 17, 2006. Pursuant to this notice, section 4966(c)(1)(A) shall not apply to payments made after August 17, 2006, with respect to an educational grant, if the payment is made pursuant to a grant commitment entered into on or before August 17, 2006. A commitment will be considered entered into on or before August 17, 2006, if:

a. the educational grant was awarded on an objective and nondiscriminatory basis and is reasonable in amount in light of the purposes of the educational grant;

b. the educational grant was not awarded to, nor are payments made pursuant to that grant, to a donor, donor advisor, or any person related to a donor or donor advisor (as described in sections 4967(d) and 4958(f)(7));

c. on or before August 17, 2006: (1) (a) the name of the educational grant recipient, the nature of the educational grant, the amount of the educational grant, the date on which it was awarded, and the educational grant period, were entered on the records of the sponsoring organization or were otherwise adequately evidenced, or (b) notice of the payments to be received was communicated to the payee in writing, and (2) the sponsoring organization keeps a record of such information or notice for a period that ends no earlier than three years after the close of the taxable year in which the last payment is made under the grant; and

d. there is no material change in the amount or in the conditions of the educational grant, such as a required reapplication for the grant.

Notwithstanding the above, section 4967 may apply to any grant that otherwise fits within the criteria specified. Thus, if a sponsoring organization makes an educational grant distribution that results in more than an incidental benefit to a donor, donor advisor, or a person related to a donor or donor advisor, the grant will be subject to excise tax.

Section 6. REQUEST FOR COMMENTS

The IRS and the Department of Treasury request comments regarding this notice and suggestions for future guidance with respect to changes in requirements for donor advised funds and supporting organizations or other changes affecting tax-exempt organizations under the PPA.

Comments should refer to Notice 2006–109 and be submitted by February 1, 2007, to:

Internal Revenue Service
SE:T:EO:RA:G (Notice 2006–109)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4:00 p.m. to:

SE:T:EO:RA:T:G (Notice 2006–109)
Courier's Desk
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

Alternatively, taxpayers may submit comments electronically to *eoppa@irs.gov.* Please include "Notice 2006–109" in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

[1] Under sections 139(c)(1), (2) and (3), a qualified disaster means a disaster that results from a terroristic or military action (as defined in section 692(c)(2)), a Presidentially declared disaster (as defined in section 1033(h)(3)), and a disaster that results from an accident involving a common carrier or from any other event which the Secretary determines to be of a catastrophic nature.

Section 7. 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 1545–2050. 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 requirements to collect information are in Sections 3 and 5 of this notice. Collecting the required information provides private foundations and sponsoring organizations of donor advised funds with relief from excise taxes imposed by sections 4942, 4945 and 4966 of the Code.

The estimated total annual reporting and/or recordkeeping burden is 612,294 hours.

The estimated annual burden per respondent/recordkeeper varies from 7 hours, 53 minutes to 9 hours, 48 minutes, depending on individual circumstances, with an estimated average of 8 1/2 hours. The estimated total number of respondents and/or recordkeepers is 65,000.

The estimated frequency of collection of such information 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. section 6103.

Section 8. DRAFTING INFORMATION

The principal authors of this notice are Mary Jo Salins and Robert Fontenrose of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Ms. Salins at (202) 283–9453, or Mr. Fontenrose at (202) 283–9484 (not a toll-free call).

Recordkeeping Requirements for Charitable Contributions Made by Payroll Deduction

Notice 2006–110

SECTION 1. PURPOSE

This notice provides guidance on how charitable contributions made by payroll deduction may meet the requirements of § 170(f)(17) of the Internal Revenue Code.

Taxpayers claiming charitable contribution deductions for cash, check, or other monetary gifts made in taxable years beginning after August 17, 2006, are subject to the new recordkeeping requirements of § 170(f)(17), as added by section 1217 of the Pension Protection Act of 2006, P.L. 109–280, 120 Stat. 780 (2006) (PPA). To substantiate a deduction, § 170(f)(17) requires a taxpayer to maintain a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution. For a charitable contribution made by payroll deduction, a pay stub, Form W–2, or other employer-furnished document that sets forth the amount withheld for payment to a donee organization, along with a pledge card prepared by or at the direction of the donee organization, will be deemed to be a "written communication from the donee organization" that satisfies the requirements of § 170(f)(17).

The Internal Revenue Service and the Treasury Department expect to issue regulations under § 170 incorporating the recordkeeping requirements of § 170(f)(17). Taxpayers making charitable contributions by payroll deduction may rely on this notice to comply with the new requirements until those regulations are effective.

SECTION 2. BACKGROUND

Section 170 generally allows a deduction, subject to certain limitations, for any charitable contribution (as defined in § 170(c)) payment of which is made during the taxable year. For any contribution of $250 or more, § 170(f)(8) provides that no deduction is allowed unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization. The contemporaneous written acknowledgment must contain the amount of cash and a description of any property other than cash contributed; a statement whether the donee organization provided any goods or services in consideration for the contribution; and a description and good faith estimate of the value of any goods or services provided in consideration for the contribution, or, if the goods or services consist solely of intangible religious benefits, a statement to that effect.

Section 1.170A–13(f)(11)(i) of the Income Tax Regulations provides that a contribution made by means of withholding from a taxpayer's wages and payment by the taxpayer's employer to a donee organization (*i.e.*, a contribution made by payroll deduction) may be substantiated, for purposes of § 170(f)(8), by both: (1) a pay stub, Form W–2, or other document furnished by the employer that sets forth the amount withheld by the employer for the purpose of payment to a donee organization; and (2) a pledge card or other document prepared by or at the direction of the donee organization that includes a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contribution made to the organization by payroll deduction. Section 1.170A–13(f)(11)(ii) provides that the contribution amount withheld from each payment of wages to a taxpayer is treated as a separate contribution for purposes of applying the $250 threshold in § 170(f)(8) to charitable contributions made by payroll deduction.

Section 1.170A–13(f)(12) provides, in relevant part, that an organization described in § 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution is treated as a donee organization solely for purposes of § 170(f)(8), even if the organization (pursuant to the donor's instructions or otherwise) distributes the amount received to one or more organizations described in § 170(c).

Section 1217 of the PPA adds § 170(f)(17), effective for contributions made in taxable years beginning after August 17, 2006. Section 170(f)(17) provides that no deduction is allowed under

§ 170(a) for any contribution of a cash, check, or other monetary gift, unless the taxpayer maintains as a record of the contribution a bank record or a written communication from the donee showing the name of the donee organization and the date and the amount of the contribution. Unlike § 170(f)(8), which only applies to contributions of $250 or more, § 170(f)(17) applies to any contribution of a cash, check, or other monetary gift.

Any contribution of $250 or more made by cash, check, or other monetary gift is subject to §§ 170(f)(8) and (f)(17). No deduction for a contribution of $250 or more made by payroll deduction is allowed unless the taxpayer satisfies the substantiation requirements of each section.

SECTION 3. APPLICATION OF § 170(f)(17) TO CONTRIBUTIONS MADE BY PAYROLL DEDUCTION

A deduction for a contribution made by payroll deduction in taxable years beginning after August 17, 2006, will not be allowed unless the recordkeeping requirements of § 170(f)(17) are met. In the case of a contribution made by payroll deduction, a "written communication from the donee organization" within the meaning of § 170(f)(17) will be deemed to include (1) a pay stub, Form W–2, or other document furnished by the employer that sets forth the amount withheld during a taxable year by the employer for the purpose of payment to a donee organization, together with (2) a pledge card or other document prepared by or at the direction of the donee organization that shows the name of the donee organization. An organization described in § 170(c), or an organization described in 5 CFR 950.105 (a Principal Combined Fund Organization for purposes of the Combined Federal Campaign) and acting in that capacity, that receives a payment made as a contribution will be treated as a donee organization for purposes of § 170(f)(17).

To substantiate a contribution of $250 or more made by payroll deduction, the pledge card or other document prepared by the donee organization also must include a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

The Service and the Treasury Department expect to issue revised regulations under § 170 that will incorporate the recordkeeping requirements of § 170(f)(17). Taxpayers may rely on this notice to substantiate contributions made by payroll deduction in taxable years beginning after August 17, 2006, until those regulations are effective.

SECTION 4. PAPERWORK REDUCTION ACT

The collections of information referenced in this notice have been previously reviewed and approved by the Office of Management and Budget (OMB) as part of the promulgation of Section 1.170A–13 in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–0754. This notice merely clarifies the substantiation required for a contribution of a cash, check, or other monetary gift subject to § 170(f)(17).

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.

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 return information are confidential, as required by § 6103.

SECTION 5. DRAFTING INFORMATION

The principal authors of this notice are Nancy J. Lee and Patricia M. Zweibel of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Nancy J. Lee at (202) 622–5020 (not a toll-free call).

Part IV. Items of General Interest

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

Announcement 2006-94

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

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

Consent Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Tomasulo, Maria V.	Wantagh, NY	CPA	Indefinite from August 7, 2006
Maloy, Jr., Robert J.	Galion, OH	CPA	Indefinite from August 15, 2006
Pate, Janet M.	Broadview, NM	CPA	Indefinite from August 15, 2006
Scott, Howard	Miami, FL	Attorney	Indefinite from August 15, 2006
Adamic, Jonathan E.	San Lorenzo, CA	CPA	Indefinite from August 18, 2006

Name	Address	Designation	Date of Suspension
Becker, Ira S.	Wilmette, IL	CPA	August 22, 2006 to August 21, 2008
Snigur, Virginia Iaquinta	Warwick, NY	Attorney	Indefinite from August 31, 2006
Galpern, Joel G.	North Miami, FL	CPA	Indefinite from September 1, 2006
DiSiena, Frank E.	Katonah, NY	CPA	Indefinite from September 4, 2006
Carusona, Thomas M.	Huntington, NY	Attorney	Indefinite from September 15, 2006
Shaikh, Firoz A.	Melville, NY	CPA	Indefinite from September 15, 2006
Wickline, Ella L.	Ronceverte, WV	Enrolled Agent	Indefinite from September 15, 2006
Smith, Daniel B.	Garden City, NY	CPA	Indefinite from September 18, 2006
Carlin, Charles R.	South Bend, IN	CPA	Indefinite from October 1, 2006
Devine, Daniel M.	Boca Raton, FL	CPA	Indefinite from October 1, 2006
Dupont, Hewitt, J.	Daytona Beach, FL	CPA	Indefinite from October 1, 2006
Farrell, Raymond J.	Matawan, NJ	Attorney	Indefinite from October 1, 2006
Kelligrew, John R.	White Plains, NY	Attorney	Indefinite from October 1, 2006
Klein, Robert B.	Bardonia, NY	Enrolled Agent	Indefinite from October 1, 2006
Long, Gregory S.	Hutchinson, KS	Attorney	Indefinite from October 1, 2006

Name	Address	Designation	Date of Suspension
Moore, Ronald L.	Cayce, SC	CPA	Indefinite from October 1, 2006
Schaffer, Robert J.	Calverton, NY	CPA	Indefinite from October 1, 2006
Berlin, Stanley	Erie, PA	Attorney	Indefinite from October 15, 2006
Briscoe, Jack	Drexel Hill, PA	Attorney	Indefinite from October 15, 2006
Buzzeo, Michael V.	New Canaan, CT	CPA	Indefinite from October 15, 2006
Sacco, John M.	Pound Ridge, NY	CPA	Indefinite from October 15, 2006
Sheiman, Alan P.	Sherman Oaks, CA	Enrolled Agent	Indefinite from October 15, 2006
Tourin, Mark	Miami, FL	CPA	Indefinite from October 15, 2006
Burns, William J.	Randolph, MA	Attorney	Indefinite from October 16, 2006
Webb, Norman R.	Daphne, AL	CPA	Indefinite from October 16, 2006
Brown, Guia EP	Hobe Sound, FL	Enrolled Agent	October 20, 2006 to April 19, 2008
Gram, John A.	Gainesville, GA	Attorney	Indefinite from November 1, 2006
Herzog, Samuel A.	Jericho, NY	CPA	Indefinite from November 1, 2006
Kellicker, John F.	Cleveland, OH	CPA	Indefinite from November 1, 2006
Krieger, Robert M.	Hampton, NH	CPA	Indefinite from November 1, 2006
Minsky, Neil J.	Randolph, NJ	CPA	Indefinite from November 1, 2006

Name	Address	Designation	Date of Suspension
O'Brien, Timothy	Newton Center, MA	Attorney	Indefinite from November 1, 2006
Sukenik, Martin	Kew Gardens, NY	Attorney	Indefinite from November 1, 2006
Savoy, Cassandra	East Orange, NJ	Attorney	Indefinite from November 7, 2006
Bonner, Charles B.	Athens, GA	CPA	Indefinite from November 15, 2006
Levine, Barton P.	New York, NY	Attorney	Indefinite from November 15, 2006
Taves, Joseph G.	Provincetown, MA	CPA	Indefinite from November 15, 2006
Young, Ronald	Fairfield, CT	CPA	Indefinite from November 16, 2006
Brush, Charles, H.	Southbury, CT	CPA	Indefinite from December 1, 2006
Jacob, Robert T.	Tucson, AZ	CPA	Indefinite from December 15, 2006

Expedited Suspensions From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Suspension
Williams, Donna M.	York, PA	CPA	Indefinite from July 25, 2006
Foushee, Wayne H.	Winston-Salem, NC	Attorney	Indefinite from August 3, 2006

Name	Address	Designation	Date of Suspension
Kronegold, Sheldon H.	Englewood, NJ	Attorney	Indefinite from August 3, 2006
Norman, Clarence	Brooklyn, NY	Attorney	Indefinite from August 3, 2006
Chin, Arnold	San Francisco, CA	Attorney	Indefinite from August 31, 2006
McCann, Thomas	Des Moines, IA	Attorney	Indefinite from August 31, 2006
Whaley, Daniel P.	Hood, CA	Attorney	Indefinite from August 31, 2006
Chukumba, Stephen C.	Montclair, NJ	Attorney	Indefinite from September 12, 2006
Katz, Edward C.	New York, NY	Attorney	Indefinite from September 12, 2006
Kadunce, Darrell L.	Butler, PA	Attorney	Indefinite from September 18, 2006
Allen, Robert W.	Torrance, CA	CPA	Indefinite from September 21, 2006
Brown, Davin W.	Raleigh, NC	CPA	Indefinite from September 21, 2006
Cunningham, R. Scott	Dalton, GA	Attorney	Indefinite from September 21, 2006
Eilers, Tom D.	Raleigh, NC	CPA	Indefinite from September 21, 2006
Gerdes, Roger A.	Carpinteria, CA	Attorney	Indefinite from September 21, 2006
Kurth, Richard Frederick	Danville, IL	Attorney	Indefinite from September 21, 2006
Mitchell, McArthur D.	Charlotte, NC	CPA	Indefinite from September 21, 2006

Name	Address	Designation	Date of Suspension
Ragusa, Patricia A.	Spring, TX	CPA	Indefinite from September 21, 2006
Wulfsberg, David E.	Murrieta, CA	Attorney	Indefinite from September 21, 2006
Cox, Brian J.	Plymouth, MI	CPA	Indefinite from September 25, 2006
Mandelman, Michael D.	Mequon, WI	Attorney	Indefinite from September 25, 2006
Miller, Steven L.	Canal Winchester, OH	Attorney	Indefinite from September 25, 2006
Felli, Jay A.	Mequon, WI	Attorney	Indefinite from October 2, 2006
Schoch V, Arch K.	High Point, NC	Attorney	Indefinite from October 2, 2006
Andre, Patrick F.	Manchester, MO	Attorney	Indefinite from October 12, 2006
Brill, Kevin Michael	Downers Grove, IL	Attorney	Indefinite from October 12, 2006
Day, Richard G.	Largo, FL	Attorney	Indefinite from October 12, 2006
Dull, Kay E.	Miami Shores, FL	Attorney	Indefinite from October 12, 2006
Frank, Arthur J.	Chicago, IL	Attorney	Indefinite from October 12, 2006
Gackle, Thomas E.	Plymouth, MI	Attorney	Indefinite from October 12, 2006
Hamilton, Howard D.	Fort Dodge, IA	Attorney	Indefinite from October 12, 2006
Hodge, Robert M.	Lafayette, LA	Attorney	Indefinite from October 12, 2006
Lesyshen, Donna P.	Waterloo, IA	Attorney	Indefinite from October 12, 2006

Name	Address	Designation	Date of Suspension
Peiss, John H.	Downers Grove, IL	Attorney	Indefinite from October 12, 2006
Petty, James E.	Austin, TX	CPA	Indefinite from October 12, 2006
Ruffin-Hudson, Linda C.	Saint Louis, MO	Attorney	Indefinite from October 12, 2006
Schaefer, James E.	St. Louis Park, MN	Attorney	Indefinite from October 12, 2006
Schmitt, Martha G.	Minneapolis, MN	Attorney	Indefinite from October 12, 2006
Shannon, Terrance J.	Mission Viejo, CA	Attorney	Indefinite from October 12, 2006
Smith, Matthew S.	Denver, CO	Attorney	Indefinite from October 12, 2006
Swanson, Richard	West Chicago, IL	CPA	Indefinite from October 12, 2006
Thomas, Kenneth A.	Farmers Branch, TX	Attorney	Indefinite from October 12, 2006
Tomasa, Ryan H.	Honolulu, HI	Attorney	Indefinite from October 12, 2006
Williams, Jr., Harry D.	San Antonio, TX	Attorney	Indefinite from October 12, 2006
Wilson, Jr., Robert N.	Ayer, MA	Attorney	Indefinite from October 12, 2006
Yum, Chris Chulho	Woodbridge, VA	Attorney	Indefinite from October 12, 2006
Dunham, Richard G.	Irvine, CA	Enrolled Agent	Indefinite from October 15, 2006
Housman, David	Albuquerque, NM	Attorney	Indefinite from October 15, 2006
Malitz, Charles P.	Beachwood, OH	CPA	Indefinite from October 15, 2006

Name	Address	Designation	Date of Suspension
Emig, Robert W.	Houston, TX	CPA	Indefinite from October 24, 2006
Freese, Scott D.	Norfolk, NE	Attorney	Indefinite from October 24, 2006
Rambo, Byron L.	Sanford, FL	EA	Indefinite from October 24, 2006
Ask, Ronald W.	Riverside, CA	Attorney	Indefinite from October 30, 2006
Berry, Richard S.	Tempe, AZ	Attorney	Indefinite from October 30, 2006
Burkhardt, William R.	Canyon Lake, TX	CPA	Indefinite from October 30, 2006
Callaway, Jr., Paul F.	Greensboro, NC	CPA	Indefinite from October 30, 2006
Doyle, David W.	Arvada, CO	Attorney	Indefinite from October 30, 2006
Elmore, III, Virgil	Birmingham, AL	Attorney	Indefinite from October 30, 2006
Grandt, Lawrence E.	Gurnee, IL	CPA	Indefinite from October 30, 2006
Hanson, Steven G.	Lodi, CA	Attorney	Indefinite from October 30, 2006
Omodele, Boluwaji	Houston, TX	CPA	Indefinite from October 30, 2006
Rahden, Horst R.	Fort Wayne, IN	CPA	Indefinite from October 30, 2006
Censoprano, Salvatore	Foster City, CA	CPA	Indefinite from October 31, 2006
Powell, James S.	Lakewood, CO	Attorney	Indefinite from October 31, 2006
Allen, Leonard G.	Mesa, AZ	CPA	Indefinite from November 1, 2006

Name	Address	Designation	Date of Suspension
Parker, Donald A.	Benson, NC	Attorney	Indefinite from November 6, 2006
Rogers, James M.	Tulsa, OK	Attorney	Indefinite from November 6, 2006
Coopet, Michael W.	Saint Paul, MN	Attorney	Indefinite from November 8, 2006
Day, Jr., John Taylor	Hingham, MA	Attorney	Indefinite from November 8, 2006
Grella, Paul J.	Canton, MA	Attorney	Indefinite from November 8, 2006
Meggers, Theodore M.	Des Moines, IA	Attorney	Indefinite from November 8, 2006
Tolbert, James L.	Los Angeles, CA	Attorney	Indefinite from November 8, 2006

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

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

Name	Address	Designation	Effective Date
Lazaro, Charles	Visalia, CA	Attorney	July 20, 2006 to January 19, 2010
Wasilowski, Ronald	Natrona Heights, PA	CPA	July 21, 2006 to July 20, 2011
Wellbery, William J.	Deerfield Beach, FL	CPA	October 12, 2006 to October 11, 2008
Clapper, Gary L.	La Mesa, CA	Enrolled Agent	November 2, 2006 to November 1, 2008

Consent Disbarments From Practice Before the Internal Revenue Service

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

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

Name	Address	Designation	Date of Disbarment
Grossman, Robert S.	Ardmore, PA	Attorney	Indefinite from October 4, 2006

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

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

Name	Address	Designation	Effective Date
Hubbard, Murphy	Springfield, MO	CPA	September 20, 2006
Kardos, Sandra E.	Van Nuys, CA	CPA	October 2, 2006
Jewett, Jerry A.	Fremont, OH	Enrolled Agent	November 2, 2006

Censure Issued by Consent

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

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

Name	Address	Designation	Date of Censure
Applegate, William F.	Madison, NJ	CPA	September 12, 2006
Vigliotti, Anthony J.	East Haven, CT	Enrolled Agent	September 12, 2006
Bolgiani, Janette A.	Brooklyn, NY	Enrolled Agent	September 14, 2006
Cheney, James E.	Phelps, NY	CPA	September 18, 2006
Dollinger, Douglas	Middletown, NY	Attorney	October 2, 2006
Reeves, Zak E.	Denver, CO	Enrolled Agent	October 2, 2006

Name	Address	Designation	Date of Censure
Castiglione, John	Pittsfield, MA	Attorney	October 4, 2006
Shannon, James P.	Rochester, NH	Attorney	October 4, 2006
Kuller, Mark A.	Bethesda, MD	Attorney	October 6, 2006

Resignations of Enrolled Agents

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

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

Name	Address	Date of Resignation
Schwartz, Judy	Las Vegas, NV	October 13, 2006

AJCA Modifications to the Section 6111 Regulations; Correction

Announcement 2006–98

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains a correction to notice of proposed rulemaking by cross-reference to temporary regulations (REG–103039–05, 2006–49 I.R.B. 1057) that were published in the **Federal Register** on Thursday, November 2, 2006 (71 FR 64496) relating to the disclosure of reportable transactions by material advisors.

FOR FURTHER INFORMATION CONTACT: Tara P. Volungis or Charles Wien, 202–622–3070 (not a toll-free number).

SUPPLEMENTAL INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–103039–05) that is the subject of this correction is under sections 6111 and 6112 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–103039–05) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–103039–05) that was the subject of FR Doc. E6–18321 is corrected as follows:

§301.6111–3 [Corrected]

On page 64499, column 1, §301.6111–3(b)(2)(ii)(B), first paragraph of the column, lines 4 and 5, the language "disclosure of the tax structure or tax aspects of the transaction is limited in" is corrected to read "disclosure of the tax treatment or tax structure of the transaction is limited in".

LaNita Van Dyke,
Branch Chief,
Publications and Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).

(Filed by the Office of the Federal Register on December 1, 2006, 8:45 a.m., and published in the issue of the Federal Register for December 4, 2006, 71 F.R. 70335)

Foundations Status of Certain Organizations

Announcement 2006–99

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Act of Change, Dallas, TX
African Federation, Inc., Ossining, NY
Alliance for Consumer Housing and Educational Services, Inc., Stone Mountain, GA
American Flyers Special Development Sport Team, Springfield, OH
American Foundation for Abused Childrens Therapy, Raleigh, NC
American Society for Education & Training in Aviation, Las Vegas, NV
Aseonyn Opportunity Center, Inc., Fort Lauderdale, FL
Asian Community of California, Inc., Richmond, CA
Aspirations Center Community Development Corporation, East St. Louis, IL
Bicycle for Everyones Earth USA, Phoenix, AZ
Big Horn Lenape Fed, Martinsville, OH
Bless the Children, Dallas, TX
Blessed to Bless Phase II, Berkley, MO
Boston Institute for the Advancement of Science, Inc., Hyde Park, MA
Calligraphy Education Group, Silver Spring, MD
CCD of Texas, Inc., Richardson, TX
Center for Universal Understanding, Inc., Charlotte, SC
Charles Livingston Family Research Association, Salt Lake City, UT
Clover Housing and Redevelopment Services, Clover, SC
Collaboration of Creation, Inc., Sacramento, CA
Colorado Business Roundtable, Denver, CO
Community Care Service, Warner Robins, GA
Community for Humanity Agency, La Habra, CA
Community Outreach Ministries, Inc., Safford, AZ
Consciousness, Inc., Milwaukee, WI
Corenet Global Community Reinvestment Challenge, Atlanta, GA
Cornerstone Counseling and Learning Center, Inc., Bronx, NY
Cultural Community Care, Inc., Sherman, TX
Cutting Edge of Medical Invention Foundation, Malibu, CA
David B. and Eileen M. Kinney Memorial Childhood Foundation, Los Angeles, CA
Delphi Foundation, Middleburg, VA
Derrick E. Houston Ministries, Inc., Birmingham, AL
Despite the Odds, Inc., Miami, FL
Dicarlo Corporation, Newton, MA
Disciples of Christ Community Development Center, Tuscaloosa, AL
D-One Education and Sports Foundation, Inc., Greensboro, NC
Edna Travis Helping Hands Foundation, Inc., Baton Rouge, LA
Foundation of Family Happiness, Arlington, VA
Friends of Fun Shop Foundation, Springfield, IL
Frontline Bible Ministries, Inc., Ypsilanti, MI
Gathering Point, Chicago, IL
Golden Years, Hattiesburg, MS
Good Shephard Holy Cross Apostolate, Inc., Elyria, OH
Goodbyebills, Inc., El Paso, TX
Harvest for Haiti, Oakland, CA
Hep C Advocated Network, Inc., Longview, TX
Illuminated Life Foundation, Honolulu, HI
Immunogenic Research Foundation, Inc., Pompano Beach, FL
Indiana Assisted Living Foundation, Inc., Indianapolis, IN
International Tcm Center, Pittsburgh, PA
International Word Outreach Ministries, Inc., Chicago, IL
Jeffrey Sealey, Tuscaloosa, AL
Joshua & Caleb Community Development Corporation, Baton Rouge, LA
Jus Tus, Inc., Rancho Cucamonga, CA
Kicking Kids, Inc., Douglasville, GA
Kingdom House Therapeutic Treatment Center, Haslet, TX
Kiwanis Club of North Mason Foundation Trust Fund, Belfair, WA
Lakemor Foundation for Breast Cancer Research, Inc., Reno, NV
Lampkin-Asam Cancer Institute, Inc., Deltona, FL
Last Day Plea Publications, Baltimore, MD
Law Street Economic Development Corporation, New Orleans, LA
Lear Charitable Foundation, Garden Grove, CA
Legacy Foundation, Shorewood, MN
LFC Recreation Center for the Aged and Disabled Adults, Houston, TX
Living Word Affordable Housing Communities, Incorporated, Nashville, TN
Local Organizing Committee, Fresno, CA
Lubbock Area Children Empowerment, Lubbock, TX
Malcolm Foundation, Inc., Madison, MS
Manjui Foundation, Inc., Baltimore, MD
Metro Mustangs Basketball Foundation, Dallas, TX
New Foundation Church, Philadelphia, MS
Newport Housing Authority Development Corporation, Newport, TN
Northey Foundation, Morrison, CO
Olen C. and Carmen Hendrix Foundation, Prescott, AR
Open Heart of Love Non Profit Organization, Matteson, IL
Order of the Dragon, Bakersfield, CA
Out of Pain, Inc., Montgomery Village, MD
Outdoors for All, Lansing, MI
Patrajsha Connection, Los Angeles, CA
Peniel Family Resource Center, Inc., Lithonia, GA
People Caring for People Through Technology PCP Group Community, Odenton, MD
Percussion for Kids Association, Seattle, WA
Philant, San Diego, CA
Piller Family Foundation in Memory of Raizy Rivky and Eli Piller, Brooklyn, NY
P L I E, Greensboro, NC
Potter's Center for the Homeless, Inc., Norwalk, CT
Power Training Academy, Inc., Columbus, OH
Presidio Films Foundation, Inc., Newport Beach, CA
Prima Sounds Foundation, Inc., Winter Park, FL
Providence Baptist Church Foundation, Inc., Opelika, AL
Quiet Environment Society, Inc., Tewksbury, MA
Reaching You Resource Center, Inc., Thomasville, GA
Restoration Dream Center, Inc., Mabelvale, AR
Revelation Enterprise, Los Angeles, CA
Rhema Sports Park and Learning Center, Virginia Beach, VA

Rivers of Living Water Ministries, Inc., Monroe, NC
San Juan Island Farm and Retreat Center, Seattle, WA
Second Chance a Sober Living Facility, Tucson, AZ
Sewickley Township Community Ambulance Service, Herminie, PA
Shantivanam Northern Knights Camp and Conference Center, Inc., Glover, VT
Social Venture Network, San Francisco, CA
Solid Oak Accessible Resources, Inc., Nacogdoches, TX
Solid Rock Productions, Inc., Scottsdale, AZ
South Florida Community Development Corporation, Miami, FL
St. Francois Society, St. Louis, MO
Steps Vocational Services, Marysville, WA
Student Image & Career Consulting, Inc., Mableton, GA
Tennessee Ministries, Madisonville, TN
This-Story, Inc., Portland, OR
Triumph Empowerment Center, Inc., Erwin, NC
United States Colored Troops Institute of Suffolk County, Amityville, NY
Victory Enterprises and Ministries, Reseda, CA
Volunteer Refugee Aid International, Inc., Temple City, CA
Well – Spring Prevention, Inc., Miami, FL
Whitemarsh Continuing Care Retirement Community, Plymouth Meeting, PA
William H. McDonald Community Outreach Center, Inc., Kansas City, KS
With One Accord, Durham, NC
Women Ministering Women, Inc., Kechi, KS
Yellow Cross AELS, Beaverton, OR
Youngblood Enterprises, Inc., Montgomery, AL

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Appeals Closing Cases Involving Unsettled Listed Transactions

Announcement 2006–100

The Internal Revenue Service announced today that it is updating its procedures relating to cases involving a listed transaction with respect to which the Office of Appeals and the taxpayer are unable to reach a satisfactory settlement. The new procedures take effect today and are part of a continuing effort by the IRS to ensure the efficiency and integrity of tax administration, while at the same time successfully combating abusive tax avoidance transactions.

When a settlement cannot be reached by the Office of Appeals in a case that is not docketed in the Tax Court, it is expected that the case will proceed to litigation. The Service wants to ensure that it has fully developed the limited number of unagreed cases that involve listed transactions (within the meaning of Treas. Reg. § 1.6011–4) before it sends a statutory notice of deficiency (or other determination notice triggering litigation rights) to the taxpayer. Consequently, the Service is revising its procedures to provide that when the Office of Appeals and the taxpayer are unable to reach a satisfactory settlement in a nondocketed case involving a listed transaction, the Office of Appeals will close out its consideration, notify the taxpayer, and send the case to the appropriate Operating Division for further handling. The process by which a taxpayer seeks consideration of the case by the Office of Appeals, and the manner in which Appeals and the taxpayer attempt to settle the case remain unchanged.

After the case is closed by the Office of Appeals, the Operating Division will determine whether the unsettled adjustments relating to the listed transaction merit further development. If not, a statutory notice of deficiency (or other appropriate notice) will be issued to the taxpayer by the Operating Division. If further case development is deemed necessary, additional development of the case will proceed and the statutory notice of deficiency (or other appropriate notice) will be issued to the taxpayer by the Operating Division after the development is completed. The decision to further develop a case is expected to rarely occur and will be made by the Commissioner of the Operating Division after consultation with the Office of Chief Counsel to ensure national consistency.

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 2006–27 through 2006–51

Announcements:

Announcements— Continued:

Notices:

Notices— Continued:

Proposed Regulations:

Revenue Procedures:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2006–1 through 2006–26 is in Internal Revenue Bulletin 2006–26, dated June 26, 2006.

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

Bulletins 2006–27 through 2006–51

Announcements:

2004-38
Modified by
Notice 2006-105, 2006-50 I.R.B. *1093*

2004-43
Amplified and modified by
Notice 2006-105, 2006-50 I.R.B. *1093*

2005-59
Updated and superseded by
Ann. 2006-45, 2006-31 I.R.B. *121*

2006-61
Corrected by
Ann. 2006-97, 2006-50 I.R.B. *1108*

Notices:

88-128
Supplemented by
Notice 2006-95, 2006-45 I.R.B. *848*

2002-45
Amplified by
Rev. Rul. 2006-36, 2006-36 I.R.B. *353*

2003-69
Amplified and superseded by
Notice 2006-101, 2006-47 I.R.B. *930*

2004-59
Amplified by
Notice 2006-105, 2006-50 I.R.B. *1093*

2004-61
Modified and superseded by
Notice 2006-95, 2006-45 I.R.B. *848*

2005-1
Modified by
Notice 2006-100, 2006-51 I.R.B. *1109*

2005-94
Superseded by
Notice 2006-100, 2006-51 I.R.B. *1109*

2006-20
Supplemented and modified by
Notice 2006-56, 2006-28 I.R.B. *58*

2006-27
Modified by
Ann. 2006-88, 2006-46 I.R.B. *910*

2006-28
Modified by
Ann. 2006-88, 2006-46 I.R.B. *910*

2006-53
Modified by
Notice 2006-71, 2006-34 I.R.B. *316*

Notices— Continued:

2006-67
Modified and superseded by
Notice 2006-77, 2006-40 I.R.B. *590*

Proposed Regulations:

REG-135866-02
Corrected by
Ann. 2006-64, 2006-37 I.R.B. *447*
Ann. 2006-65, 2006-37 I.R.B. *447*

REG-103039-05
Corrected by
Ann. 2006-98, 2006-51 I.R.B. *1139*

REG-134317-05
Corrected by
Ann. 2006-47, 2006-28 I.R.B. *78*

REG-112994-06
Corrected by
Ann. 2006-79, 2006-43 I.R.B. *792*

REG-118775-06
Corrected by
Ann. 2006-71, 2006-40 I.R.B. *630*

REG-124152-06
Corrected by
Ann. 2006-90, 2006-47 I.R.B. *953*

Revenue Procedures:

99-35
Modified and superseded by
Rev. Proc. 2006-40, 2006-42 I.R.B. *694*

2002-9
Modified and amplified by
Notice 2006-67, 2006-33 I.R.B. *248*
Notice 2006-77, 2006-40 I.R.B. *590*
Rev. Proc. 2006-43, 2006-45 I.R.B. *849*

2002-37
Clarified, modified, amplified, and superseded by
Rev. Proc. 2006-45, 2006-45 I.R.B. *851*

2002-38
Clarified, modified, amplified, and superseded by
Rev. Proc. 2006-46, 2006-45 I.R.B. *859*

2002-41
Modified by
Rev. Proc. 2006-53, 2006-48 I.R.B. *996*

2002-52
Modified and superseded by
Rev. Proc. 2006-54, 2006-49 I.R.B. *1035*

2004-63
Superseded by
Rev. Proc. 2006-34, 2006-38 I.R.B. *460*

2005-41
Superseded by
Rev. Proc. 2006-29, 2006-27 I.R.B. *13*

Revenue Procedures— Continued:

2005-49
Superseded by
Rev. Proc. 2006-33, 2006-32 I.R.B. *140*

2005-67
Superseded by
Rev. Proc. 2006-41, 2006-43 I.R.B. *777*

2005-70
Amplified by
Rev. Proc. 2006-51, 2006-47 I.R.B. *945*

2005-78
Superseded by
Rev. Proc. 2006-49, 2006-47 I.R.B. *936*

2006-9
Amplified by
Rev. Proc. 2006-54, 2006-49 I.R.B. *1035*

2006-12
Modified by
Rev. Proc. 2006-37, 2006-38 I.R.B. *499*

2006-26
Modified and superseded by
Rev. Proc. 2006-54, 2006-49 I.R.B. *1035*

2006-33
Updated and clarified by
Ann. 2006-73, 2006-42 I.R.B. *745*

2006-35
Modified by
Notice 2006-90, 2006-42 I.R.B. *688*

2006-41
Corrected by
Ann. 2006-96, 2006-50 I.R.B. *1108*

Revenue Rulings:

72-238
Obsoleted by
REG-109367-06, 2006-41 I.R.B. *683*

73-558
Obsoleted by
REG-109367-06, 2006-41 I.R.B. *683*

75-296
Distinguished by
Rev. Rul. 2006-52, 2006-43 I.R.B. *761*

80-31
Distinguished by
Rev. Rul. 2006-52, 2006-43 I.R.B. *761*

81-35
Amplified and modified by
Rev. Rul. 2006-43, 2006-35 I.R.B. *329*

81-36
Amplified and modified by
Rev. Rul. 2006-43, 2006-35 I.R.B. *329*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2006–1 through 2006–26 is in Internal Revenue Bulletin 2006–26, dated June 26, 2006.

Revenue Rulings— Continued:

87-10

Amplified and modified by

Rev. Rul. 2006-43, 2006-35 I.R.B. *329*

92-75

Clarified by

Rev. Proc. 2006-54, 2006-49 I.R.B. *1035*

2002-41

Amplified by

Rev. Rul. 2006-36, 2006-36 I.R.B. *353*

2003-43

Amplified by

Notice 2006-69, 2006-31 I.R.B. *107*

2005-24

Amplified by

Rev. Rul. 2006-36, 2006-36 I.R.B. *353*

Treasury Decisions:

9244

Corrected by

Ann. 2006-91, 2006-47 I.R.B. *953*

9254

Corrected by

Ann. 2006-44, 2006-27 I.R.B. *49*
Ann. 2006-66, 2006-37 I.R.B. *448*

9258

Corrected by

Ann. 2006-46, 2006-28 I.R.B. *76*

9260

Corrected by

Ann. 2006-67, 2006-38 I.R.B. *509*

9262

Corrected by

Ann. 2006-56, 2006-35 I.R.B. *342*

9264

Corrected by

Ann. 2006-46, 2006-28 I.R.B. *76*

9272

Corrected by

Ann. 2006-68, 2006-38 I.R.B. *510*

9274

Corrected by

Ann. 2006-89, 2006-44 I.R.B. *826*

9276

Corrected by

Ann. 2006-83, 2006-44 I.R.B. *822*
Ann. 2006-85, 2006-45 I.R.B. *873*

9277

Corrected by

Ann. 2006-72, 2006-40 I.R.B. *630*

9280

Corrected by

Ann. 2006-78, 2006-42 I.R.B. *748*

Treasury Decisions— Continued:

9281

Corrected by

Ann. 2006-82, 2006-44 I.R.B. *821*
Ann. 2006-84, 2006-45 I.R.B. *873*

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