

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

T.D. 9433, page 1263.

Final regulations under section 7701 of the Code add an entity to the list of foreign business entities that are always classified as corporations. This entity is not eligible to check the box to change its classification.

Notice 2008-107, page 1265.

This notice provides adjusted limitations on housing expenses for tax year 2008 for purposes of section 911 of the Code.

Notice 2008-109, page 1282.

This notice provides guidance with respect to state volume limits under section 1400N that are applicable to (1) allocations of the low-income housing tax credit in the Midwestern and Hurricane Ike disaster areas, (2) the issuance of tax-exempt bonds for the Midwestern and Hurricane Ike disaster areas, and (3) the issuance of tax credit bonds for the Midwestern disaster areas. These provisions were enacted as part of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008. The notice provides a list of the counties that qualify as Midwestern or Hurricane Ike disaster areas and provides the portion of the state population located in the disaster or other relevant areas for purposes of determining the volume limits applicable to each of these provisions. The notice also provides instructions for reporting the issuance of Midwestern and Hurricane Ike tax-exempt and tax credit bonds.

Rev. Proc. 2008-72, page 1286.

2009 optional standard mileage rates. This procedure announces 55 cents as the optional rate for deducting or accounting for expenses for business use of an automobile, 14 cents as the optional rate for use of an automobile as a charitable contribution, and 24 cents as the optional rate for use of an

automobile as a medical or moving expense for 2009. The procedure also provides rules for substantiating the deductible expenses of using an automobile for business, moving, medical, or charitable purposes. Rev. Proc. 2007-70 and Announcement 2008-63 superseded.

EMPLOYEE PLANS

Notice 2008-108, page 1275.

Retirement plans; qualification, list of changes. This notice sets forth a list of changes referred to in Rev. Proc. 2007-44, 2007-2 C.B. 54, pertaining to the statutory, regulatory, and guidance changes needed for certain requests to the Service for opinion, advisory, and determination letters for the 12-month period beginning February 1, 2009.

EXEMPT ORGANIZATIONS

Announcement 2008-120, page 1295.

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

ADMINISTRATIVE

T.D. 9433, page 1263.

Final regulations under section 7701 of the Code add an entity to the list of foreign business entities that are always classified as corporations. This entity is not eligible to check the box to change its classification.

(Continued on the next page)

Finding Lists begin on page ii.



Announcement 2008–119, page 1295.

This announcement contains clarification to filing procedures in Publication 1187 for Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, filed electronically. These changes are effective immediately. Rev. Proc. 2008–44 clarified.

Announcement 2008–121, page 1296.

This document provides notice of a public hearing on proposed regulations (REG–106251–08, 2008–39 I.R.B. 774) relating to options granted under an employee stock purchase plan as defined in section 423 of the Code. These proposed regulations affect certain taxpayers who participate in the transfer of stock pursuant to the exercise of options granted under an employee stock purchase plan. The public hearing is scheduled for January 15, 2009.

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

Section 7701.—Definitions

26 CFR 301.7701–2: *Business entities; definitions.*

T.D. 9433

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes. The regulations are needed to make the Federal tax classification of the Bulgarian public limited liability company (aktsionerno druzhestvo) consistent with the Federal tax classification of public limited liability companies organized in other countries of the European Economic Area. The regulations will affect persons owning an interest in a Bulgarian aktsionerno druzhestvo on or after January 1, 2007.

DATES: *Effective Date:* These regulations are effective on November 28, 2008.

Applicability Date: For the dates of applicability of these regulations, see §301.7701–2(e)(7).

FOR FURTHER INFORMATION CONTACT: S. James Hawes, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 21, 2008, the IRS and Treasury Department published in the **Federal Register** temporary regulations (T.D. 9388, 2008–17 I.R.B. 832 [73 FR 15064]) and a notice of proposed rulemaking (REG–143468–07, 2008–17

I.R.B. 848 [73 FR 15107]) under section 7701 of the Internal Revenue Code (Code). The regulations added the Bulgarian aktsionerno druzhestvo to the list of entities in §301.7701–2(b)(8) (the *per se* corporation list). For further background, see T.D. 9388 and Notice 2007–10, 2007–4 I.R.B. 354.

On October 8, 2001, the Council of the European Union adopted Council Regulation 2157/2001 (2001 Official Journal of the European Communities, L 294/1) (the EU Regulation) permitting the organization of a new public limited liability company, the Societas Europaea (SE). The EU Regulation entered into force on October 8, 2004. The general rules for the formation and operation of an SE provided by the EU Regulation are supplemented by the laws of the member country in which the SE has its registered office. On December 16, 2005, the IRS and Treasury Department published final regulations in the **Federal Register** (T.D. 9235, 2006–1 C.B. 338) adding the SE to the *per se* corporation list. The preamble to T.D. 9388 stated incorrectly that the aktsionerno druzhestvo is Bulgaria's SE. In fact, the aktsionerno druzhestvo is a public limited liability company organized in Bulgaria. The IRS and Treasury Department continue to study issues related to the residence of an SE for application of relevant Federal income tax provisions, such as the same-country exception under section 954(c)(3) of the Code. Comments are requested.

Explanation of Provisions

No written comments were received from the public or the Small Business Administration on the temporary or proposed regulations. No public hearing was requested or held. Accordingly, these regulations finalize the proposed regulations without modification and remove the text of the temporary regulations from the Code of Federal Regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order

12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply either. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is S. James Hawes of the Office of Associate Chief Counsel (International); however, other personnel from the IRS and the Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7701–2 is amended by:

1. Adding an entry in alphabetical order to paragraph (b)(8)(i).
2. Removing paragraph (b)(8)(vi).
3. Revising paragraph (e)(7).

The revisions and addition read as follows:

§301.7701–2 *Business entities; definitions.*

* * * * *

(b) * * *

(8) * * *

(i) * * *

Bulgaria, Aktsionerno Druzhestvo.

* * * * *

(e) * * *

(7) The reference to the Bulgarian entity in paragraph (b)(8)(i) of this section applies to such entities formed on or after January 1, 2007, and to any such entity formed before such date from the date that, in the aggregate, a 50 percent or more interest in such entity is owned by any person or persons who were not owners of the

entity as of January 1, 2007. For purposes of the preceding sentence, the term *interest* means—

(i) In the case of a partnership, a capital or profits interest; and

(ii) In the case of a corporation, an equity interest measured by vote or value.

§301.7701-2T [Removed]

Par. 3. Section 301.7701-2T is removed.

Linda E. Stiff,
*Deputy Commissioner for
Services and Enforcement.*

Approved October 31, 2008.

Eric Solomon,
*Assistant Secretary of
the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on November 26, 2008, 8:45 a.m., and published in the issue of the Federal Register for November 28, 2008, 73 F.R. 72345)

Part III. Administrative, Procedural, and Miscellaneous

Determination of Housing Cost Amounts Eligible for Exclusion or Deduction for 2008

Notice 2008-107

SECTION 1. PURPOSE

This notice provides adjustments to the limitation on housing expenses for purposes of section 911 of the Internal Revenue Code (Code) for specific locations for 2008. These adjustments are made on the basis of geographic differences in housing costs relative to housing costs in the United States.

SECTION 2. BACKGROUND

Section 911(a) of the Code allows a qualified individual to elect to exclude from gross income the foreign earned income and housing cost amount of such individual. Section 911(c)(1) defines the term "housing cost amount" as an amount equal to the excess of (A) the housing expenses of an individual for the taxable year to the extent such expenses do not exceed the amount determined under section 911(c)(2), over (B) 16 percent of the exclusion amount (computed on a daily

basis) in effect under section 911(b)(2)(D) for the calendar year in which such taxable year begins (\$239.34 per day for 2008, or \$87,600 for the full year), multiplied by the number of days of that taxable year within the applicable period described in section 911(d)(1). The applicable period is the period during which the individual meets the tax home requirement of section 911(d)(1) and either the *bona fide* residence requirement of section 911(d)(1)(A) or the physical presence requirement of section 911(d)(1)(B). Assuming that the entire taxable year of a qualified individual is within the applicable period, the section 911(c)(1)(B) amount for 2008 is \$14,016 (\$87,600 x .16).

Section 911(c)(2)(A) of the Code limits the housing expenses taken into account in section 911(c)(1)(A) to an amount equal to (i) 30 percent (adjusted as may be provided under the Secretary's authority under section 911(c)(2)(B)) of the amount in effect under section 911(b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by (ii) the number of days of that taxable year within the applicable period described in section 911(d)(1). Thus, under this general limitation, a qualified individual whose entire

taxable year is within the applicable period is limited to maximum housing expenses of \$26,280 (\$87,600 x .30) in 2008.

Section 911(c)(2)(B) of the Code authorizes the Secretary to issue regulations or other guidance to adjust the percentage under section 911(c)(2)(A)(i) based on geographic differences in housing costs relative to housing costs in the United States. Pursuant to this authority, the Internal Revenue Service (IRS) and the Treasury Department published Notice 2006-87, 2006-2 C.B. 766, and Notice 2007-25, 2007-12 I.R.B. 760, for 2006, and Notice 2007-77, 2007-40 I.R.B. 735, for 2007, to provide adjustments to the limitation on housing expenses for qualified individuals incurring housing expenses in countries with high housing costs relative to housing costs in the United States.

SECTION 3. TABLE OF ADJUSTED LIMITATIONS FOR 2008

The following table provides adjusted limitations on housing expenses (in lieu of the otherwise applicable limitation of \$26,280) for 2008.

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Argentina	Buenos Aires	125.96	46,100
Australia	Brisbane	81.42	29,800
Australia	Canberra	76.50	28,000
Australia	Gold Coast	81.42	29,800
Australia	Melbourne	78.96	28,900
Australia	Oakey	81.42	29,800
Australia	Perth	118.85	43,500
Australia	Toowoomba	81.42	29,800
Austria	Vienna	96.72	35,400
Bahamas, The	Nassau	135.79	49,700
Bahrain	Bahrain	120.22	44,000
Barbados	Barbados	103.01	37,700
Belgium	Antwerp	116.67	42,700
Belgium	Brussels	157.65	57,700
Belgium	Gosselies	110.11	40,300

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Belgium	Hoogbuul	116.67	42,700
Belgium	Mons	110.11	40,300
Belgium	SHAPE/Chievres	110.11	40,300
Bermuda	Bermuda	245.90	90,000
Bosnia-Herzegovina	Sarajevo	89.89	32,900
Brazil	Brasilia	121.31	44,400
Brazil	Rio de Janeiro	95.90	35,100
Brazil	Sao Paulo	127.05	46,500
Canada	Calgary	110.93	40,600
Canada	Dartmouth	95.63	35,000
Canada	Edmonton	100.82	36,900
Canada	Halifax	95.63	35,000
Canada	London, Ontario	81.42	29,800
Canada	Montreal	158.20	57,900
Canada	Ottawa	130.87	47,900
Canada	Toronto	129.78	47,500
Canada	Vancouver	125.68	46,000
Canada	Victoria	95.08	34,800
Canada	Winnipeg	82.51	30,200
Cayman Islands	Grand Cayman	131.15	48,000
Chile	Santiago	124.32	45,500
China	Beijing	134.25	49,137
China	Hong Kong	312.30	114,300
China	Shanghai	155.74	57,001
Colombia	Bogota	147.81	54,100
Colombia	All cities other than Bogota and Barranquilla.	122.68	44,900
Denmark	Copenhagen	119.41	43,704
Dominican Republic	Santo Domingo	124.32	45,500
Ecuador	Guayaquil	84.15	30,800
Ecuador	Quito	83.33	30,500
Egypt	Cairo	74.43	27,240
Estonia	Tallinn	127.32	46,600
France	Garches	273.50	100,100
France	Le Havre	114.75	42,000
France	Lyon	155.46	56,900
France	Marseille	143.17	52,400
France	Montpellier	126.78	46,400
France	Paris	273.50	100,100

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
France	Sevres	273.50	100,100
France	Suresnes	273.50	100,100
France	Versailles	273.50	100,100
Germany	Babenhausen	134.15	49,100
Germany	Bad Aibling	114.48	41,900
Germany	Bad Nauheim	107.10	39,200
Germany	Baumholder	121.86	44,600
Germany	Berlin	163.93	60,000
Germany	Birkenfeld	121.86	44,600
Germany	Boeblingen	145.90	53,400
Germany	Butzbach	104.92	38,400
Germany	Darmstadt	134.15	49,100
Germany	Erlangen	84.97	31,100
Germany	Frankfurt am Main	139.89	51,200
Germany	Friedberg	107.10	39,200
Germany	Fuerth	84.97	31,100
Germany	Garmisch-Partenkirchen	115.85	42,400
Germany	Geilenkirchen	92.35	33,800
Germany	Gelnhausen	145.08	53,100
Germany	Germersheim	101.91	37,300
Germany	Giebelstadt	116.39	42,600
Germany	Giessen	104.92	38,400
Germany	Grafenwoehr	114.48	41,900
Germany	Hanau	145.08	53,100
Germany	Hannover	100.00	36,600
Germany	Heidelberg	133.88	49,000
Germany	Idar-Oberstein	121.86	44,600
Germany	Ingolstadt	169.40	62,000
Germany	Kaiserslautern, Landkreis	149.18	54,600
Germany	Kitzingen	116.39	42,600
Germany	Leimen	133.88	49,000
Germany	Ludwigsburg	145.90	53,400
Germany	Mainz	164.48	60,200
Germany	Mannheim	133.88	49,000
Germany	Munich	169.40	62,000
Germany	Nellingen	145.90	53,400
Germany	Neubruecke	121.86	44,600
Germany	Nuernberg	84.97	31,100
Germany	Ober Ramstadt	134.15	49,100

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Germany	Oberammergau	115.85	42,400
Germany	Pirmasens	149.18	54,600
Germany	Rheinau	133.88	49,000
Germany	Schwabach	84.97	31,100
Germany	Schwetzingen	133.88	49,000
Germany	Seckenheim	133.88	49,000
Germany	Sembach	149.18	54,600
Germany	Stuttgart	145.90	53,400
Germany	Wertheim	116.39	42,600
Germany	Wiesbaden	164.48	60,200
Germany	Wuerzburg	116.39	42,600
Germany	Zimdorf	84.97	31,100
Germany	Zweibruecken	149.18	54,600
Germany	All cities other than Augsburg, Babenhausen, Bad Aibling, Bad Kreuznach, Bad Nauheim, Baumholder, Berchtesgaden, Berlin, Birkenfeld, Boeblingen, Bonn, Bremen, Bremerhaven, Butzbach, Cologne, Darmstadt, Delmenhorst, Duesseldorf, Erlangen, Flensburg, Frankfurt am Main, Friedberg, Fuerth, Garlstedt, Garmisch-Partenkirchen, Geilenkirchen, Gelnhausen, Germersheim, Giebelstadt, Giessen, Grafenwoehr, Grefrath, Greven, Gruenstadt, Hamburg, Hanau, Handorf, Hannover, Heidelberg, Heilbronn, Herongen, Idar-Oberstein, Ingolstadt, Kaiserslautern, Landkreis, Kalkar, Karlsruhe, Kerpen, Kitzingen, Koblenz, Leimen, Leipzig, Ludwigsburg, Mainz, Mannheim, Mayen, Moenchen-Gladbach, Muenster, Munich, Nellingen, Neubruecke, Noervenich, Nuernberg, Ober Ramstadt, Oberammergau, Osterholz-Scharmbeck, Pirmasens, Rheinau, Rheinberg, Schwabach, Schwetzingen, Seckenheim, Sembach, Stuttgart, Twisteden, Wahn, Wertheim, Wiesbaden, Worms, Wuerzburg, Zimdorf and Zweibruecken.	125.41	45,900

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Greece	Argyroupolis	104.64	38,300
Greece	Athens	107.92	39,500
Greece	Elefsis	107.92	39,500
Greece	Ellinikon	107.92	39,500
Greece	Mt. Hortiatis	104.64	38,300
Greece	Mt. Parnis	107.92	39,500
Greece	Mt. Pateras	107.92	39,500
Greece	Nea Makri	107.92	39,500
Greece	Perivolaki	104.64	38,300
Greece	Piraeus	107.92	39,500
Greece	Souda Bay (Crete)	83.61	30,600
Greece	Tanagra	107.92	39,500
Greece	Thessaloniki	104.64	38,300
Guatemala	Guatemala City	102.73	37,600
Holy See, The	Holy See, The	182.24	66,700
Hungary	Budapest	88.80	32,500
India	Mumbai	185.57	67,920
India	New Delhi	82.66	30,252
Indonesia	Jakarta	103.21	37,776
Ireland	Dublin	158.20	57,900
Ireland	Limerick	89.34	32,700
Ireland	Shannon Area	89.34	32,700
Italy	Catania	106.56	39,000
Italy	Gaeta	77.05	28,200
Italy	Genoa	110.38	40,400
Italy	Gioia Tauro	85.25	31,200
Italy	La Spezia	110.38	40,400
Italy	Leghorn	114.21	41,800
Italy	Milan	272.13	99,600
Italy	Naples	150.27	55,000
Italy	Pisa	114.21	41,800
Italy	Pordenone-Aviano	125.68	46,000
Italy	Rome	182.24	66,700
Italy	Sardinia	93.44	34,200
Italy	Sigonella	106.56	39,000
Italy	Turin	136.07	49,800
Italy	Verona	86.89	31,800
Italy	Vicenza	126.78	46,400

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Italy	All cities other than Avellino, Brindisi, Catania, Florence, Gaeta, Genoa, Gioia Tauro, La Spezia, Leghorn, Milan, Mount Vergine, Naples, Nettuno, Pisa, Pordenone-Aviano, Rome, Sardinia, Sigonella, Turin, Verona, and Vicenza.	104.64	38,300
Jamaica	Kingston	112.57	41,200
Japan	Akashi	86.07	31,500
Japan	Akizuki	75.68	27,700
Japan	Atsugi	108.47	39,700
Japan	Camp Zama	108.47	39,700
Japan	Chiba-Ken	108.47	39,700
Japan	Fussa	108.47	39,700
Japan	Gifu	79.78	29,200
Japan	Gotemba	81.97	30,000
Japan	Haneda	108.47	39,700
Japan	Kanagawa-Ken	108.47	39,700
Japan	Komaki	79.78	29,200
Japan	Machidi-Shi	108.47	39,700
Japan	Misawa	78.96	28,900
Japan	Nagoya	103.24	37,786
Japan	Okinawa Prefecture	133.06	48,700
Japan	Osaka-Kobe	144.91	53,036
Japan	Sagamihara	108.47	39,700
Japan	Saitama-Ken	108.47	39,700
Japan	Sasebo	81.42	29,800
Japan	Tachikawa	108.47	39,700
Japan	Tokyo	257.38	94,200
Japan	Tokyo-to	108.47	39,700
Japan	Yokohama	138.25	50,600
Japan	Yokosuka	118.58	43,400
Japan	Yokota	108.47	39,700
Kazakhstan	Almaty	131.15	48,000
Korea	Camp Carroll	80.05	29,300
Korea	Camp Colbern	178.69	65,400
Korea	Camp Market	178.69	65,400
Korea	Camp Mercer	178.69	65,400
Korea	Chinhae	82.79	30,300
Korea	Chunchon	76.78	28,100

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Korea	K-16	178.69	65,400
Korea	Kimhae	85.79	31,400
Korea	Kimpo Airfield	178.69	65,400
Korea	Kwangju	81.97	30,000
Korea	Munsan	75.41	27,600
Korea	Osan AB	93.17	34,100
Korea	Pusan	85.79	31,400
Korea	Pyongtaek	93.17	34,100
Korea	Seoul	178.69	65,400
Korea	Suwon	178.69	65,400
Korea	Taegu	100.00	36,600
Korea	Tongduchon	75.41	27,600
Korea	Uijongbu	106.56	39,000
Korea	Waegwan	80.05	29,300
Korea	All cities other than Ammo Depot #9, Camp Carroll, Camp Colbern, Camp Market, Camp Mercer, Changwon, Chinhae, Chunchon, K-16, Kimhae, Kimpo Airfield, Kunsun, Kwangju, Munsan, Osan AB, Pusan, Pyongtaek, Seoul, Suwon, Taegu, Tongduchon, Uijongbu, and Waegwan.	87.16	31,900
Kuwait	Kuwait City	177.87	65,100
Kuwait	All cities other than Kuwait City.	159.29	58,300
Luxembourg	Luxembourg	149.45	54,700
Macedonia	Skopje	96.72	35,400
Malaysia	Kuala Lumpur	138.80	50,800
Malaysia	All cities other than Kuala Lumpur.	92.08	33,700
Malta	Malta	122.95	45,000
Mexico	Hermosillo	98.36	36,000
Mexico	Mazatlan	88.52	32,400
Mexico	Merida	103.55	37,900
Mexico	Mexico City	125.41	45,900
Mexico	Monterrey	117.21	42,900

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Mexico	All cities other than Ciudad Juarez, Cuernavaca, Guadalajara, Hermosillo, Matamoros, Mazatlan, Merida, Metapa, Mexico City, Monterrey, Nogales, Nuevo Laredo, Tapachula, Tijuana, Tuxtla Gutierrez, and Veracruz.	107.65	39,400
Micronesia	Pohnpei	75.14	27,500
Netherlands	Amsterdam	144.54	52,900
Netherlands	Aruba	98.36	36,000
Netherlands	Brunssum	103.28	37,800
Netherlands	Eygelshoven	103.28	37,800
Netherlands	Hague, The	187.16	68,500
Netherlands	Heerlen	103.28	37,800
Netherlands	Hoensbroek	103.28	37,800
Netherlands	Hulsberg	103.28	37,800
Netherlands	Kerkrade	103.28	37,800
Netherlands	Landgraaf	103.28	37,800
Netherlands	Maastricht	103.28	37,800
Netherlands	Papendrecht	130.87	47,900
Netherlands	Rotterdam	130.87	47,900
Netherlands	Schaesburg	103.28	37,800
Netherlands	Schinnen	103.28	37,800
Netherlands	Schiphol	144.54	52,900
Netherlands	Ypenburg	187.16	68,500
Netherlands	All cities other than Amsterdam, Aruba, Brunssum, Coevorden, Eygelshoven, The Hague, Heerlen, Hoensbroek, Hulsberg, Kerkrade, Landgraaf, Maastricht, Margraten, Papendrecht, Rotterdam, Schaesburg, Schinnen, Schiphol, and Ypenburg.	95.63	35,000
Netherlands Antilles	Curacao	101.91	37,300
New Zealand	Auckland	97.54	35,700
New Zealand	Wellington	92.35	33,800
Nicaragua	Managua	86.89	31,800
Norway	Oslo	159.29	58,300
Norway	Stavanger	108.20	39,600
Norway	All cities other than Oslo and Stavanger.	103.01	37,700
Panama	Panama City	96.99	35,500

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
Peru	Lima	74.59	27,300
Phillippines	Cavite	98.36	36,000
Phillippines	Manila	98.36	36,000
Phillippines	All cities other than Cavite and Manila.	76.23	27,900
Poland	Poland	80.33	29,400
Portugal	Alverca	166.67	61,000
Portugal	Lajes Field	82.24	30,100
Portugal	Lisbon	166.67	61,000
Qatar	Doha	99.08	36,264
Qatar	All cities other than Doha.	88.52	32,400
Russia	Moscow	248.36	90,900
Russia	Saint Petersburg	119.67	43,800
Russia	Sakhalin Island	211.75	77,500
Russia	Vladivostok	211.75	77,500
Russia	Yekaterinburg	129.51	47,400
Rwanda	Kigali	86.07	31,500
Saudi Arabia	Jeddah	83.79	30,667
Saudi Arabia	Riyadh	87.43	32,000
Singapore	Singapore	176.23	64,500
South Africa	Pretoria	109.84	40,200
Spain	Barcelona	110.93	40,600
Spain	Madrid	123.50	45,200
Spain	Rota	106.01	38,800
Spain	Valencia	127.60	46,700
Spain	All cities other than Barcelona, Madrid, Rota and Valencia.	76.23	27,900
Switzerland	Bern	162.30	59,400
Switzerland	Geneva	229.78	84,100
Switzerland	Zurich	107.16	39,219
Switzerland	All cities other than Bern, Geneva, and Zurich.	89.89	32,900
Taiwan	Taipei	126.20	46,188
Thailand	Bangkok	139.62	51,100
Turkey	Ankara	88.80	32,500
Turkey	Elmadag	88.80	32,500
Turkey	Izmir-Cigli	86.34	31,600
Turkey	Manzarali	88.80	32,500
Turkey	Yamanlar	86.34	31,600
Ukraine	Kiev	196.72	72,000

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
United Arab Emirates	Abu Dhabi	135.76	49,687
United Arab Emirates	Dubai	156.21	57,174
United Kingdom	Basingstoke	112.29	41,099
United Kingdom	Bath	112.02	41,000
United Kingdom	Bracknell	169.67	62,100
United Kingdom	Bristol	105.74	38,700
United Kingdom	Cambridge	117.49	43,000
United Kingdom	Caversham	201.64	73,800
United Kingdom	Cheltenham	127.87	46,800
United Kingdom	Chicksands	72.40	26,500
United Kingdom	Croughton	117.76	43,100
United Kingdom	Fairford	112.02	41,000
United Kingdom	Farnborough	149.45	54,700
United Kingdom	Felixstowe	122.95	45,000
United Kingdom	Gibraltar	121.90	44,616
United Kingdom	Harrogate	126.78	46,400
United Kingdom	High Wycombe	169.67	62,100
United Kingdom	Kemble	112.02	41,000
United Kingdom	Lakenheath	150.55	55,100
United Kingdom	Liverpool	106.01	38,800
United Kingdom	London	226.50	82,900
United Kingdom	Loudwater	173.50	63,500
United Kingdom	Menwith Hill	126.78	46,400
United Kingdom	Mildenhall	150.55	55,100
United Kingdom	Oxfordshire	117.76	43,100
United Kingdom	Plymouth	117.76	43,100
United Kingdom	Portsmouth	117.76	43,100
United Kingdom	Reading	169.67	62,100
United Kingdom	Rochester	109.02	39,900
United Kingdom	Southampton	120.77	44,200
United Kingdom	Surrey	132.25	48,402
United Kingdom	Waterbeach	119.95	43,900
United Kingdom	West Byfleet	72.13	26,400
United Kingdom	Wiltshire	113.66	41,600

Country	Location	Limitation on Housing Expenses (daily)	Limitation on Housing Expenses (full year)
United Kingdom	All cities other than Basingstoke, Bath, Belfast, Birmingham, Bracknell, Bristol, Brough, Bude, Cambridge, Caversham, Chelmsford, Cheltenham, Chicksands, Croughton, Dunstable, Edinburgh, Edzell, Fairford, Farnborough, Felixstowe, Ft. Halstead, Gibraltar, Glenrothes, Greenham Common, Harrogate, High Wycombe, Hythe, Kemble, Lakenheath, Liverpool, London, Loudwater, Menwith Hill, Mildenhall, Nottingham, Oxfordshire, Plymouth, Portsmouth, Reading, Rochester, Southampton, Surrey, Waterbeach, Welford, West Byfleet, and Wiltshire.	113.93	41,700
Venezuela	Caracas	155.74	57,000
Vietnam	Hanoi	128.22	46,800
Vietnam	Ho Chi Minh City	115.07	42,000

EFFECTIVE DATE

This notice is effective for taxable years beginning on or after January 1, 2008.

DRAFTING INFORMATION

The principal author of this notice is Paul J. Carlino of the Office of Associate Chief Counsel (International). For further information regarding this notice, contact Mr. Carlino at (202) 622-3840 (not a toll-free call).

2008 Cumulative List of Changes in Plan Qualification Requirements

Notice 2008-108

I. PURPOSE

This notice contains the 2008 Cumulative List of Changes in Plan Qualification Requirements (2008 Cumulative List) described in section 4 of Rev. Proc. 2007-44, 2007-28 I.R.B. 54. The 2008

Cumulative List is to be used primarily by plan sponsors of individually designed plans that are in Cycle D. An individually designed plan is in Cycle D if it is a single employer plan where the last digit of the employer identification number of the plan sponsor is 4 or 9, or it is a multiemployer plan under § 414(f).

The list of changes in section VI of this notice does not extend the deadline by which a plan must be amended to comply with any statutory, regulatory, or guidance changes. The general deadline for timely adoption of an interim or discretionary amendment can be found in section 5.05 of Rev. Proc. 2007-44.

II. BACKGROUND

Rev. Proc. 2007-44 sets forth procedures for issuing opinion, advisory, and determination letters and describes the five-year remedial amendment cycle for individually designed plans and the six-year remedial amendment cycle for pre-approved plans. In addition, section 5.05 of Rev. Proc. 2007-44 provides the deadline for timely adoption of an interim amendment or discretionary amendment.

Under section 4 of Rev. Proc. 2007-44, the Internal Revenue Service intends to annually publish a Cumulative List to identify statutory, regulatory and guidance changes that must be taken into account in submissions by plan sponsors to the Service for opinion, advisory and determination letters whose submission period begins on February 1st following issuance of the Cumulative List.

In Notice 2007-94, 2007-51 I.R.B. 1179, the Service published the 2007 Cumulative List of Changes in Plan Qualification Requirements (2007 Cumulative List).¹

III. APPLICATION OF 2008 CUMULATIVE LIST

This notice is being issued for purposes of the determination letter program for plans submitted for determination letters during the Cycle D submission period. In Rev. Proc. 2005-66, 2005-2 C.B. 509, the Service announced the opening of the initial five-year remedial amendment cycle. In accordance with Rev. Proc. 2007-44, the Service will start accepting determination letter applications for Cycle

¹ See Notice 2007-3, 2007-1 C.B. 255, Notice 2005-101, 2005-2 C.B. 1219, and Notice 2004-84, 2004-2 C.B. 1030, for the 2006, 2005, and 2004 Cumulative Lists respectively.

D plans beginning on February 1, 2009. The 12-month submission period for Cycle D plans will end January 31, 2010.

The 2008 Cumulative List, set forth in section VI of this notice, informs plan sponsors of issues the Service has specifically identified for review in determining whether a plan filing in Cycle D has been properly updated. Specifically, the 2008 Cumulative List reflects law changes under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Pub. L. 107-16 (with technical corrections made by the Job Creation and Worker Assistance Act of 2002 (JCWAA)), Pub. L. 104-147, the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108-218, the American Jobs Creation Act of 2004 (AJCA), Pub. L. 108-357, the Katrina Emergency Tax Relief Act of 2005 (KETRA), Pub. L. 109-73, the Gulf Opportunity Zone Act of 2005 (GOZA), Pub. L. 109-135, the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280, and the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28.

The Service will not consider in its review of any determination letter application, for the submission period that begins February 1, 2009, any:

- (1) guidance issued after October 1, 2008;
- (2) statutes enacted after October 1, 2008;
- (3) qualification requirements first effective in 2010 or later; or
- (4) statutory provisions that are first effective in 2009, for which there is no guidance identified in this notice.

The 2008 Cumulative List does not include any items described in (1) through (4) above. However, in order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2008 Cumulative List.

Terminating plans must include all law changes in effect at the time of termination. See section 8 of Rev. Proc. 2007-44 regarding plan termination.

IV. SPECIAL RULES FOR THE PENSION PROTECTION ACT OF 2006

Under section 1107 of the PPA '06, a plan amendment made pursuant to any

amendment made by PPA '06 generally may be retroactively effective, if, in addition to meeting the other applicable requirements, the amendment is made on or before the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011 in the case of a governmental plan).

The PPA '06 provisions formerly appeared separately from the Cumulative List of Changes in Plan Qualification Requirements section of the 2006 and 2007 Cumulative Lists. The PPA '06 provisions are now included in the Cumulative List of Changes in Plan Qualification Requirements (which is section VI of this notice) and are identified as "(New)."

Plans submitted in Cycle D must be amended to include the applicable PPA '06 provisions listed in section VI of this notice. Thus, all plans submitted in Cycle D will receive a determination letter which covers PPA '06, even if the deadline for amending under section 1107 of PPA '06 is after January 31, 2010.

As an alternative to submitting a plan in Cycle D, a plan sponsor of a Cycle D plan whose first plan year beginning on or after January 1, 2009 ends on or after February 1, 2010, may defer submission of its plan until Cycle E (February 1, 2010 - January 31, 2011). In order to defer submission of such a plan until Cycle E, an application must be timely filed in Cycle E. In such a case, the plan will be treated as having been filed within the plan's EGTRRA remedial amendment period and will be reviewed on the basis of the 2009 Cumulative List. However, such a plan will be treated as a Cycle E plan solely for this initial cycle, and all subsequent submissions will be made in Cycle D.

V. SPECIAL RULES FOR THE HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008

Under sections 104(d)(2) and 105(c) of the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART Act), Pub. L. 110-245, a plan amendment made pursuant to sections 104(a) or 105(b)(1) of the HEART Act generally may be retroactively effective, if, in addition to meeting the other applicable requirements, the amendment is made on or before the last day of the first plan year beginning on

or after January 1, 2010 (January 1, 2012 in the case of a governmental plan).

Plans submitted in Cycle D can be amended, at the option of plan sponsors, to include the applicable HEART Act provisions listed in section VII of this notice. However, the Service will not consider the HEART Act in issuing determination letters for Cycle D plans, and such letters cannot be relied on with respect to the requirements of the HEART Act.

Section 107(a) of the HEART Act extends the applicability of the qualified reservist distribution to individuals ordered or called to duty after December 31, 2007. The Service is treating an amendment made pursuant to section 107 of the HEART Act as if it was included in the amendments described in section 1107 of PPA '06. See section VI of this notice, # 11, footnote 4, with respect to § 401(k)(2)(B)(i)(V) qualified reservist distributions.

VI. 2008 CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS

The following list consists of statutory provisions and associated guidance which reflect changes to plan qualification requirements. Miscellaneous guidance is also provided. The Service has identified below plan qualification requirements which were not on the 2007 or earlier Cumulative Lists as "(New)". Thus, the 2008 Cumulative List contains those plan qualification requirements listed in the 2004, 2005, 2006, and 2007 Cumulative Lists as well as additional 2008 plan qualification requirements.

1. *72(p)*: Section 1.72(p)-1 of the Income Tax Regulations relating to plan loans was published on December 3, 2002 (67 Fed. Reg. 71821). (2004 C. L.).
2. *401(a)*:
 - Final Regulations under § 401(a) of the Code regarding permissible normal retirement ages were published May 22, 2007 (72 Fed. Reg. 28604). (2006 C. L.).
 - Notice 2007-69, 2007-35 I.R.B. 468, provides temporary relief, for certain pension

plans under which the definition of normal retirement age may be required to be changed to comply with the regulations, but only until the first day of the first plan year that begins after June 30, 2008. Accordingly, the final regulations will be taken into account in the Service's review of plans submitted for determination letters during the Cycle D submission period. (2007 C. L.).

- Rev. Rul. 2008–40, 2008–30 I.R.B. 166, provides that the transfer of amounts from a trust under a plan qualified under § 401(a) to a nonqualified foreign trust is treated as a distribution from the transferor plan and that transfer of assets and liabilities from a qualified plan to a plan that satisfies § 1165 of the Puerto Rico Code is also treated as a distribution from the transferor plan. (New).
 - Rev. Rul. 2008–45, 2008–34 I.R.B. 403, provides that the exclusive benefit rule of § 401(a) is violated if the sponsorship of a qualified retirement plan is transferred from an employer to an unrelated taxpayer and the transfer is not in connection with a transfer of business assets or operations from the employer to the unrelated taxpayer. (New).
3. *401(a)(4)*:
 - Amendments to § 1.401(a)(4)–8 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2004 C. L.).
 - Rev. Rul. 2001–30, 2001–2 C.B. 46. (2004 C. L.).
 - Amendments to § 1.401(a)(4)–9 of the Regulations relating to new comparability plans were published on June 29, 2001 (66 Fed. Reg. 34535). (2005 C. L.).
 - Rev. Rul. 2004–21, 2004–1 C.B. 544. (2005 C. L.).
 4. *401(a)(5)*: Section 401(a)(5)(G) of the Code was amended by PPA '06 § 861(a)(1) with respect to governmental plans. (New).
 5. *401(a)(9)*:
 - Sections 1.401(a)(9)–1 through –9 of the Regulations were published on April 17, 2002 and June 15, 2004 (67 Fed. Reg. 18988 and 69 Fed. Reg. 33288). (2004 C. L.).²
 6. *401(a)(17)*: Section 401(a)(17) of the Code was amended by § 611(c) of EGTRRA to increase the compensation limit to \$200,000. (2004 C. L.).
 - Notice 2001–56, 2001–2 C.B. 277. (2004 C. L.).
 7. *401(a)(26)*: Section 401(a)(26)(G) of the Code was amended by PPA '06 § 861(a)(1) with respect to governmental plans. (New).
 8. *401(a)(31)*:
 - Section 401(a)(31) was amended by § 643(b) of EGTRRA to allow employees' after-tax contributions to be rolled over under certain circumstances. (2004 C. L.).
 - Section 401(a)(31)(B) was amended by § 657(a) of EGTRRA (as amended by § 411(t) of JCWAA) to provide for the automatic rollover of certain mandatory distributions. The effective date is March 28, 2005. (2004 C. L.).
 - Notice 2005–5, 2005–1 C.B. 337. (2004 C. L.).
 - Sections 641, 642 and 643 of EGTRRA (as amended by § 411(q) of JCWAA) amended the definition of eligible retirement plan in § 402 of the Code to include a § 403(b) annuity contract and eligible governmental § 457(b) plan. (2004 C. L.).
 - Section 636(b) of EGTRRA modified the definition of eligible rollover distribution to exclude hardship distributions. (2004 C. L.).
 9. *401(a)(35)*: PPA '06 § 901(a)(1) added § 401(a)(35) requiring that defined contribution plans provide employees with the freedom to divest publicly traded securities.³ (New).
 - Notice 2006–107, 2006–2 C.B. 1114. (New).
 - Notice 2008–7, 2008–3 I.R.B. 276, extends certain transitional guidance and transitional relief provided to certain defined contribution plans holding publicly traded employer securities under Notice 2006–107. (New).
 10. *401(a)(36)*: PPA '06 § 905(b) added § 401(a)(36) regarding distributions to a participant who has attained age 62 and who has not separated from employment at the time of the distribution. (New).
 11. *401(k) & 401(m)*:
 - Section 401(k)(2) and § 401(k)(10) of the Code were amended by § 646(a)(1) of EGTRRA to permit distributions of elective deferrals from a § 401(k) plan upon severance from employment. (2004 C. L.).
 - Notice 2002–4, 2002–1 C.B. 298. (2004 C. L.).
 - Section 636(a) of EGTRRA directed the Secretary of the Treasury to revise the regulations relating to safe harbor hardship distributions of elective deferrals from § 401(k) plans so that the time the employee is prohibited from making elective and employee contributions is reduced from one year to six months after a hardship distribution. (2004 C. L.).
 - Notice 2001–56. (2004 C. L.).
 - Notice 2002–4. (2004 C. L.).
 - Section 401(k)(11) of the Code was amended by § 611(f) of EGTRRA to increase the maximum amount of qualified salary reduction contributions that can be made to SIMPLE 401(k) plans. (2004 C. L.).
 - Section 402(g) of the Code was amended by § 611(d) of EGTRRA

² Proposed regulations under § 401(a)(9) were published July 10, 2008 (73 Fed. Reg. 39630), which permit a governmental plan to comply with the required minimum distribution rules of § 401(a)(9) by using a reasonable and good faith interpretation of the statute.

³ Proposed regulations under § 401(a)(35) were published January 3, 2008 (73 Fed. Reg. 421) and may be relied upon until final regulations are issued.

- to increase the applicable dollar amount. (2004 C. L.).
- Section 401(m)(9) of the Code was amended by § 666 of EGTRRA to eliminate the multiple use test. (2004 C. L.).
 - Final Regulations under § 401(k) and § 401(m) of the Code were published on December 29, 2004 (69 Fed. Reg. 78144). (2004 C. L.).
 - Announcement 2007–59, 2007–1 C.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement a designated Roth contribution program. (2007 C. L.).
 - PPA '06 § 826 modified the rules relating to distributions from a § 401(k) plan on account of a participant's hardship to permit the plan to treat a participant's beneficiary under the plan the same as the participant's spouse or dependent. (New).
 - Notice 2007–7, 2007–1 C.B. 395, provides guidance regarding PPA '06 § 826. (New).
 - Announcement 2007–59, 2007–1 C.B. 1448, provides that a plan will not fail to satisfy the requirements of a § 401(k) safe harbor plan because of a mid-year change to implement the PPA '06 § 826 hardship withdrawals. (New).
 - PPA '06 § 827 added § 401(k)(2)(B)(i)(V) which permits reservists called to active duty after September 11, 2001 and before 2008 to take in-service distributions from a § 401(k) plan.⁴ (New).
 - PPA '06 § 861(a)(2) amended § 401(k)(3)(G) with respect to governmental plans. (New).
 - PPA '06 § 902(e)(3) eliminates the gap period income rule for excess contributions in § 401(k)(8)(A)(i). (New).
 - PPA '06 § 902 added § 401(k)(13) with respect to qualified automatic contribution arrangements.⁵ (New).
 - PPA '06 § 902(e)(3) eliminates the gap period income rule for excess aggregate contributions in § 401(m)(6)(A). (New).
 - PPA '06 § 902 added § 401(m)(12) with respect to qualified automatic contribution arrangements.⁶ (New).
12. *402(c)(2)(A)*: PPA '06 § 822(a) amended § 402(c)(2)(A) to permit nontaxable distributions from a qualified plan to be directly rolled over tax-free to either another qualified plan or a § 403(b) plan if the separate accounting requirements are met. (New).
13. *402(c)(11)*: PPA '06 § 829(a)(1) added § 402(c)(11) to allow non-spouse beneficiaries to directly roll over distributions from a qualified plan to an individual retirement plan. (New).
 - Notice 2007–7, 2007–1 C.B. 395, provides guidance regarding § 402(c)(11). (New).
14. *402(f)*: PPA '06 § 1102(a) provides that notice required to be provided under § 402(f) may be provided as much as 180 days before the annuity starting date. (New).
 - Notice 2007–7, 2007–1 C.B. 395, provides guidance regarding PPA '06 § 1102. (New).
15. *402A*: Section 402A of the Code was added by § 617 of EGTRRA to offer optional treatment of elective deferrals as designated Roth contributions to defined contribution plans, effective for taxable years beginning after December 31, 2005. (2004 C. L.).
 - Final Regulations under § 401(k) and § 401(m) of the Code relating to designated Roth contributions were published on January 3, 2006 (71 Fed. Reg. 6). (2005 C. L.).
 - Notice 2006–44, 2006–1 C.B. 889, provides a sample amendment for Roth § 401(k) plans. (2006 C. L.).
 - Final Regulations under § 402A of the Code were published on April 30, 2007 (72 Fed. Reg. 21103). (2006 C. L.).
16. *404*:
 - Section 404(k)(2)(A) of the Code was amended by § 662(a) of EGTRRA (as amended by § 411(w) of JCWAA) to allow ESOP dividends to be reinvested without the loss of dividend deductions. (2005 C. L.).
 - Notice 2002–2, 2002–1 C.B. 285, provides guidance with respect to the changes made to § 404(k) of the Code and on the effective date of § 409(p) of the Code. (2005 C. L.).
17. *408(q)*: Section 408(q) of the Code was added by § 602 of EGTRRA (as amended by § 411(i) of JCWAA) to allow for deemed individual retirement accounts (IRAs) in an eligible retirement plan. (2004 C. L.).
 - Section 1.408(q)–1 of the Regulations was published on July 22, 2004 (69 Fed. Reg. 43735). (2004 C. L.).
18. *408A(e)*: PPA '06 § 824 added § 408A(e) which permits rollovers to Roth IRAs from accounts that are not designated Roth accounts that are part of qualified plans, § 403(b) plans, and § 457 plans. (New).
 - Notice 2008–30, 2008–12 I.R.B. 638, provides guidance regarding PPA '06 § 824. (New).
19. *409*: Section 409(p) of the Code was added by § 656 of EGTRRA relating to restrictions on the allocation of employer securities in an

⁴ Section 107(a) of the HEART Act extends the applicability of the qualified reservist distribution to individuals ordered or called to active duty after December 31, 2007.

⁵ Proposed regulations under § 401(k) with respect to qualified automatic contribution arrangements were published November 8, 2007 (72 Fed. Reg. 63144) and may be relied upon until final regulations are issued.

⁶ Proposed regulations under § 401(m) with respect to qualified automatic contribution arrangements were published November 8, 2007 (72 Fed. Reg. 63144) and may be relied upon until final regulations are issued.

ESOP maintained by an S corporation. (2005 C. L.).

- Section 1.409(p)-1T of the Regulations was published on July 21, 2003 (68 Fed. Reg. 42970). (2005 C. L.).
 - Section 1.409(p)-1T of the Regulations was published on December 17, 2004 (69 Fed. Reg. 75455). (2005 C. L.).
 - Rev. Proc. 2003-23, 2003-1 C.B. 599, as modified and superseded by Rev. Proc. 2004-14, 2004-1 C.B. 489, allows a direct rollover from an ESOP maintained by an S corporation to an individual retirement plan (IRA). (2005 C. L.).
 - Rev. Rul. 2003-6, 2003-1 C.B. 286, provides guidance with respect to whether an ESOP maintained by an S corporation is eligible for the delayed effective date of § 409(p) under § 656(d)(2) of EGTRRA. (2005 C. L.).
 - Rev. Rul. 2004-4, 2004-1 C.B. 414, provides guidance relating to synthetic equity owned by a disqualified person in a nonallocation year of an ESOP maintained by an S corporation. (2005 C. L.).
 - Final Regulations were published on December 20, 2006 (71 Fed. Reg. 76134) that provide guidance concerning requirements under § 409(p) for ESOPs holding stock of S corporations. (2006 C. L.).
20. *410(b)*: Final Regulations were published on July 21, 2006 (71 Fed. Reg. 41357) permitting some employees of tax-exempt organizations to be excluded when determining whether a § 401(k) plan meets the § 410(b) minimum coverage requirements. (2006 C. L.).
21. *411(a)*:
- Section 411(a) of the Code was amended by § 633 of EGTRRA (as amended by § 411(o) of JCWAA) to provide for faster vesting of matching contributions. (2004 C. L.).
 - Rev. Rul. 2003-65, 2003-1 C.B. 1035. (2005 C. L.).
 - Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (2006 C. L.).
 - Section 411(a) of the Code was amended by § 904 of PPA '06 to provide for faster vesting of employer nonelective contributions. (New).
 - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding § 411(a), as amended by § 904 of PPA '06. (New).
22. *411(a)(11)*: Section 411(a)(11)(D) of the Code was added by § 648(a) of EGTRRA (as amended by § 411(r) of JCWAA) to allow amounts attributable to rollover contributions to be disregarded in determining the value of an account balance for involuntary distributions. (2004 C. L.).
- PPA '06 § 1102(a) provides that notice required to be provided under § 411(a)(11) may be provided as much as 180 days before the annuity starting date. Section 1102(b) of PPA '06 provides that the notice under § 411(a)(11) also include a description of the consequences of failing to defer receipt of a distribution. (New).
 - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 1102. (New).
23. *411(a)(13)*: PPA '06 § 701(b)(2) added § 411(a)(13) with respect to special vesting rules for applicable defined benefit plans, such as cash balance plans.⁷ (New).
- Notice 2007-6, 2007-1 C.B. 272, provides guidance regarding cash balance plans and other hybrid defined benefit plans. (New).
24. *411(b)(1)*:
- Rev. Rul. 2008-7, 2008-7 I.R.B. 419, addresses (1) the application of the backloading provisions of § 411(b)(1)(A), (B), and (C) to defined benefit cash balance plans and (2) the use of a "greater of" formula in the instance of a conversion of a defined benefit pension plan to a cash balance plan, including limited § 7805(b) relief. (New).
25. *411(b)(5)*: PPA '06 § 701(b)(1) added § 411(b)(5) with respect to applicable defined benefit plans, such as cash balance plans, and special rules relating to age.⁸ (New).
- Notice 2007-6, 2007-1 C.B. 272, provides guidance regarding cash balance plans and other hybrid defined benefit plans. (New).
26. *411(d)(3)*:
- Rev. Rul. 2007-43, 2007-28 I.R.B. 45, provides guidance regarding the partial termination of a defined contribution plan. (2007 C. L.).
27. *411(d)(6)*:
- *Central Laborers' Pension Fund v. Heinz*, 124 S. Ct. 2230 (2004). (2005 C. L.).
 - Rev. Proc. 2005-23, 2005-1 C.B. 991, as modified by Rev. Proc. 2005-76, 2005-2 C.B. 1139. (2005 C. L.).
 - Amendments to § 1.411(d)-3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to the interaction between the anti-cutback rules of § 411(d)(6) and the nonforfeitability requirements of § 411(a). (2006 C. L.).
 - Section 645(b)(3) of EGTRRA directed the Secretary of the Treasury to issue regulations under § 411(d)(6)(B). (2005 C. L.).
 - Section 1.411(d)-3 of the Regulations was published on Au-

⁷ Proposed regulations under § 411(a)(13) were published December 28, 2007 (72 Fed. Reg. 73680) and may be relied upon until final regulations are issued.

⁸ Proposed regulations under § 411(b)(5) were published December 28, 2007 (72 Fed. Reg. 73680) and may be relied upon until final regulations are issued.

gust 12, 2005 (70 Fed. Reg. 47109). (2005 C. L.).

- Amendments to § 1.411(d)–3 of the Final Regulations were published on August 9, 2006 (71 Fed. Reg. 45379) with respect to a utilization test. (2006 C. L.).
 - Section 411(d)(6)(D) and § 411(d)(6)(E) of the Code were added by § 645 of EGTRRA to permit the elimination of certain optional forms of benefit under certain conditions. (2005 C. L.).
 - Section 1.411(d)–4, Q&A–2(e) of the Regulations was published on January 25, 2005 (70 Fed. Reg. 3475) to implement § 411(d)(6)(E). (2005 C. L.).
28. *412*:
- Rev. Rul. 2004–20, 2004–1 C.B. 546, provides guidance with respect to whether a qualified pension plan can be a § 412(i) plan if the plan holds life insurance contracts and annuity contracts for benefits at normal retirement age in excess of a participant’s benefits at normal retirement age under the plan. (2005 C. L.).
 - Notice 2004–59, 2004–2 C.B. 447, provides guidance with respect to restrictions placed on plan amendments following an employer’s election of an alternative deficit reduction contribution. (2005 C. L.).
29. *414(d)*: PPA ’06 § 906(a)(1) added language to the definition of governmental plan in § 414(d) with respect to Indian tribal governments. (New).
- Notice 2006–89, 2006–2 C.B. 772, provides transition relief for plans subject to PPA ’06 § 906. (New).
 - Notice 2007–67, 2007–2 C.B. 467, extends the transition relief provided in Notice 2006–89. (New).
30. *414(f)(6)*: PPA ’06 § 1106(b) added § 414(f)(6) with respect to a mul-
- tiemployer status election. Section 6611(a)(2) and (b)(2) of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 amends § 414(f)(6). (New).
31. *414(v)*: Section 414(v) of the Code was added by § 631 of EGTRRA (as amended by § 411(o) of JCWAA) to allow for catch-up contributions for individuals age 50 or older. (2004 C. L.).
- Regulations under § 414(v) were published on July 8, 2003 (68 Fed. Reg. 40510). (2004 C. L.).
 - Notice 2002–4. (2004 C. L.).
32. *414(w)*: PPA ’06 § 902(d)(1) added § 414(w) with respect to eligible automatic contribution arrangements.⁹ (New).
33. *415*:
- Section 415(c) of the Code was amended by §§ 611(b) and 632 of EGTRRA (as amended by § 411(p) of JCWAA) to increase the maximum annual additions permitted to the lesser of \$40,000 or 100% of compensation. (2004 C. L.).
 - Rev. Rul. 2001–51, 2001–2 C.B. 427. (2004 C. L.).
 - Rev. Rul. 2002–27, 2002–1 C.B. 925, provided that “compensation” within the meaning of § 415(c) could in certain situations include “deemed § 125 compensation”. (2004 C. L.).
 - Section 415(b) of the Code was amended by § 611 of EGTRRA to increase the dollar limit and change the age when the limit is reduced or increased. (2005 C. L.).
 - Rev. Rul. 2001–51, 2001–2 C.B. 427. (2004 C. L.).
 - Section 415(b)(2)(E)(ii) of the Code was amended by § 101(b)(4) of PFEA to fix the percentage at 5.5%. (2005 C. L.).
 - Notice 2004–78, 2004–2 C.B. 879, provides the actuarial assumptions that must be used for distributions with annuity starting dates occurring during the plans years beginning in 2004 and 2005. (2005 C. L.).
- Final Regulations under § 415 with respect to pre-PPA ’06 law were published April 5, 2007 (72 Fed. Reg. 16878). (2006 C. L.).
 - Section 415(b)(2)(E)(ii) of the Code was amended by § 303 of PPA ’06 regarding the interest rate assumption for applying benefit limitations to lump sum distributions. (New).
 - Final Regulations under § 415 were published April 5, 2007 (72 Fed. Reg. 16878), which provide guidance regarding § 415(b)(2)(E)(ii), as amended by PPA ’06. (New).
 - PPA ’06 § 832(a) amended § 415(b)(3) to eliminate the active participant restriction from the “average compensation for high 3 years” definition. (New).
 - PPA ’06 § 906(b)(1)(A) & (B) modified §§ 415(b)(2)(H) and 415(b)(10), respectively, regarding Indian tribal governments. (New).
 - PPA ’06 § 867(a) removed the 100% of compensation limitation for a church plan participant if the participant has never been a highly compensated employee of the church in § 415(b)(11). (New).
 - Final Regulations under § 415 were published April 5, 2007 (72 Fed. Reg. 16878), which provide guidance regarding § 415(b)(11), as added by PPA ’06. (New).
34. *416*:
- Section 416 of the Code was amended by § 613 of EGTRRA (as amended by § 411(k) of JCWAA) to make several changes to the top-heavy rules. (2004 C. L.).
 - Section 416(g)(4)(H) of the Code was added by § 613(d) of EGTRRA to provide certain safe harbor § 401(k) plans and

⁹ Proposed regulations under § 414(w) with respect to eligible automatic contribution arrangements were published November 8, 2007 (72 Fed. Reg. 63144) and may be relied upon until final regulations are issued.

§ 401(m) plans an exemption from the top-heavy rules. (2004 C. L.).

- Rev. Rul. 2004-13, 2004-1 C.B. 485. (2004 C. L.).
- Section 416(c)(1)(C) of the Code was amended by § 613(e) of EGTRRA (as amended by § 411(k)(1) of JCWAA) to provide when a frozen defined benefit plan is exempt from the minimum benefit requirements. (2005 C. L.).
- PPA '06 § 902(c)(1) amended § 416(g)(4)(H)(i) by inserting § 401(k)(13) of the Code. (New).
- PPA '06 § 902(c)(2) amended § 416(g)(4)(H)(ii) by inserting § 401(m)(12) of the Code. (New).

35. 417:

- Section 1.417(e)-1 of the Regulations was published on July 16, 2003 (68 Fed. Reg. 41906) relating to retroactive annuity starting dates. (2005 C. L.).
- Final Regulations under § 417(a)(3) were published on March 24, 2006 (71 Fed. Reg. 14798) regarding the disclosure of the relative value of optional forms of benefit. (2006 C. L.).
- PPA '06 § 1102(a) provides that notice required to be provided under § 417 may be provided as much as 180 days before the annuity starting date. (New).
 - Notice 2007-7, 2007-1 C.B. 395, provides guidance regarding PPA '06 § 1102. (New).
- PPA '06 § 302(b) amended the applicable interest rate and mortality table to be used for determining the present value of lump sum distributions in § 417(e)(3). (New).
 - Rev. Rul. 2007-67, 2007-48 I.R.B. 1047, addresses the mortality tables required by § 417(e)(3). (New).
 - Notice 2008-30, 2008-12 I.R.B. 638, provides guidance regarding PPA '06 § 302. (New).
- PPA '06 § 1004(a) added the qualified optional survivor annuity benefit to § 417. (New).
 - Notice 2008-30, 2008-12 I.R.B. 638, provides guidance

regarding PPA '06 § 1004. (New).

36. 420:

- Section 6613 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, amends § 420(c)(3)(A) regarding minimum cost requirements for transfers of excess pension assets to retiree health accounts. (2007 C. L.).
- PPA '06 § 114(d)(1) modified the definition of the term "excess pension assets" in § 420(e)(2). Section 6612(b) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 amends § 420(e)(2)(B). (2007 C. L.).

37. 432(e): PPA '06 § 212(a) added § 432(e) which requires that a rehabilitation plan be adopted for multi-employer plans in critical status and permits certain reductions and adjustable benefits. (New).

38. 4975:

- Section 4975 of the Code was amended by § 612 of EGTRRA to allow plan loans for Subchapter S shareholder-employees. (2004 C. L.).
- Section 4975(f) of the Code was amended by § 240 of AJCA to allow an S corporation distribution on allocated shares to pay off an exempt loan as long as equal amounts are allocated to participant accounts. (2005 C. L.).

39. Hurricane Relief:

- Katrina Emergency Tax Relief Act of 2005, Pub. L. 109-73. (2005 C. L.).
 - Notice 2005-92, 2005-2 C.B. 1165. (2005 C. L.).
- Announcement 2005-70, 2005-2 C.B. 682. (2005 C. L.).
- Gulf Opportunity Zone Act of 2005, Pub. L. 109-135, added § 1400M and § 1400Q to the Code to provide certain tax benefits to those areas affected by Hurricanes

Katrina, Wilma, and Rita. (2006 C. L.).

40. Miscellaneous:

- Rev. Rul. 2002-42, 2002-2 C.B. 76, provides guidance with respect to a situation where a money purchase pension plan is merged or converted into a profit sharing plan. (2004 C. L.).
- Rev. Proc. 2002-21, 2002-1 C.B. 911, provides guidance with respect to defined contribution retirement plans maintained by professional employer organizations. (2004 C. L.).
- Rev. Proc. 2003-86, 2003-2 C.B. 1211, amplifies Rev. Proc. 2002-21 relating to relief provided for certain defined contribution plans maintained by professional employer organizations. (2004 C. L.).
- Rev. Rul. 2004-10, 2004-1 C.B. 484, provides guidance with respect to charging administrative expenses to former and current employees. (2004 C. L.).
- Rev. Rul. 2004-12, 2004-1 C.B. 478, provides guidance with respect to the distribution restrictions applicable to rollover contributions. (2004 C. L.).
- Rev. Rul. 2001-62, 2001-2 C.B. 632, provides guidance with respect to the mortality table under § 415(b)(2)(E)(v) of the Code and the applicable mortality table under § 417(e)(3)(A)(ii)(I) of the Code. (2005 C. L.).
- Rev. Rul. 2003-11, 2003-1 C.B. 285, provides guidance with respect to satisfying the nondiscrimination rules under § 401(a)(4) of the Code and the minimum coverage requirements under § 410(b) of the Code when applying the increased compensation limit to former employees. (2005 C. L.).
- Rev. Rul. 2005-55, 2005-2 C.B. 284, provides guidance with respect to medical reimbursement accounts under a profit sharing plan. (2005 C. L.).
- Section 1.401(a)-21 of the Final Regulations were published on October 20, 2006 (71 Fed. Reg.

61877) setting forth standards for the use of an electronic medium to applicable notices to recipients or to make participant elections. (2006 C. L.).

- Notice 2008–21, 2008–7 I.R.B. 431, provides transitional guidance for 2008 under § 436 for small plans with end-of-year valuation dates. (New).
- Notice 2008–73, 2008–38 I.R.B. 717, expands transition relief of Notice 2008–21. (New).

The following guidance contains sample or model amendments: Notice 2001–57, 2001–2 C.B. 279 (miscellaneous EGTRRA amendments); Rev. Rul. 2001–62, 2001–2 C.B. 632 (applicable mortality table); Rev. Proc. 2002–29, 2002–1 C.B. 1176 (required minimum distribution amendments); Rev. Proc. 2003–13, 2003–1 C.B. 317 (required language for deemed IRAs); Notice 2005–5 (automatic rollover); and Notice 2006–44, 2006–1 C.B. 889 (Roth § 401(k) plans).

VII. HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008 PROVISIONS

As provided in section V of this notice, plans submitting in Cycle D may be amended for the HEART Act, but the Service will not consider the HEART Act in issuing determination letters. The HEART Act provisions are listed below.

1. *401(a)(37)*: Section 104(a) of the HEART Act added Code § 401(a)(37) with respect to benefits payable on the death of a plan participant while performing qualified military service. (New).
2. *414(u)(9)*: Section 104(b) of the HEART Act amended § 414(u) of the Code by adding a paragraph regarding how a plan may provide benefit accruals for a person who dies or becomes disabled while performing qualified military service. (New).
3. *414(u)(12)*: Section 105(b)(1) of the HEART Act added § 414(u)(12) with respect to the treatment of differential wage payments during the period a person, while on active duty, is per-

forming service in the uniformed services. (New).

DRAFTING INFORMATION

The principal author of this notice is Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1–877–829–5500 (a toll-free number) or e-mail Ms. Carrington at RetirementPlanQuestions@irs.gov.

Midwestern and Hurricane Ike Disaster Areas and Population Estimates

Notice 2008–109

This notice informs the States of Arkansas, Illinois, Indiana, Iowa, Missouri, Nebraska, and Wisconsin of those counties that comprise the Midwestern disaster area for purposes of certain provisions of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Division C of Public Law 110–343) (Act). In addition, this notice informs these States of the portion of their State population that is located in the Midwestern disaster area for purposes of determining the (1) Midwestern disaster housing amount under § 1400N(c)(1)(B) of the Internal Revenue Code (Code), as applied and modified by section 702 of the Act, (2) maximum aggregate face amount of qualified Midwestern disaster area bonds (Midwestern Disaster Bonds) which may be designated under § 1400N(a)(3)(A) of the Code, as applied and modified by section 702 of the Act, and (3) maximum aggregate face amount of Midwestern tax credit bonds (Midwestern Tax Credit Bonds) which may be designated under § 1400N(l)(4)(C), as applied and modified by section 702 of the Act.

This notice also informs the States of Texas and Louisiana of the counties and parishes that comprise the Hurricane Ike disaster area for purposes of certain provisions of the Act. In addition, this notice informs the States of Texas and Louisiana of their State population portion for purposes

of determining the (1) Hurricane Ike Recovery Assistance housing amount under § 1400N(c)(1)(B) of the Code, as applied and modified by section 704(b) of the Act, and (2) maximum aggregate face amount of qualified Hurricane Ike disaster area bonds (Hurricane Ike Bonds) which may be designated under § 1400N(a)(3)(A), as applied and modified by section 704(a) of the Act.

This notice also provides instructions for the reporting of the issuance of Midwestern Disaster Bonds, Midwestern Tax Credit Bonds, and Hurricane Ike Bonds.

BACKGROUND

The Act provides certain tax benefits for specified counties in certain Midwestern States affected by severe storms, tornadoes, or flooding, and for specified counties in Texas and parishes in Louisiana affected by Hurricane Ike.

Section 702(a) of the Act provides that, subject to the modifications described in section 702 of the Act, certain provisions of or relating to the Code shall apply to any Midwestern disaster area in addition to the areas to which such provisions otherwise apply. Section 702(a)(1) provides, in part and with certain modifications, that § 1400N(a), § 1400N(c), and § 1400N(l) of the Code shall apply to the Midwestern disaster area.

Section 702(b) of the Act defines the term “Midwestern disaster area” to mean an area (1) with respect to which a major disaster has been declared by the President on or after May 20, 2008, and before August 1, 2008, under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) by reason of severe storms, tornadoes, or flooding occurring in any of the States of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin, and (2) determined by the President to warrant individual or individual and public assistance from the Federal government under the Stafford Act for damages attributable to the severe storms, tornadoes, or flooding.

Under section 702(c) of the Act, any reference in the relevant provisions of § 1400N of the Code to the Gulf Opportunity Zone (GO Zone) is treated as a reference to any Midwestern disaster area and any reference to the GO Zone within

a State is treated as a reference to all Midwestern disaster areas within the State.

Section 704(a) of the Act provides that, with certain modifications, § 1400N(a) of the Code shall apply to any Hurricane Ike disaster area in addition to any other area referenced in § 1400N(a). Section 704(b) of the Act provides, with certain modifications, that § 1400N(c) shall apply to any Hurricane Ike disaster area in addition to any other area referenced in § 1400N(c).

Section 704(c) of the Act defines the term “Hurricane Ike disaster area” to mean an area in the State of Texas or Louisiana (1) with respect to which a major disaster has been declared by the President on September 13, 2008, under section 401 of the Stafford Act by reason of Hurricane Ike, and (2) determined by the President to warrant individual or individual and public assistance from the Federal government under the Stafford Act for damages attributable to Hurricane Ike.

MIDWESTERN DISASTER AREA COUNTIES

The counties located in the Midwestern disaster area are:

Arkansas— Arkansas, Benton, Cleburne, Conway, Crittenden, Grant, Lonoke, Mississippi, Phillips, Pulaski, Saline, and Van Buren.

Illinois— Adams, Calhoun, Clark, Coles, Crawford, Cumberland, Douglas, Edgar, Hancock, Henderson, Jasper, Jersey, Lake, Lawrence, Mercer, Rock Island, Whiteside, and Winnebago.

Indiana— Adams, Bartholomew, Brown, Clay, Daviess, Dearborn, Decatur, Gibson, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Huntington, Jackson, Jefferson, Jennings, Johnson, Knox, Lawrence, Madison, Marion, Monroe, Morgan, Owen, Parke, Pike, Posey, Putnam, Randolph, Ripley, Rush, Shelby, Sullivan, Tippecanoe, Vermillion, Vigo, Washington, and Wayne.

Iowa— Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Cass, Cedar, Cerro Gordo, Chickasaw, Clarke, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Iowa, Jackson, Jasper, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, Page, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Story, Tama, Union, Van Buren, Wapello, Warren, Washington, Webster, Winnebago, Winneshiek, Worth, and Wright.

Missouri— Adair, Andrew, Barry, Callaway, Cass, Chariton, Clark, Gentry, Greene, Harrison, Holt, Jasper, Johnson, Lewis, Lincoln, Linn, Livingston, Macon, Marion, Monroe, Newton, Nodaway, Pike, Putnam, Ralls, St. Charles, Stone, Taney, Vernon, and Webster.

Nebraska— Buffalo, Butler, Colfax, Custer, Dawson, Douglas, Gage, Hamilton, Holt, Jefferson, Kearney, Lancaster, Platte, Richardson, Sarpy, and Saunders.

Wisconsin— Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, and Winnebago.

Although section 702(b) of the Act references the States of Kansas, Michigan, and Minnesota as Midwestern States, no county in these three States has been determined to warrant individual or individual and public assistance under the Stafford Act for damages attributable to severe storms, tornados, or flooding. Accordingly, this notice does not apply to these States.

HURRICANE IKE DISASTER AREA COUNTIES AND PARISHES

The counties and parishes located in the Hurricane Ike disaster area are:

Louisiana— Acadia, Allen, Beauregard, Calcasieu, Cameron, Iberia, Jefferson, Jefferson Davis, Lafourche, Livingston, Orleans, Plaquemines, Sabine, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, and Vernon.

Texas— Angelina, Austin, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Gregg, Grimes, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Walker, Waller, and Washington.

LOW-INCOME HOUSING TAX CREDIT: ADDITIONAL HOUSING CREDIT AMOUNT

A. *Midwestern disaster area.*

Section 702(d)(2) of the Act provides, in part, that § 1400N(c) of the Code shall apply [to the Midwestern disaster area] with certain modifications. Section 702(d)(2)(A) of the Act provides that the modifications only apply to calendar years 2008, 2009, and 2010. Section 702(d)(2)(B) of the Act substitutes “Disaster Recovery Assistance housing amount” for “the Gulf Opportunity housing amount” each place it appears in § 1400N(c). As a result, § 1400N(c)(1), as applied and modified by section 702 of the Act, provides that, for purposes of § 42, in the case of calendar years 2008, 2009, and 2010, the State housing credit ceiling of each State, any portion of which is located in the Midwestern disaster area, shall be increased by the lesser of—

(i) the aggregate housing credit dollar amount allocated by the State housing credit agency of such State to buildings located in the Midwestern disaster area for such calendar year, or

(ii) the Disaster Recovery Assistance housing amount for such State for such calendar year.

Section 702(d)(2)(C) of the Act modifies § 1400N(c)(1)(B) of the Code by substituting “\$8” for “\$18” and by substituting “before the earliest applicable disaster date for Midwestern disaster areas within the State” for “before August 28, 2005.” As a result, § 1400N(c)(1)(B), as applied and modified by section 702 of the Act, provides that the term “Disaster Recovery Assistance housing amount” means, for any calendar year, the amount equal to the product of \$8 multiplied by the portion of the State population that is in the Midwestern disaster area (as determined on the basis of the most recent census estimate of resident population released by the Bureau of the Census before the earliest applicable disaster date for Midwestern disaster areas within the State).

B. Hurricane Ike disaster area.

Section 704(b) of the Act provides, in part, that § 1400N(c) of the Code shall apply to any Hurricane Ike disaster area, but with certain modifications. Section 704(b)(1) of the Act provides that the modifications only apply to calendar years 2008, 2009, and 2010. Section 704(b)(2) of the Act substitutes “Hurricane Ike disaster area” for “the Gulf Opportunity Zone” each place it appears in § 1400N(c) and section 704(b)(3) of the Act substitutes “Hurricane Ike Recovery Assistance housing amount” for “Gulf Opportunity housing amount” each place it appears in § 1400N(c). As a result, § 1400N(c)(1), as applied and modified by 704(b) of the Act, provides that, for purposes of § 42, in the case of calendar years 2008, 2009, and 2010, the State housing credit ceiling of each State, any portion of which is located in the Hurricane Ike disaster area, shall be increased by the lesser of—

(i) the aggregate housing credit dollar amount allocated by the State housing credit agency of such State to buildings located in the Hurricane Ike disaster area for such calendar year, or

(ii) the Hurricane Ike Recovery Assistance housing amount for such State for such calendar year.

Section 704(b)(4) of the Act modifies § 1400N(c)(1)(B) of the Code to provide that for purposes of § 1400N(c)(1)(A), the term “Hurricane Ike housing amount” [*i.e.*, Hurricane Ike Recovery Assistance housing amount] means, for any calendar year,

the amount equal to the product of \$16 multiplied by the portion of the State population that is in (1) the Texas counties of Brazoria, Chambers, Galveston, Jefferson, and Orange, and (2) the Louisiana parishes of Calcasieu and Cameron. These population amounts are determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before September 13, 2008.

TAX-EXEMPT BONDS AND TAX CREDIT BONDS

A. Midwestern disaster area.

Midwestern Disaster Bonds. Section 702(d)(1) of the Act provides, in part, that § 1400N(a) of the Code shall apply to a qualified Midwestern Disaster Bond with certain modifications as described therein. Section 702(d)(1)(B) of the Act substitutes “any State in which a Midwestern disaster area is located” for “the State of Alabama, Louisiana, or Mississippi” in § 1400N(a)(2)(B). Section 702(d)(1)(C) of the Act substitutes “designated for purposes of this section (on the basis of providing assistance to areas in the order in which such assistance is most needed)” for “designated for purposes of this section” in § 1400N(a)(2)(C). Section 702(d)(1)(D) of the Act substitutes “January 1, 2013” for “January 1, 2011” where it appears in § 1400N(a)(2)(D). As a result, § 1400N(a), as applied and modified by section 702 of the Act, provides generally for the designation and issuance of Midwestern Disaster Bonds with respect to any State in which a Midwestern disaster area is located subject to certain limitations including a requirement that such Midwestern Disaster Bonds be issued after the date of enactment and before January 1, 2013.

Section 702(d)(1)(E) of the Act provides the limitation on the amount of Midwestern Disaster Bonds that can be designated for issuance. Section 702(d)(1)(E) substitutes “\$1,000” for “\$2,500” and “before the earliest applicable disaster date for Midwestern disaster areas within the State” for “before August 28, 2005” where it appears in § 1400N(a)(3)(A) of the Code. As a result, § 1400N(a)(3)(A), as applied and modified by section 702(d)(1)(E) of the Act, provides that the maximum aggregate face amount of bonds that may be des-

ignated for any State shall not exceed the product of \$1,000 multiplied by the portion of the State population which is in the Midwestern disaster area (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before the earliest applicable disaster date for Midwestern disaster areas within the State).

Midwestern Tax Credit Bonds. Section 702(d)(7) of the Act provides, in part, that § 1400N(l) of the Code shall apply to tax credit bonds issued in connection with Midwestern disaster areas, with certain modifications as described therein. Section 702(d)(7)(A) provides that § 1400N(l) shall apply by substituting “Midwestern tax credit bond” for “Gulf tax credit bond” each place it appears. Section 702(d)(7)(B) provides that § 1400N(l)(4)(A)(i) shall be applied by substituting “any State in which a Midwestern disaster area is located or any instrumentality of the State” for “the State of Alabama, Louisiana, or Mississippi.” Section 702(d)(7)(C) substitutes “after December 31, 2008 and before January 1, 2010” for “after December 31, 2005, and before January 1, 2007” in § 1400N(l)(4)(A)(vi). As a result, § 1400N(l), as applied and modified by section 702 of the Act, provides generally for the designation and issuance of Midwestern Tax Credit Bonds with respect to any State in which a Midwestern disaster area is located subject to certain limitations including a requirement that such Midwestern Tax Credit Bonds be issued after December 31, 2008, and before January 1, 2010.

Section 702(d)(7)(D) of the Act provides the limitation on the amount of Midwestern Tax Credit Bonds that can be designated for issuance. Section 702(d)(7)(D) provides that § 1400N(l)(4)(C) shall be applied by substituting “shall not exceed \$100,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 2,000,000, \$50,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 1,000,000 but less than 2,000,000, and zero for any other State. The population of a State within any area shall be determined on the basis of the most recent census estimate of resident population released by the Bureau of Census be-

fore the earliest applicable disaster date for Midwestern disaster areas within the State” for “shall not exceed” and all that follows in § 1400N(1)(4)(C). As a result, § 1400N(1)(4)(C), as applied and modified by section 702 of the Act, provides that the maximum aggregate face amount of bonds that may be designated shall not exceed \$100,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 2,000,000, \$50,000,000 for any State with an aggregate population located in all Midwestern disaster areas within the State of at least 1,000,000 but less than 2,000,000, and zero for all other States. For purposes of applying the limitation on the amount of Midwestern Tax Credit Bonds to be issued, the population of a State within any area shall be determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before the earliest applicable disaster date for Midwestern disaster areas within the State.

B. Hurricane Ike disaster area.

Hurricane Ike Bonds. Section 704(a)(1) of the Act provides that § 1400N(a) of the Code shall apply to any Hurricane Ike disaster area in addition to any other areas referenced in § 1400N(a), with certain modifications as described therein. Section 704(a)(2) of the Act substitutes “any State in which any Hurricane Ike disaster area is located” for “the State of Alabama, Louisiana, or Mississippi” in § 1400N(a)(2)(B). Section 704(a)(3) of the Act substitutes “designated for purposes of this section (on the basis of providing assistance to areas in the order in which such assistance is most needed)” for “designated for purposes of this section” in § 1400N(a)(2)(C). Section 704(a)(4) of the Act substitutes “January 1, 2013” for “January 1, 2011” where it appears in § 1400N(a)(2)(D). As a result, § 1400N(a)(2)(D), as applied and modified by section 704 of the Act, provides generally for the designation and issuance of Hurricane Ike Bonds with respect to any State in which a Hurricane Ike disaster area is located subject to certain limitations including a requirement that such Hurricane Ike Bonds be issued after the

date of enactment and before January 1, 2013.

Section 704(a)(5) of the Act provides the limitation on the amount of Hurricane Ike Bonds that can be designated for issuance. As a result, § 1400N(a)(3)(A), as applied and modified by section 704 of the Act, provides that the maximum aggregate face amount of bonds that may be designated under § 1400N(a)(3)(A) for any State shall not exceed the product of \$2,000 multiplied by the portion of the State population which is in (1) the Texas counties of Brazoria, Chambers, Galveston, Jefferson, and Orange, and (2) the Louisiana parishes of Calcasieu and Cameron (as determined on the basis of the most recent census estimate of resident population released by the Bureau of Census before September 13, 2008).

APPLICABLE CENSUS POPULATION AMOUNTS

The most recent census estimate of the resident population released by the U.S. Census Bureau that reflects the portion of State population that is in (1) the Midwestern disaster area, or (2) the Texas counties of Brazoria, Chambers, Galveston, Jefferson, and Orange, and the Louisiana parishes of Calcasieu and Cameron, is the July 1, 2007, Annual Estimates of the Population for Counties released by the U.S. Census Bureau on March 20, 2008, in Press Release CB08–47.

A. Midwestern Disaster Areas.

The portion of each State’s population that is in the Midwestern disaster area is determined by adding together the population estimates provided by Press Release CB08–47 for each county located in the Midwestern disaster areas for that State. These results should be used to determine each State’s Midwestern disaster housing amount under § 1400N(c)(1)(B) of the Code (as applied by section 702 of the Act), the maximum aggregate face amount of Midwestern Disaster Bonds that can be designated under § 1400N(a)(3) (as applied by section 702 of the Act), and the maximum aggregate face amount of Midwestern Tax Credit Bonds that can be designated under § 1400N(1)(4)(C) (as applied by section 702 of the Act).

Based on the foregoing, the portion of each State’s population that is in a Midwestern disaster area is provided below:

Arkansas	957,100
Illinois	1,515,271
Indiana	3,098,222
Iowa	2,615,995
Missouri	1,414,492
Nebraska	1,136,088
Wisconsin	3,830,112

B. Hurricane Ike Disaster Areas.

The portion of the each State’s population that is used in calculating the Hurricane Ike Recovery Assistance housing amount and the aggregate amount of Hurricane Ike Bonds that can be issued is determined by adding together the population estimates provided by Press Release CB08–47 for (in the case of Texas) the counties of Brazoria, Chambers, Galveston, Jefferson, and Orange, and (in the case of Louisiana) the parishes of Calcasieu and Cameron. These results should be used to determine the Hurricane Ike Recovery Assistance housing amount for Texas and Louisiana under § 1400N(c)(1)(B) (as applied by section 704(b) of the Act) and the maximum aggregate face amount of Hurricane Ike Bonds that may be designated under § 1400N(a)(3) (as applied by section 704(a) of the Act).

Based on the foregoing, the portion of each State’s population to be used for these purposes is provided below:

Louisiana	191,926
Texas	931,635

REPORTING REQUIREMENTS FOR TAX-EXEMPT BONDS AND TAX CREDIT BONDS

Pending further guidance from the Internal Revenue Service (IRS) regarding the applicable forms to be used for information reporting, issuers of Midwestern Disaster Bonds, Midwestern Tax Credit Bonds and Hurricane Ike Bonds should report the issuance on IRS Form 8038, *Information Return for Tax-Exempt Private*

Activity Bond Issues, with modifications as described below:

Midwestern Disaster Bonds. Issuers of Midwestern Disaster Bonds should report the issuance of bonds as follows:

1. Report the issuance of mortgage revenue bonds on Line 20c of IRS Form 8038 and enter “Midwestern Disaster Mortgage Bonds” on the line provided.
2. Report the issuance of Midwestern Disaster Bonds that are not mortgage revenue bonds on Line 11q of IRS Form 8038 and enter “Midwestern Disaster Exempt Facility Bonds” on the line provided.

Midwestern Tax Credit Bonds. Issuers of Midwestern Tax Credit Bonds should report the issuance on Line 20c of IRS Form 8038 and enter “Midwestern Disaster Tax Credit Bonds” on the line provided.

Hurricane Ike Bonds. Issuers of Hurricane Ike Bonds should report the issuance of bonds as follows:

1. Report the issuance of mortgage revenue bonds on Line 20c of IRS Form 8038 and enter “Hurricane Ike Mortgage Bonds” on the line provided.
2. Report the issuance of Hurricane Ike Bonds that are not mortgage revenue bonds on Line 11q of IRS Form 8038

and enter “Hurricane Ike Exempt Facility Bonds” on the line provided.

DRAFTING INFORMATION

The principal authors of this notice are Christopher J. Wilson, Office of the Associate Chief Counsel (Passthroughs and Special Industries) and Carla Young, Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding the low-income housing tax credit, contact Mr. Wilson at (202) 622-3040. For further information regarding tax-exempt or tax credit bonds, contact Ms. Young at (202) 622-3980 (not toll-free calls).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also Part I, §§ 62, 162, 170, 213, 217, 274, 1016; 1.62-2, 1.162-17, 1.170A-1, 1.213-1, 1.217-2, 1.274-5, 1.1016-3.)

Rev. Proc. 2008-72

SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2007-70, 2007-50 I.R.B. 1162, and Announcement 2008-63, 2008-28 I.R.B. 114, and provides optional standard

mileage rates for employees, self-employed individuals, or other taxpayers to use in computing the deductible costs of operating an automobile for business, charitable, medical, or moving expense purposes. This revenue procedure also provides rules under which the amount of ordinary and necessary expenses of local travel or transportation away from home that are paid or incurred by an employee are deemed substantiated under § 1.274-5 of the Income Tax Regulations if a payor (the employer, its agent, or a third party) provides a mileage allowance under a reimbursement or other expense allowance arrangement to pay for the expenses. Use of a method of substantiation described in this revenue procedure is not mandatory and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. The Internal Revenue Service prospectively adjusts the business and medical and moving standard mileage rates annually (to the extent warranted).

SECTION 2. SUMMARY OF STANDARD MILEAGE RATES

.01 Standard mileage rates

(1) Business (section 5 below)	55 cents per mile
(2) Charitable contribution (section 7 below)	14 cents per mile
(3) Medical and moving (section 7 below)	24 cents per mile

.02 Determination of standard mileage rates. The business and medical and moving standard mileage rates reflected in this revenue procedure are based on an annual study of the fixed and variable costs of operating an automobile conducted on behalf of the Service by an independent contractor. The charitable contribution standard mileage rate is provided in § 170(i) of the Internal Revenue Code.

SECTION 3. BACKGROUND AND CHANGES

.01 Section 162(a) allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under that provision, an employee or self-em-

ployed individual may deduct the cost of operating an automobile to the extent that it is used in a trade or business. However, under § 262, no portion of the cost of operating an automobile that is attributable to personal use is deductible.

.02 Section 274(d) provides, in part, that no deduction is allowed under § 162 with respect to any listed property (as defined in § 280F(d)(4) to include passenger automobiles and any other property used as a means of transportation) unless the taxpayer complies with certain substantiation requirements. Section 274(d) further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by the regulations.

.03 Section 1.274-5(j), in part, grants the Commissioner of Internal Revenue the authority to establish a method under which a taxpayer may use mileage rates to substantiate, for purposes of § 274(d), the amount of the ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home.

.04 Section 1.274-5(g), in part, grants the Commissioner the authority to prescribe rules relating to mileage allowances for ordinary and necessary expenses of using a vehicle for local transportation and transportation to, from, and at the destination while traveling away from home. Pursuant to this grant of authority, the Commissioner may prescribe rules

under which the allowances, if in accordance with reasonable business practice, will be regarded as (1) equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of the travel and transportation expenses for purposes of § 1.274-5(c), and (2) satisfying the requirements of an adequate accounting to the employer of the amount of the expenses for purposes of § 1.274-5(f).

.05 Section 62(a)(2)(A) allows an employee, in determining adjusted gross income, a deduction for the expenses allowed by Part VI (§ 161 and following), subchapter B, chapter 1 of the Code, paid or incurred by the employee in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement with a payor.

.06 Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) provides the employee with the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

Section 62(c) further provides that the substantiation requirements described therein do not apply to any expense to the extent that, under the grant of regulatory authority in § 274(d), the Commissioner has provided that substantiation is not required for the expense.

.07 Under § 1.62-2(c), a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses as specified in the regulations. If an arrangement meets these requirements, all amounts paid under the arrangement are treated as paid under an accountable plan and are excluded from income and wages. If an arrangement does not meet these requirements, all amounts paid under the arrangement are treated as paid under a nonaccountable plan and are included in the employee's gross income, must be reported as wages or compensation on the employee's Form W-2, and are subject to the withholding and payment of employment taxes. Sec-

tion 1.62-2(e)(2) specifically provides that substantiation of certain business expenses in accordance with rules prescribed under the authority of § 1.274-5(g) will be treated as substantiation of the amount of the expenses for purposes of § 1.62-2. Under § 1.62-2(f)(2), the Commissioner may prescribe rules under which an arrangement providing mileage allowances is treated as satisfying the requirement of returning amounts in excess of expenses, even though the arrangement does not require the employee to return the portion of the allowance that relates to miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated pursuant to rules prescribed under § 274(d), provided the allowance is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return any portion of the allowance that relates to miles of travel not substantiated.

.08 Section 1.62-2(h)(2)(i)(B) provides that if a payor pays a mileage allowance under an arrangement that meets the requirements of § 1.62-2(c)(1), the portion, if any, of the allowance that relates to miles of travel substantiated in accordance with § 1.62-2(e), that exceeds the amount of the employee's expenses deemed substantiated for the travel pursuant to rules prescribed under § 274(d) and § 1.274-5(g), and that the employee is not required to return, is subject to withholding and payment of employment taxes. See §§ 31.3121(a)-3, 31.3231(e)-1(a)(5), 31.3306(b)-2, and 31.3401(a)-4 of the Employment Tax Regulations. Because the employee is not required to return this excess portion, the reasonable period of time provisions of § 1.62-2(g) (relating to the return of excess amounts) do not apply to this excess portion.

.09 Under § 1.62-2(h)(2)(i)(B)(4), the Commissioner may provide special rules regarding the timing of withholding and payment of employment taxes on mileage allowances.

.10 Under § 1.62-2(k), if a payor's reimbursement or other expense allowance arrangement, such as a mileage allowance, evidences a pattern of abuse of the rules of § 62(c) and § 1.62-2, all payments under the arrangement will be treated as made under a nonaccountable plan. See Rev. Rul. 2006-56, 2006-2 C.B. 874, for an ex-

ample of one type of abuse of § 62(c) and § 1.62-2.

SECTION 4. DEFINITIONS

.01 *Standard mileage rate.* The term "standard mileage rate" means the applicable amount provided by the Service for optional use by employees or self-employed individuals in computing the deductible costs of operating automobiles (including vans, pickups, or panel trucks) they own or lease for business purposes, or by taxpayers in computing the deductible costs of operating automobiles for charitable, medical, or moving expense purposes.

.02 *Transportation expenses.* The term "transportation expenses" means the expenses of operating an automobile for local travel or transportation away from home.

.03 *Mileage allowance.* The term "mileage allowance" means a payment under a reimbursement or other expense allowance arrangement that is:

(1) paid with respect to the ordinary and necessary business expenses incurred, or that the payor reasonably anticipates will be incurred, by an employee for transportation expenses in connection with the performance of services as an employee of the employer,

(2) reasonably calculated not to exceed the amount of the expenses or the anticipated expenses, and

(3) paid at the applicable standard mileage rate, a flat rate or stated schedule, or in accordance with any other Service-specified rate or schedule.

.04 *Flat rate or stated schedule.* A mileage allowance is paid at a flat rate or stated schedule if it is provided on a uniform and objective basis with respect to the expenses described in section 4.03 of this revenue procedure. The allowance may be paid periodically at a fixed rate, at a cents-per-mile rate, at a variable rate based on a stated schedule, at a rate that combines any of these rates, or on any other basis that is consistently applied and in accordance with reasonable business practice. Thus, for example, a periodic payment at a fixed rate to cover the fixed costs (including depreciation (or lease payments), insurance, registration and license fees, and personal property taxes) of driving an automobile in connection with the performance of services as an employee of the employer, coupled with a periodic pay-

ment at a cents-per-mile rate to cover the variable costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of using an automobile for those purposes, is an allowance paid at a flat rate or stated schedule. Likewise, a periodic payment at a variable rate based on a stated schedule for different locales to cover the costs of driving an automobile in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule.

SECTION 5. BUSINESS STANDARD MILEAGE RATE

.01 *In general.* The standard mileage rate for transportation expenses is 55 cents per mile for all miles of use for business purposes.

.02 *Use of the business standard mileage rate.* A taxpayer may use the business standard mileage rate with respect to an automobile that is either owned or leased by the taxpayer. A taxpayer generally may deduct an amount equal to either the business standard mileage rate times the number of business miles traveled or the actual costs (both fixed and variable) paid or incurred by the taxpayer that are allocable to traveling those business miles.

.03 *Business standard mileage rate in lieu of fixed and variable costs.* A deduction using the business standard mileage rate is computed on a yearly basis and is in lieu of all fixed and variable costs of the automobile allocable to business purposes (except as provided in section 9.06 of this revenue procedure). Items such as depreciation (or lease payments), maintenance and repairs, tires, gasoline (including all taxes thereon), oil, insurance, and license and registration fees are included in fixed and variable costs for this purpose.

.04 *Parking fees, tolls, interest, and taxes.* Parking fees and tolls attributable to use of the automobile for business purposes may be deducted as separate items. Likewise, interest relating to the purchase of the automobile as well as state and local personal property taxes may be deducted as separate items, but only to the extent allowable under § 163 or § 164, respectively. Section 163(h)(2)(A) expressly provides that interest is nondeductible personal interest if it is paid or accrued on indebtedness properly allocable to the trade or business of performing services as

an employee. Section 164 expressly provides that state and local taxes that are paid or accrued by a taxpayer in connection with an acquisition or disposition of property are treated as part of the cost of the acquired property or as a reduction in the amount realized on the disposition of the property. If the automobile is operated less than 100 percent for business purposes, an allocation is required to determine the business and nonbusiness portion of the taxes and interest deduction allowable.

.05 *Depreciation.* For owned automobiles placed in service for business purposes, and for which the business standard mileage rate has been used for any year, depreciation is considered to have been allowed at the rate of 16 cents per mile for 2003 and 2004, 17 cents per mile for 2005 and 2006, 19 cents per mile for 2007, and 21 cents per mile for 2008 and 2009, for those years in which the business standard mileage rate was used. If actual costs were used for one or more of those years, these rates do not apply to any year in which actual costs were used. The depreciation described above reduces the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016.

.06 *Limitations.*

(1) The business standard mileage rate may not be used to compute the deductible expenses of (a) automobiles used for hire, such as taxicabs, or (b) five or more automobiles owned or leased by a taxpayer and used simultaneously (such as in fleet operations).

(2) The business standard mileage rate may not be used to compute the deductible business expenses of an automobile leased by a taxpayer unless the taxpayer uses either the business standard mileage rate or a fixed and variable rate allowance (FAVR allowance) (as provided in section 8 of this revenue procedure) to compute the deductible business expenses of the automobile for the entire lease period (including renewals). For a lease commencing on or before December 31, 1997, the “entire lease period” means the portion of the lease period (including renewals) remaining after that date.

(3) The business standard mileage rate may not be used to compute the deductible expenses of an automobile for which the taxpayer has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179

deduction, (c) claimed the special depreciation allowance under § 168(k), or (d) used the Accelerated Cost Recovery System (ACRS) under former § 168 or the Modified Accelerated Cost Recovery System (MACRS) under current § 168. By using the business standard mileage rate, the taxpayer has elected to exclude the automobile (if owned) from MACRS pursuant to § 168(f)(1). If, after using the business standard mileage rate, the taxpayer uses actual costs, the taxpayer must use straight-line depreciation for the automobile’s remaining estimated useful life (subject to the applicable depreciation deduction limitations under § 280F).

(4) The business standard mileage rate and this revenue procedure may not be used to compute the amount of the deductible automobile expenses of an employee of the United States Postal Service incurred in performing services involving the collection and delivery of mail on a rural route if the employee receives qualified reimbursements (as defined in § 162(o)) for the expenses. See § 162(o) for the rules that apply to these qualified reimbursements.

SECTION 6. RESERVED

SECTION 7. CHARITABLE AND MEDICAL AND MOVING STANDARD MILEAGE RATES

.01 *Charitable.* Section 170(i) provides a standard mileage rate of 14 cents per mile for purposes of computing the charitable contribution deduction for use of an automobile in connection with rendering gratuitous services to a charitable organization under § 170.

.02 *Medical and moving.* The standard mileage rate is 24 cents per mile for use of an automobile (1) to obtain medical care described in § 213, or (2) as part of a move for which the expenses are deductible under § 217.

.03 *Charitable or medical and moving standard mileage rates in lieu of variable expenses.* A deduction computed using the applicable standard mileage rate for charitable, medical, or moving expense miles is in lieu of all variable expenses (including gasoline and oil) of the automobile allocable to those purposes. Costs for items such as depreciation (or lease payments), insurance, and license and registration fees are

not deductible, and are not included in the charitable or medical and moving standard mileage rates.

.04 *Parking fees, tolls, interest, and taxes.* Parking fees and tolls attributable to the use of the automobile for charitable, medical, or moving expense purposes may be deducted as separate items. Interest relating to the purchase of the automobile and state and local personal property taxes are not deductible as charitable, medical, or moving expenses, but they may be deducted as separate items to the extent allowable under § 163 or § 164, respectively.

SECTION 8. FIXED AND VARIABLE RATE ALLOWANCE

.01 *In general.*

(1) The ordinary and necessary expenses paid or incurred by an employee in driving an automobile owned or leased by the employee in connection with the performance of services as an employee of the employer are deemed substantiated (in an amount determined under section 9 of this revenue procedure) when a payor reimburses those expenses with a mileage allowance using a flat rate or stated schedule that combines periodic fixed and variable rate payments that meet all the requirements of section 8 of this revenue procedure (a FAVR allowance).

(2) The amount of a FAVR allowance must be based on data that (a) is derived from the base locality, (b) reflects retail prices paid by consumers, and (c) is reasonable and statistically defensible in approximating the actual expenses employees receiving the allowance would incur as owners of the standard automobile.

.02 *Computation of FAVR allowance.*

(1) *FAVR allowance.* A FAVR allowance includes periodic fixed payments and periodic variable payments. A payor may maintain more than one FAVR allowance. A FAVR allowance that uses the same payor, standard automobile (or an automobile of the same make and model that is comparably equipped), retention period, and business use percentage is considered one FAVR allowance, even though other features of the allowance may vary. A FAVR allowance also includes any optional high mileage payments; however, optional high mileage payments are included in the employee's gross income,

are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes when paid. See section 9.05 of this revenue procedure. An optional high mileage payment covers the additional depreciation for a standard automobile attributable to business miles driven and substantiated by the employee for a calendar year in excess of the annual business mileage for that year. If an employee is covered by the FAVR allowance for less than the entire calendar year, the annual business mileage may be prorated on a monthly basis for purposes of the preceding sentence.

(2) *Periodic fixed payment.* A periodic fixed payment covers the projected fixed costs (including depreciation (or lease payments), insurance, registration and license fees, and personal property taxes) of driving the standard automobile in connection with the performance of services as an employee of the employer in a base locality, and must be paid at least quarterly. A periodic fixed payment may be computed by (a) dividing the total projected fixed costs of the standard automobile for all years of the retention period, determined at the beginning of the retention period, by the number of periodic fixed payments in the retention period, and (b) multiplying the resulting amount by the business use percentage.

(3) *Periodic variable payment.* A periodic variable payment covers the projected variable costs (including gasoline and all taxes thereon, oil, tires, and routine maintenance and repairs) of driving a standard automobile in connection with the performance of services as an employee of the employer in a base locality, and must be paid at least quarterly. The rate of a periodic variable payment for a computation period may be computed by dividing the total projected variable costs for the standard automobile for the computation period, determined at the beginning of the computation period, by the computation period mileage. A computation period can be any period of a year or less. Computation period mileage is the total mileage (business and personal) a payor reasonably projects a standard automobile will be driven during a computation period and equals the retention mileage divided by the number of computation periods in the retention period. For each business mile sub-

stantiated by the employee for the computation period, the periodic variable payment must be paid at a rate that does not exceed the rate for that computation period.

(4) *Base locality.* A base locality is the particular geographic locality or region of the United States in which the costs of driving an automobile in connection with the performance of services as an employee of the employer are generally paid or incurred by the employee. Thus, for purposes of determining the amount of fixed costs, the base locality is generally the geographic locality or region in which the employee resides. For purposes of determining the amount of variable costs, the base locality is generally the geographic locality or region in which the employee drives the automobile in connection with the performance of services as an employee of the employer.

(5) *Standard automobile.* A standard automobile is the automobile selected by the payor on which a specific FAVR allowance is based.

(6) *Standard automobile cost.* The standard automobile cost for a calendar year may not exceed 95 percent of the sum of (a) the retail dealer invoice cost of the standard automobile in the base locality, and (b) state and local sales or use taxes applicable on the purchase of the automobile. Further, the standard automobile cost may not exceed \$27,200.

(7) *Annual mileage.* Annual mileage is the total mileage (business and personal) a payor reasonably projects a standard automobile will be driven during a calendar year. Annual mileage equals the annual business mileage divided by the business use percentage.

(8) *Annual business mileage.* Annual business mileage is the mileage a payor reasonably projects a standard automobile will be driven by an employee in connection with the performance of services as an employee of the employer during the calendar year, but may not be less than 6,250 miles for a calendar year. Annual business mileage equals the annual mileage multiplied by the business use percentage.

(9) *Business use percentage.* A business use percentage is determined by dividing the annual business mileage by the annual mileage. The business use percentage may not exceed 75 percent. In lieu of demonstrating the reasonableness of the business use percentage based

on records of total mileage and business mileage driven by the employees annually, a payor may use a business use percentage

that is less than or equal to the following percentages for a FAVR allowance that

is paid for the following annual business mileage:

<i>Annual business mileage</i>	<i>Business use percentage</i>
6,250 or more but less than 10,000	45 percent
10,000 or more but less than 15,000	55 percent
15,000 or more but less than 20,000	65 percent
20,000 or more	75 percent

(10) *Retention period.* A retention period is the period in calendar years selected by the payor during which the payor expects an employee to drive a standard automobile in connection with the performance of services as an employee of the employer before the automobile is replaced. The

period may not be less than two calendar years.

(11) *Retention mileage.* Retention mileage is the annual mileage multiplied by the number of calendar years in the retention period.

(12) *Residual value.* The residual value of a standard automobile is the projected

amount for which it could be sold at the end of the retention period after being driven the retention mileage. The Service will accept the following safe harbor residual values for a standard automobile computed as a percentage of the standard automobile cost:

<i>Retention period</i>	<i>Residual value</i>
2-year	70 percent
3-year	60 percent
4-year	50 percent

.03 *FAVR allowance in lieu of fixed and variable costs.*

(1) A reimbursement computed using a FAVR allowance is in lieu of the employee's deduction of all the fixed and variable costs paid or incurred by an employee in driving the automobile in connection with the performance of services as an employee of the employer, except as provided in section 9.06 of this revenue procedure. Items such as depreciation (or lease payments), maintenance and repairs, tires, gasoline (including all taxes thereon), oil, insurance, license and registration fees, and personal property taxes are included in fixed and variable costs for this purpose.

(2) Parking fees and tolls attributable to an employee driving the standard automobile in connection with the performance of services as an employee of the employer are not included in fixed and variable costs and may be deducted as separate items. Similarly, interest relating to the purchase of the standard automobile may be deducted as a separate item, but only to the extent that the interest is an allowable deduction under § 163.

.04 *Depreciation.*

(1) A FAVR allowance may not be paid with respect to an automobile for which the

employee has (a) claimed depreciation using a method other than straight-line for its estimated useful life, (b) claimed a § 179 deduction, (c) claimed the special depreciation allowance under § 168(k), or (d) used ACRS under former § 168 or MACRS under current § 168. If an employee uses actual costs for an owned automobile that has been covered by a FAVR allowance, the employee must use straight-line depreciation for the automobile's remaining estimated useful life (subject to the applicable depreciation deduction limitations under § 280F).

(2) Except as provided in section 8.04(3) of this revenue procedure, the total amount of the depreciation component for the retention period taken into account in computing the periodic fixed payments for that retention period may not exceed the excess of the standard automobile cost over the residual value of the standard automobile. In addition, the total amount of the depreciation component may not exceed the sum of the annual § 280F limitations on depreciation (in effect at the beginning of the retention period) that apply to the standard automobile during the retention period.

(3) If the depreciation component of periodic fixed payments exceeds the limi-

tations in section 8.04(2) of this revenue procedure, that section will be treated as satisfied in any year during which the total annual amount of the periodic fixed payments and the periodic variable payments made to an employee driving 80 percent of the annual business mileage of the standard automobile does not exceed the amount obtained by multiplying 80 percent of the annual business mileage of the standard automobile by the business standard mileage rate for that year (under section 5.01 of the applicable revenue procedure).

(4) The depreciation included in each periodic fixed payment portion of a FAVR allowance paid with respect to an automobile reduces the basis of the automobile (but not below zero) in determining adjusted basis as required by § 1016. See section 8.07(2) of this revenue procedure for the requirement that the employer report the depreciation component of a periodic fixed payment to the employee.

.05 *FAVR allowance limitations.*

(1) A FAVR allowance may be paid only to an employee who substantiates to the payor for a calendar year at least 5,000 miles driven in connection with the performance of services as an employee of the employer or, if greater, 80 percent of the

annual business mileage of that FAVR allowance. If the employee is covered by the FAVR allowance for less than the entire calendar year, these limits may be prorated on a monthly basis.

(2) A FAVR allowance may not be paid to a control employee (as defined in § 1.61-21(f)(5) and (6), excluding the \$100,000 limitation in paragraph (f)(5)(iii)).

(3) An employer may not pay a FAVR allowance if at any time during a calendar year a majority of the employees covered by the FAVR allowance are management employees.

(4) An employer may not pay a FAVR allowance to any employee unless at all times during a calendar year at least five employees in total are covered by FAVR allowances provided by the employer.

(5) A FAVR allowance may be paid only with respect to an automobile (a) owned or leased by the employee receiving the payment, (b) the cost of which, as a new vehicle (whether or not purchased new by the employee), was at least 90 percent of the standard automobile cost taken into account for purposes of determining the FAVR allowance for the first calendar year the employee receives the allowance with respect to that automobile, and (c) the model year of which does not differ from the current calendar year by more than the number of years in the retention period.

(6) A FAVR allowance may not be paid with respect to an automobile leased by an employee for which the employee has used actual expenses to compute the deductible business expenses of the automobile for any year during the entire lease period. For a lease commencing on or before December 31, 1997, the “entire lease period” means the portion of the lease period (including renewals) remaining after that date.

(7) The insurance cost component of a FAVR allowance must be based on the rates charged in the base locality for insurance coverage on the standard automobile during the current calendar year without taking into account rate-increasing factors such as poor driving records or young drivers.

(8) A FAVR allowance may be paid only to an employee whose insurance coverage limits on the automobile with respect to which the FAVR allowance is paid are at least equal to the insurance coverage lim-

its used to compute the periodic fixed payment under that FAVR allowance.

.06 *Employee reporting.* Within 30 days after an employee’s automobile is initially covered by a FAVR allowance, or is again covered by a FAVR allowance if coverage has lapsed, the employee by written declaration must provide the payor with the following information: (1) the make, model, and year of the employee’s automobile, (2) written proof of the insurance coverage limits on the automobile, (3) the odometer reading of the automobile, (4) if owned, the purchase price of the automobile or, if leased, the price at which the automobile is ordinarily sold by retailers (the gross capitalized cost of the automobile), and (5) if owned, whether the employee has claimed depreciation with respect to the automobile using any of the depreciation methods prohibited by section 8.04(1) of this revenue procedure or, if leased, whether the employee has computed deductible business expenses with respect to the automobile using actual expenses. The information described in (1), (2), and (3) of the preceding sentence also must be supplied by the employee to the payor within 30 days after the beginning of each calendar year that the employee’s automobile is covered by a FAVR allowance.

.07 *Payor recordkeeping and reporting.*

(1) The payor or its agent must maintain written records setting forth (a) the statistical data and projections on which the FAVR allowance payments are based, and (b) the information provided by the employees pursuant to section 8.06 of this revenue procedure.

(2) Within 30 days of the end of each calendar year, the employer must provide each employee covered by a FAVR allowance during that year with a statement that, for automobile owners, lists the amount of depreciation included in each periodic fixed payment portion of the FAVR allowance paid during that calendar year and explains that by receiving a FAVR allowance the employee has elected to exclude the automobile from the Modified Accelerated Cost Recovery System pursuant to § 168(f)(1). For automobile lessees, the statement must explain that by receiving the FAVR allowance the employee may not compute the deductible business expenses of the automobile using actual expenses for the entire lease period

(including renewals). For a lease commencing on or before December 31, 1997, the “entire lease period” means the portion of the lease period (including renewals) remaining after that date.

.08 *Failure to meet section 8 requirements.* If an employee receives a mileage allowance that fails to meet one or more of the requirements of section 8 of this revenue procedure, the employee may not be treated as covered by any FAVR allowance of the payor during the period of the failure. Nevertheless, the expenses to which that mileage allowance relates may be deemed substantiated using the method described in sections 5, 9.01(1), and 9.02 of this revenue procedure to the extent the requirements of those sections are met.

SECTION 9. APPLICATION

.01 If a payor pays a mileage allowance in lieu of reimbursing actual transportation expenses incurred or to be incurred by an employee, the amount of the expenses that is deemed substantiated to the payor is either:

(1) for any mileage allowance other than a FAVR allowance, the lesser of the amount paid under the mileage allowance or the applicable standard mileage rate in section 5.01 of this revenue procedure multiplied by the number of business miles substantiated by the employee; or

(2) for a FAVR allowance, the amount paid under the FAVR allowance less the sum of (a) any periodic variable rate payment that relates to miles in excess of the business miles substantiated by the employee and that the employee fails to return to the payor although required to do so, (b) any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return to the payor although required to do so, and (c) any optional high mileage payments.

.02 If the amount of transportation expenses is deemed substantiated under the rules provided in section 9.01 of this revenue procedure, and the employee actually substantiates to the payor the elements of time, place (or use), and business purpose of the transportation expenses in accordance with paragraphs (b)(2) (travel away from home) and (b)(6) (listed property, which includes passenger automobiles and

any other property used as a means of transportation) of § 1.274-5T, and paragraph (c) of § 1.274-5, the employee is deemed to satisfy the adequate accounting requirements of § 1.274-5(f) as well as the requirement to substantiate by adequate records or other sufficient evidence for purposes of § 1.274-5(c). See also § 1.62-2(e)(1) for the rule that, in order to satisfy the substantiation requirement of an accountable plan, an arrangement must require business expenses to be substantiated to the payor within a reasonable period of time.

.03 An arrangement providing mileage allowances will be treated as satisfying the requirement of § 1.62-2(f)(2) with respect to returning amounts in excess of expenses as follows:

(1) For a mileage allowance (other than a FAVR allowance) paid only at a cents-per-mile rate, the requirement to return excess amounts is treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)) any portion of the allowance that relates to miles of travel not substantiated by the employee, even though the arrangement does not require the employee to return the portion of the allowance that relates to the miles of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated. For example, assume a payor provides an employee an advance mileage allowance of \$120.00 based on an anticipated 200 business miles at 60 cents per mile (at a time when the business standard mileage rate is 55 cents per mile), and the employee substantiates 120 business miles. The requirement to return excess amounts is treated as satisfied if the employee is required to return the portion of the allowance that relates to the 80 unsubstantiated business miles (\$48.00) even though the employee is not required to return the portion of the allowance (\$6.00) that exceeds the amount of the employee's expenses deemed substantiated under section 9.01 of this revenue procedure (\$66.00) for the 120 substantiated business miles. However, the \$6.00 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 9.05.

(2) For a mileage allowance (other than a FAVR allowance) paid other than only at a cents-per-mile rate, the requirement

to return excess amounts is treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)) any portion of the allowance that exceeds the product of the standard mileage rate and the number of miles of travel substantiated by the employee. For example, assume a payor provides an employee an advance mileage allowance of \$400 per month plus 20 cents per mile based on an anticipated 2000 miles for a total of \$800 (at a time when the business standard mileage rate is 55 cents per mile), and the employee substantiates 1000 business miles. The requirement to return excess amounts is treated as satisfied if the employee is required to return \$250, the portion of the allowance that exceeds the product of the standard mileage rate and the miles substantiated (\$550).

(3) For a FAVR allowance, the requirement to return excess amounts is treated as satisfied if the employee is required to return, within a reasonable period of time (as defined in § 1.62-2(g)), (a) the portion (if any) of the periodic variable payment received that relates to miles in excess of the business miles substantiated by the employee, and (b) the portion (if any) of a periodic fixed payment that relates to a period during which the employee was not covered by the FAVR allowance.

.04 An employee is not required to include in gross income the portion of a mileage allowance received from a payor that is less than or equal to the amount deemed substantiated under section 9.01 of this revenue procedure, provided the employee substantiates in accordance with section 9.02. See § 1.274-5T(f)(2)(i). Assuming that the remaining requirements for an accountable plan provided in § 1.62-2 are satisfied, that portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W-2, and is exempt from withholding and payment of employment taxes. See § 1.62-2(c)(2) and (c)(4).

.05 An employee is required to include in gross income the portion of a mileage allowance received from a payor that exceeds the amount deemed substantiated under section 9.01 of this revenue procedure, provided the employee substantiates in accordance with section 9.02 of this revenue procedure. See § 1.274-5T(f)(2)(ii).

In addition, the excess portion of the allowance is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. See § 1.62-2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.06 If an employee's substantiated expenses are less than the employee's actual expenses, the following rules apply:

(1) Except as otherwise provided in section 9.06(2) of this revenue procedure with respect to leased automobiles, if the amount of the expenses deemed substantiated under the rules provided in section 9.01 of this revenue procedure is less than the amount of the employee's business transportation expenses, the employee may claim an itemized deduction for the amount by which the business transportation expenses exceed the amount that is deemed substantiated, provided the employee substantiates all the business transportation expenses (not just the excess over the business standard mileage rate), includes on Form 2106, *Employee Business Expenses*, the deemed substantiated portion of the mileage allowance received from the payor, and includes in gross income the portion (if any) of the mileage allowance received from the payor that exceeds the amount deemed substantiated. See § 1.274-5T(f)(2)(iii). However, for purposes of claiming this itemized deduction, substantiation of the amount of the expenses is not required if the employee is claiming a deduction that is equal to or less than the applicable standard mileage rate multiplied by the number of business miles substantiated by the employee minus the amount deemed substantiated under section 9.01 of this revenue procedure. The itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions provided in § 67.

(2) An employee whose business transportation expenses with respect to a leased automobile are deemed substantiated under section 9.01(1) of this revenue procedure (relating to an allowance other than a FAVR allowance) may not claim a deduction based on actual expenses under section 9.06(1) unless the employee does so consistently beginning with the first business use of the automobile after December 31, 1997. An employee whose business transportation expenses with respect to a leased automobile are deemed substantiated

ated under section 9.01(2) of this revenue procedure (relating to a FAVR allowance) may not claim a deduction based on actual expenses.

.07 An employee may deduct an amount computed pursuant to section 5.01 of this revenue procedure only as an itemized deduction. This itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.08 A self-employed individual may deduct an amount computed pursuant to section 5.01 of this revenue procedure in determining adjusted gross income under § 62(a)(1).

.09 If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of § 62(c) and the regulations thereunder, all payments under the arrangement will be treated as made under a nonaccountable plan. See § 1.62-2(k) and Rev. Rul. 2006-56. Thus, the payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes. See § 1.62-2(c)(3), (c)(5), and (h)(2), and section 10.03 of this revenue procedure.

SECTION 10. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES

.01 The portion of a mileage allowance (other than a FAVR allowance), if any, that relates to the miles of business travel substantiated and that exceeds the amount deemed substantiated for those miles under section 9.01(1) of this revenue procedure is treated as paid under a nonaccountable plan and is subject to withholding and payment of employment taxes. See § 1.62-2(h)(2)(i)(B).

(1) In the case of a mileage allowance paid as a reimbursement, the excess described in section 10.01 of this revenue procedure is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the business miles substantiated. See § 1.62-2(h)(2)(i)(B)(2).

(2) In the case of a mileage allowance paid as an advance, the excess described in section 10.01 of this revenue procedure is subject to withholding and payment of employment taxes no later than the first pay-

roll period following the payroll period in which the business miles with respect to which the advance was paid are substantiated. See § 1.62-2(h)(2)(i)(B)(3). If some or all of the business miles with respect to which the advance was paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those miles within a reasonable period of time, the portion of the allowance that relates to those miles is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. See § 1.62-2(h)(2)(i)(A).

(3) In the case of a mileage allowance that is not computed on the basis of a fixed amount per mile of travel (for example, a mileage allowance that combines periodic fixed and variable rate payments, but that does not satisfy the requirements of section 8 of this revenue procedure), the payor must compute periodically (no less frequently than quarterly) the amount, if any, that exceeds the amount deemed substantiated under section 9.01(1) of this revenue procedure by comparing the total mileage allowance paid for the period to the standard mileage rate in section 5.01 of this revenue procedure multiplied by the number of business miles substantiated by the employee for the period. Any excess is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. See § 1.62-2(h)(2)(i)(B)(4).

(4) For example, assume an employer pays its employees a mileage allowance under an arrangement that otherwise meets the requirements of an accountable plan at a rate of 60 cents per mile (when the business standard mileage rate is 55 cents per mile). The employer does not require the return of the portion of the allowance that exceeds the business standard mileage rate for the business miles substantiated (5.0 cents). In June, the employer advances an employee \$300.00 for 500 miles to be traveled during the month. In July, the employee substantiates to the employer 400 business miles traveled in June and returns \$60.00 to the employer for the 100 business miles not traveled. The amount deemed substantiated for the 400 miles traveled is \$220.00 and the employee is not required to return \$20.00. No later

than the first payroll period following the payroll period in which the 400 business miles traveled are substantiated, the employer must withhold and pay employment taxes on \$20.00.

.02 The portion of a FAVR allowance, if any, that exceeds the amount deemed substantiated for those miles under section 9.01(2) of this revenue procedure is subject to withholding and payment of employment taxes. See § 1.62-2(h)(2)(i)(B).

(1) Any periodic variable rate payment that relates to miles in excess of the business miles substantiated by the employee and that the employee fails to return within a reasonable period, or any portion of a periodic fixed payment that relates to a period during which the employee is treated as not covered by the FAVR allowance and that the employee fails to return within a reasonable period, is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. See § 1.62-2(h)(2)(i)(A).

(2) Any optional high mileage payment is subject to withholding and payment of employment taxes when paid.

.03 If a mileage allowance arrangement has no mechanism or process to determine when an allowance exceeds the amount that may be deemed substantiated and the arrangement routinely pays allowances in excess of the amount that may be deemed substantiated without requiring actual substantiation of all the expenses or repayment of the excess amount, the failure of the arrangement to treat the excess allowances as wages for employment tax purposes causes all payments made under the arrangement to be treated as made under a nonaccountable plan under § 1.62-2(k). Therefore, all payments made under the arrangement are subject to withholding and payment of employment taxes. See Rev. Rul. 2006-56 and § 9.09 of this revenue procedure.

SECTION 11. EFFECTIVE DATE

This revenue procedure is effective for (1) deductible transportation expenses paid or incurred on or after January 1, 2009, and (2) mileage allowances or reimbursements paid to an employee or to a charitable volunteer (a) on or after January 1, 2009, and (b) with respect to transportation expenses paid or incurred

by the employee or charitable volunteer on or after January 1, 2009.

SECTION 12. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2007-70 and Announcement 2008-63 are superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Bernard P. Harvey of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure,

contact Mr. Harvey at (202) 622-4930 (not a toll-free call).

Part IV. Items of General Interest

Instructions in Publication 1187, *Specifications for Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically, Clarified*

Announcement 2008-119

This announcement clarifies instructions in Publication 1187, *Specifications for Filing of Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically*. For all 'City' address fields in the Transmitter 'T' Record, the Withholding Agent 'W' Record, and the Recipient 'Q' Record, only enter alpha characters and those special characters identified within the instructions. Do **not** input any numeric or foreign characters in these fields. Entering numeric or foreign characters in 'City' address fields will cause your file to be rejected. Use this announcement in conjunction with Publication 1187, revised August 2008 and Announcement 2008-95, 2008-42 I.R.B. 964, to format your Form 1042-S information for Tax Year 2008.

If you have questions concerning the filing of Form 1042-S, *Foreign Person's U.S. Source Income Subject to Withholding*, please contact the Internal Revenue Service ECC-MTB toll-free at 866-455-7438 within the U.S. or 304-263-8700 outside the U.S.

Foundations Status of Certain Organizations

Announcement 2008-120

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:

3D Athletics, Inc., Denison, TX
After School Community Learning Center, Wingate, NC
Alpha and Omega Fraternity, Inc., Goose Creek, SC
Arkansas Committee on Occupational Safety & Health, Little Rock, AR
Asociacion Mision Latina, Galand, TX
BJ Connective Concepts, Inc., Cincinnati, OH
Center for Educator Renewal Through the Arts, Houston, TX
Center for the Advancement of Health and Biosciences, Menlo Park, CA
Change Your World, Inc., Ridgeland, MS
Changing Faces, Detroit, MI
Charis Corporation, Inc., Jacksonville, FL
Concert America for the Children, Inc., Norwood, NC
Confidence Learning Center, Florissant, MO
Covenant Life Ministries International, Inc., Hampton, GA
Creative Housing Coalition, Lacanada, CA
Crescent City Case Management, Inc., Richmond, TX
DNA Economic Development Corporation, Inc., Washington, DC
Edna Herbert Phillips Endowment, Inc., Schulenburg, TX
Enterprise for Enterprenerrial Education, Hickory, NC
Exile Alternative Diversion Program a California Nonprofit Public Bene, Richmond, CA
Family Building Institute, Inc., Sussex, WI
Family Support Circle, McDonough, GA
First Community Outreach Center, Inc., Kansas City, KS
God Cares Ministries, Denver, CO
Happy Tails Animal Care Center, Monticello, IN
Hogar Amparo, Inc., San Juan, PR

Julian Youth Center, Memphis, TN
Just Us, Inc., Dallas, TX
Life Long Individual and Family Enrichment Center, Inc., Hampton, GA
Lighthouse Community Information and Referral, Inc., Harrisburg, PA
MCPBA Foundation, Inc., Miami, FL
New Life Institute Hopecenter, Inc., Haslett, MI
Peoples Advocacy Group, Washington, DC
Phi Iota Iota Foundation, LaPlace, LA
Plano Institute, Richmond Heights, OH
Positive Image Program, Chicago, IL
Project H.O.M.E., Inc., Bronx, NY
Rainbow Women Wellness & Resource Center, Grants, NM
Renaissance Outreach Services, Raleigh, NC
Sailing Aboard Recovery Foundation, Inc., Catonsville, MD
Shekinah Glory Helping Hand Services Corp., Miami, FL
Sierras Center, LTD, Danielsville, GA
South Shore Line Heritage Foundation, Gary, IN
Stratford Community Alliance Network, Dallas, TX
Village Group Partner's Inc., Bradenton, FL
Whole Village, Inc., Amite, LA
Worldview Institute, Coral Gables, FL
Young Athletes for Tomorrow, Detroit, MI
Youth Challenge, Inc., Columbus, MS
Yuma Tennis, Inc., Yuma, AZ

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.

Employee Stock Purchase Plans Under Internal Revenue Code Section 423; Hearing Announcement 2008–121

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of a public hearing on proposed regulations (REG–106251–08, 2008–39 I.R.B. 774) relating to options granted under an employee stock purchase plan as defined in section 423 of the Internal Revenue Code. These proposed regulations affect certain taxpayers who participate in the transfer of stock pursuant to the exercise of options granted under an employee stock purchase plan.

DATES: The public hearing is being held on Thursday, January 15, 2009, at 10:00 a.m. The IRS must receive outlines of the topics to be discussed at the public hearing by Thursday, December 18, 2008.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC 20224.

Send Submissions to CC:PA:LPD:PR (REG–106251–08), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday to CC:PA:LPD:PR (REG–106251–08), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS-REG–106251–08).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Thomas Scholz (202) 622–6030; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG–106251–08) that was published in the **Federal Register** on Tuesday, July 29, 2008 (73 FR 43875).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by October 27, 2008, must submit an outline of the topics to be addressed and the amount of

time to be denoted to each topic (Signed original and eight (8) copies)

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW, entrance, 1111 Constitution Avenue, NW, Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this document.

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

(Filed by the Office of the Federal Register on November 21, 2008, 8:45 a.m., and published in the issue of the Federal Register for November 24, 2008, 73 F.R. 70929)

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 List¹

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