Internal Revenue bulletin

Bulletin No. 2012-21
May 21, 2012

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

T.D. 9585, page 935.

Final regulations under section 1248 of the Code characterize gain with respect to stock in certain foreign corporations upon distributions.

REG–137589–07, page 942.

Proposed regulations under section 162 of the Code describe the circumstances under which expenses paid or incurred for lodging when not traveling away from home (local lodging) may be deductible expenses. Proposed amendments to the regulations under section 262 provide that expenses for local lodging are nondeductible personal expenses unless they qualify as deductible expenses under section 162. Notice 2007–47 obsoleted.

REG–139991–08, page 945.

Proposed regulations under section 337(d) of the Code provide guidance concerning certain transfers of property from a C corporation to a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT) and will affect the parties to such transactions.

Notice 2012–34, page 937.

This notice provides that the Treasury Department and the Service intend to delay the proposed effective dates for reporting for debt instruments and options by brokers and others under sections 6045(g), 6045(h), 6045A, and 6045B of the Code from January 1, 2013, to January 1, 2014.

Notice 2012–35, page 937.

This notice provides inflation adjustment factors and reference prices for purposes of computing the renewable electricity production tax credit under section 45 of the Code for tax year 2012.

Rev. Proc. 2012–27, page 940.

Th procedure provides guidance on how a taxpayer may make the notification required by section 42(j)(6)(B)(i) of the Code, which was added by section 3004(c) of the Housing Assistance Tax Act of 2008 (Pub. L. 110–289). The notification begins the 3-year statutory period for assessing a deficiency with respect to the taxpayer resulting from a reduction in the qualified basis of a low-income housing tax credit building that occurs after the taxpayer disposes of the building (or an interest therein).

EXEMPT ORGANIZATIONS

REG–144267–11, page 949.

Proposed regulations under section 4944(c) of the Code provide guidance to private foundations on program-related investments. Private foundations generally are subject to excise taxes on investments that jeopardize the carrying out of their exempt purposes. However, program-related investments are excepted from the tax on jeopardizing investments. The proposed regulations add nine new examples that illustrate that a wide range of investments qualify as program-related investments than the range currently presented in regulations section 53.4944–3(b).

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

Section 1248.—Gain from Certain Sales or Exchanges of Stock in Certain Foreign Corporations

26 CFR 1.1248–1: Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

T.D. 9585

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Treatment of Gain Recognized With Respect to Stock in Certain Foreign Corporations Upon Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the characterization of gain recognized with respect to stock in certain foreign corporations upon distributions. The regulations finalize proposed regulations and remove temporary regulations that characterize gain recognized with respect to stock in foreign corporations upon distributions as a deemed dividend in certain situations. The regulations affect certain persons that recognize gain with respect to stock in connection with the receipt of a distribution of property from a foreign corporation.

DATES: *Effective Date:* These regulations are effective on April 24, 2012.

Applicability Date: These regulations apply to distributions occurring on or after February 10, 2009.

FOR FURTHER INFORMATION CONTACT: Ryan A. Bowen, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 11, 2009, the IRS and the Department of the Treasury (the Treasury Department) published temporary and proposed regulations in the **Federal Register** (REG–147636–08, 74 FR 6824; T.D. 9444, 2009–9 I.R.B. 603) (the temporary or proposed regulations, as applicable, and collectively, the 2009 regulations). The 2009 regulations, in part, provide that for purposes of section 1248(a), gain recognized under section 301(c)(3) in connection with the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated as gain from the sale or exchange of the stock of such foreign corporation (2009 section 1248 regulations).

The 2009 regulations also addressed the application of section 367 to certain related party stock transactions that are recharacterized under section 304. As described in Notice 2012–15, 2012–9 I.R.B. 495 (February 27, 2012) (see §601.601(d)(2)(ii)(*b*) of this chapter), the IRS and the Treasury Department intend to amend the regulations under section 367 to provide that the section 351 exchange that is deemed to occur in a section 304 transaction is subject to section 367(a) and (b), as applicable. Accordingly, this Treasury decision does not finalize the portions of the 2009 regulations that address the interaction of sections 304 and 367. Those portions of the 2009 regulations will be withdrawn in separate published guidance (REG–104400–12).

No public hearing on the 2009 section 1248 regulations was requested or held and no written comments were received. This Treasury decision adopts the 2009 section 1248 regulations, with one modification to remove a deadwood provision, as final regulations under section 1248(a). This Treasury decision also removes the temporary regulations under section 1248(a).

Explanation of Provisions

The final regulations provide that gain recognized under section 301(c)(3) on the receipt of a distribution of property from a foreign corporation with respect to its stock shall be treated for purposes of section 1248(a) as gain from the sale or exchange of the stock of such corporation. For purposes of section 1248(a), a sale or exchange also includes a distribution that gives rise to gain with respect to stock under section 302(a) or 331(a). The final regulations ensure that the earnings and profits of lower-tier foreign subsidiaries described in section 1248(c)(2) are taken into account when gain is recognized with respect to stock of a controlled foreign corporation.

The 2009 section 1248 regulations incorporated a provision from the prior final regulations under section 1248 providing that section 1248(a) applies to gain recognized with respect to stock under section 331(a)(2) by reason of a partial liquidation of a corporation. The final regulations remove the reference to partial liquidations under section 331(a)(2) in order to reflect amendments made in 1982 by the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97–248, 96 Stat. 324 (1982)), which repealed section 331(a)(2) and provided new rules regarding redemptions in partial liquidation under section 302. See section 302(b)(4) and (e).

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 also has been determined that 5 U.S.C. 553(b) and (d) do not apply to these regulations. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. These regulations primarily will affect large domestic corporations. Thus, the number of affected small entities will not be substantial. 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 comments on its impact on small business.

Drafting Information

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

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.1248–1 is amended by:

1. Revising paragraphs (b) and (g)(2).
2. Removing paragraph (h).

The revisions read as follows.

§1.1248–1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

* * * * *

(b) *Sale or exchange*. For purposes of section 1248(a), the term sale or exchange includes the receipt of a distribution which is treated as in exchange for stock under section 302(a) (relating to distributions in redemption of stock) or section 331(a) (relating to distributions in complete liquidation of a corporation). For purposes of section 1248(a), gain recognized by a shareholder under section 301(c)(3) in connection with a distribution of property by a corporation with respect to its stock shall be treated as gain from the sale or exchange of stock of such corporation.

* * * * *

(g) * * *

(2) Paragraph (b) of this section applies to distributions that occur on or after February 10, 2009.

§1.1248–1T [Removed]

Par. 3. Section 1.1248–1T is removed.

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

Approved April 13, 2012.

Emily S. McMahon,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on April 23, 2012, 8:45 a.m., and published in the issue of the Federal Register for April 24, 2012, 77 F.R. 24380)

Section 6045A.—Information Required in Connection With Transfers of Covered Securities to Brokers

The proposed effective date for reporting on transfers of debt instruments and options is postponed to January 1, 2014. See Notice 2012-34, page 937.

Section 6045B.—Returns Relating to Actions Affecting Basis of Specified Securities

The proposed effective date for reporting on actions affecting the basis of debt instruments and options is postponed to January 1, 2014. See Notice 2012-34, page 937.

Part III. Administrative, Procedural, and Miscellaneous

Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options

Notice 2012–34

PURPOSE

This notice provides that the Treasury Department and the Internal Revenue Service intend to delay the proposed effective dates for reporting for debt instruments and options by brokers and others under sections 6045(g), 6045(h), 6045A, and 6045B of the Internal Revenue Code from January 1, 2013, to January 1, 2014.

BACKGROUND

Section 403 of the Energy Improvement and Extension Act of 2008, Div. B of Pub. L. No. 110–343, 122 Stat. 3765, enacted on October 3, 2008 (the "Act"), amended the broker reporting rules in section 6045 for certain securities, including debt instruments and options. For a debt instrument acquired on or after January 1, 2013, or such later date determined by the Secretary, section 6045(g) generally requires a broker, when reporting the sale of the debt instrument to the Internal Revenue Service, to report the customer's adjusted basis for the debt instrument and whether any gain or loss upon the sale of the debt instrument is long-term or short-term. For certain options granted or acquired on or after January 1, 2013, section 6045(h) generally requires a broker to report information similar to that required under section 6045(g), as well as information on gross proceeds. The Act also added two new sections to the Internal Revenue Code: (1) section 6045A, which requires a broker transferring securities subject to basis reporting to report basis and other information to the receiving broker; and (2) section 6045B, which requires an issuer of a security subject to basis reporting to file a return to describe the issuer's actions that affect the basis of the security.

On November 25, 2011, the Treasury Department and the Internal Revenue Service published in the Federal Register a notice of proposed rulemaking relating to the reporting requirements under sections 6045, 6045A, and 6045B for debt instruments and options. *See* Basis Reporting by Securities Brokers and Basis Determination for Debt Instruments and Options (REG–102988–11, 2012–4 I.R.B. 326 [76 FR 72652]) (the "proposed regulations"). A public hearing on the proposed regulations was held on March 16, 2012.

Under the proposed regulations, a broker is required to report the information required under section 6045(g) for certain debt instruments acquired on or after January 1, 2013, and the information required under section 6045(h) for certain options granted or acquired on or after January 1, 2013. The proposed regulations also require a broker to provide the information required under section 6045A for a transfer of certain debt instruments or options that occurs on or after January 1, 2013, and the information required under section 6045B for an organizational action occurring on or after January 1, 2013, that affects a debt instrument or an option.

The Treasury Department and the Internal Revenue Service received numerous requests to delay the proposed effective dates for both debt instruments and options in the proposed regulations. Brokers and other interested parties maintain that the proposed effective date of January 1, 2013, does not provide them sufficient time to build and test the systems required to implement the reporting rules for debt instruments and options.

DELAY OF THE PROPOSED EFFECTIVE DATES

After consideration of the comments and testimony received on the proposed effective dates, the Treasury Department and the Internal Revenue Service intend to provide that the rules in the proposed regulations when finalized will not apply until January 1, 2014. For example, the final regulations under section 6045(g) will not apply to a debt instrument acquired before January 1, 2014, and the final regulations under section 6045 will not apply to an option granted or acquired before January 1, 2014.

DRAFTING INFORMATION

The principal author of this notice is Pamela Lew of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Pamela Lew at (202) 622–3950 (not a toll-free call).

Credit for Renewable Electricity Production, Refined Coal Production, and Indian Coal Production, and Publication of Inflation Adjustment Factors and Reference Prices for Calendar Year 2012

Notice 2012–35

This notice publishes the inflation adjustment factors and reference prices for calendar year 2012 for the renewable electricity production credit, the refined coal production credit, and the Indian coal production credit under section 45 of the Internal Revenue Code. The 2012 inflation adjustment factors and reference prices are used in determining the availability of the credits. The 2012 inflation adjustment factors and reference prices apply to calendar year 2012 sales of kilowatt-hours of electricity produced in the United States or a possession thereof from qualified energy resources and to calendar year 2012 sales of refined coal and Indian coal produced in the United States or a possession thereof.

BACKGROUND

Section 45(a) provides that the renewable electricity production credit for any tax year is an amount equal to the product of 1.5 cents multiplied by the kilowatt hours of specified electricity produced by the taxpayer and sold to an unrelated person during the tax year. This electricity must be produced from qualified energy resources and at a qualified facility during the 10-year period beginning on the date the facility was originally placed in service.

Section 45(b)(1) provides that the amount of the credit determined under section 45(a) is reduced by an amount which bears the same ratio to the amount of the credit as (A) the amount by which the reference price for the calendar year in which the sale occurs exceeds 8 cents, bears to (B) 3 cents. Under section 45(b)(2), the 1.5 cent amount in section 45(a), the 8 cent amount in section 45(b)(1), the $4.375 amount in section 45(e)(8)(A), and in section 45(e)(8)(B)(i), the $2.00 amount in section 45(e)(8)(D)(ii)(I), the reference price of fuel used as feedstock (within the meaning of section 45(c)(7)(A)) in 2002 are each adjusted by multiplying the amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, the amount is rounded to the nearest multiple of 0.1 cent.

Section 45(c)(1) defines qualified energy resources as wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic renewable energy.

Section 45(d)(1) defines a qualified facility using wind to produce electricity as any facility owned by the taxpayer that is originally placed in service after December 31, 1993, and before January 1, 2013. See section 45(e)(7) for rules relating to the inapplicability of the credit to electricity sold to utilities under certain contracts.

Section 45(d)(2)(A) defines a qualified facility using closed-loop biomass to produce electricity as any facility (i) owned by the taxpayer that is originally placed in service after December 31, 1992, and before January 1, 2014, or (ii) owned by the taxpayer which before January 1, 2014, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052. Section 45(d)(2)(C) provides that in the case of a qualified facility described in section 45(d)(2)(A)(ii), (i) the 10-year period referred to in section 45(a) is treated as beginning no earlier than the date of enactment of section 45(d)(2)(B)(i); and (ii) if the owner of the facility is not the producer of the electricity, the person eligible for the credit allowable under section 45(a) is the lessee or the operator of the facility.

Section 45(d)(3)(A) defines a qualified facility using open-loop biomass to produce electricity as any facility owned by the taxpayer which (i) in the case of a facility using agricultural livestock waste nutrients, (I) is originally placed in service after the date of enactment of section 45(d)(3)(A)(i)(I) and before January 1, 2014, and (II) the nameplate capacity rating of which is not less than 150 kilowatts; and (ii) in the case of any other facility, is originally placed in service before January 1, 2014. In the case of any facility described in section 45(d)(3)(A), if the owner of the facility is not the producer of the electricity, section 45(d)(3)(C) provides that the person eligible for the credit allowable under section 45(a) is the lessee or the operator of the facility.

Section 45(d)(4) defines a qualified facility using geothermal or solar energy to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(4) and before January 1, 2014 (January 1, 2006, in the case of a facility using solar energy). A qualified facility using geothermal or solar energy does not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

Section 45(d)(5) defines a qualified facility using small irrigation power to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(5) and before October 3, 2008.

Section 45(d)(6) defines a qualified facility using gas derived from the biodegradation of municipal solid waste to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(6) and before January 1, 2014.

Section 45(d)(7) defines a qualified facility (other than a facility described in paragraph (6)) that burns municipal solid waste to produce electricity as any facility owned by the taxpayer which is originally placed in service after the date of enactment of section 45(d)(7) and before January 1, 2014. A qualified facility burning municipal solid waste includes a new unit placed in service in connection with a facility placed in service on or before the date of enactment of section 45(d)(7), but only to the extent of the increased amount of electricity produced at the facility by reason of such new unit.

Section 45(d)(8) provides in the case of a facility that produces refined coal, the term "refined coal production facility" means (i) with respect to a facility producing steel industry fuel, any facility (or any modification to a facility) which is placed in service before January 1, 2010, and (ii) with respect to any other facility producing refined coal, and facility placed in service after the date of the enactment of the American Jobs Creation Act of 2004 and before January 1, 2012.

Section 45(d)(9) defines a qualified facility producing qualified hydroelectric production described in section 45(c)(8) as (A) any facility producing incremental hydropower production, but only to the extent of its incremental hydropower production attributable to efficiency improvements or additions to capacity described in section 45(c)(8)(B) placed in service after the date of enactment of section 45(d)(9) and before January 1, 2014, and (B) any other facility placed in service after the date of enactment of section 45(d)(9) and before January 1, 2014. Section 45(d)(9)(C) provides that in the case of a qualified facility described in section 45(d)(9)(A), the 10-year period referred to in section 45(a) is treated as beginning on the date the efficiency improvements or additions to capacity are placed in service.

Section 45(d)(10) provides in the case of a facility that produces Indian coal, the term "Indian coal production facility" means a facility which is placed in service before January 1, 2009.

Section 45(d)(11) provides in the case of a facility producing electricity from marine and hydrokinetic renewable energy, the term "qualified facility" means any facility owned by the taxpayer which (i) has a nameplate capacity rating of at least 150 kilowatts, and (ii) which is originally placed in service on or after the date of the enactment of this paragraph and before January 1, 2012.

Section 45(e)(8)(A) provides that the refined coal production credit is an amount equal to $4.375 per ton of qualified refined coal (i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and (ii) sold by the taxpayer (I) to an unrelated person and (II) during the 10-year period and the tax year. Section 45(e)(8)(B) provides that the amount of credit determined under section 45(e)(8)(A) is reduced by an amount which bears the same ratio to the amount of the increase as (i) the amount by which the reference price of fuel used as feedstock (within the meaning of section 45(c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to (ii) \$8.75. Section 45(e)(8)(D)(ii)(I) provides that in the case of a taxpayer who produces steel industry fuel, subparagraph (A) shall be applied by substituting "2.00 per barrel-of-oil equivalent" for \$4.375 per ton." Section 45(e)(8)(D)(ii)(II) provides that in lieu of the 10-year period referred to in clauses (i) and (ii)(II) of subparagraph (A), the credit period shall be the period beginning in the later of the date such facility was originally placed-in-service, or October 1, 2008, and ending on the later of December 31, 2009, or the date which is 1 year after the date such facility or the modifications described in clause (iii) were placed in service. Section 45(e)(8)(D)(ii)(III) provides that subparagraph (B) (dealing with the phaseout of the credit) will not apply.

Section 45(e)(10)(A) provides in the case of a producer of Indian coal, the credit determined under section 45 for any taxable year shall be increased by an amount equal to the applicable dollar amount per ton of Indian coal (i) produced by the taxpayer at an Indian coal production facility during the 7-year period beginning on January 1, 2006, and (ii) sold by the taxpayer (I) to an unrelated person, and (II) during such 7-year period and such taxable year.

Section 45(e)(10)(B)(i) defines "applicable dollar amount" for any taxable year as (I) \$1.50 in the case of calendar years 2006 through 2009, and (II) \$2.00 in the case of calendar years beginning after 2009.

Section 45(e)(2)(A) requires the Secretary to determine and publish in the Federal Register each calendar year the inflation adjustment factor and the reference price for the calendar year. The inflation adjustment factors and the reference prices for the 2012 calendar year were published in the Federal Register on April 11, 2012 (77 Fed. Reg. 21835). Corrections were published on April 30, 2012 (77 Fed. Reg. 25538).

Section 45(e)(2)(B) defines the inflation adjustment factor for a calendar year as the fraction the numerator of which is the GDP implicit price deflator for the preceding calendar year and the denominator of which is the GDP implicit price deflator for the calendar year 1992. The term "GDP implicit price deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the Department of Commerce before March 15 of the calendar year.

Section 45(e)(2)(C) provides that the reference price is the Secretary's determination of the annual average contract price per kilowatt hour of electricity generated from the same qualified energy resource and sold in the previous year in the United States. Only contracts entered into after December 31, 1989, are taken into account.

Under section 45(e)(8)(C), the determination of the reference price for fuel used as feedstock within the meaning of section 45(c)(7)(A) is made according to rules similar to the rules under section 45(e)(2)(C).

Under section 45(e)(10)(B)(ii), in the case of any calendar year after 2006, each of the dollar amounts under section 45(e)(10)(B)(i) shall be equal to the product of such dollar amount and the inflation adjustment factor determined under section 45(e)(2)(B) for the calendar year, except that section 45(e)(2)(B) shall be applied by substituting 2005 for 1992.

INFLATION ADJUSTMENT FACTORS AND REFERENCE PRICES

The inflation adjustment factor for calendar year 2012 for qualified energy resources and refined coal is 1.4799. The inflation adjustment factor for Indian coal is 1.1336. The reference price for calendar year 2012 for facilities producing electricity from wind (based upon information provided by the Department of Energy) is 5.31 cents per kilowatt hour. The reference prices for fuel used as feedstock within the meaning of section 45(c)(7)(A), relating to refined coal production (based upon information provided by the Department of Energy) are \$31.90 per ton for calendar year 2002 and \$58.49 per ton for calendar year 2012. The reference prices for facilities producing electricity from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic energy have not been determined for calendar year 2012.

PHASE-OUT CALCULATION

Because the 2012 reference price for electricity produced from wind does not exceed 8 cents multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2012. Because the 2012 reference price of fuel used as feedstock for refined coal does not exceed the \$31.90 reference price of such fuel in 2002 multiplied by the inflation adjustment factor and 1.7, the phaseout of credit provided in section 45(e)(8)(B) does not apply to refined coal sold during calendar year 2012. Further, for electricity produced from closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, marine and hydrokinetic energy, the phaseout of credit provided in section 45(b)(1) does not apply to such electricity sold during calendar year 2012.

CREDIT AMOUNT BY QUALIFIED ENERGY RESOURCE AND FACILITY, REFINED COAL, AND INDIAN COAL

As required by section 45(b)(2), the 1.5 cent amount in section 45(a)(1), the 8 cent amount in section 45(b)(1), the \$4.375 amount in section 45(e)(8)(A) and the \$2.00 amount in section 45(e)(8)(D) are each adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1 cent, such amount is rounded to the nearest multiple of 0.1 cent. In the case of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic renewable energy, section 45(b)(4)(A) requires the amount in effect under section 45(a)(1) (before rounding to the nearest 0.1 cent) to be reduced by one-half. Under the calculation required by section 45(b)(2), the credit for renewable electricity production for calendar year 2012 under section 45(a) is 2.2 cents per kilowatt hour on the sale of electricity produced from the qualified energy resources of wind, closed-loop biomass, geothermal energy, and solar energy, and 1.1 cent per kilowatt hour on the sale of electricity produced in open-loop biomass facilities, small irrigation power facilities, landfill gas facilities, trash combustion facilities, qualified hydropower facilities, marine and hydrokinetic energy facilities. Under the calculation required by section 45(b)(2), the credit for refined coal production for calendar year 2012 under section 45(e)(8)(A) is $6.475 per ton on the sale of qualified refined coal. The credit for Indian coal production for calendar year 2012 under section 45(e)(10)(B) is $2.267 per ton on the sale of Indian coal.

DRAFTING AND CONTACT INFORMATION

The principal author of this notice is Philip Tiegerman of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Tiegerman at (202) 622–3110 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, § 42.)

Rev. Proc. 2012–27

SECTION 1. PURPOSE

This revenue procedure provides the manner under § 42(j)(6)(B)(i) of the Internal Revenue Code (the Code) by which a taxpayer may notify the Internal Revenue Service of any increase in tax resulting from a reduction in the qualified basis of a low-income housing tax credit building in order to begin the 3-year statutory period for assessing a deficiency with respect to that taxpayer.

SECTION 2. BACKGROUND

.01 Section 42 of the Code allows a 10-year tax credit for investment in qualified low-income buildings placed in service after December 31, 1986. If, as of the close of any taxable year in the 15-year compliance period (defined under § 42(i)(1) of the Code), the amount of the qualified basis of any building with respect to the taxpayer is less than the amount of such basis as of the close of the preceding taxable year, § 42(j)(1) provides that the taxpayer's tax for the taxable year shall be increased by the credit recapture amount.

.02 Section 42(j)(6)(A) of the Code, as amended by section 3004(c) of the Housing Assistance Tax Act of 2008 (Pub. L. 110–289) (the Act), provides that, in general, an increase in tax under § 42(j) shall not apply solely by reason of a disposition of a building (or an interest therein) if it is reasonably expected that such building will continue to be operated as a qualified low-income building for the remaining compliance period with respect to such building. A building's compliance period is defined in § 42(i)(1).

.03 Section 42(j)(6)(B) of the Code, as amended by section 3004(c) of the Act, provides that if a building (or interest therein) is disposed of during any taxable year and there is any reduction in the qualified basis of such building which results in an increase in tax for such taxable or any subsequent taxable year, then (i) the statutory period for the assessment of any deficiency with respect to such increase in tax shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of such reduction in qualified basis, and (ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

.04 Under section 3004(i) of the Act, the amendments made to § 42(j)(6) of the Code by section 3004(c) of the Act apply to buildings (or interests therein) disposed of after July 30, 2008, the date of enactment of the Act. In addition, the amendments apply to buildings (or interests therein) disposed of on or before July 30, 2008, if (i) it is reasonably expected that such building(s) will continue to be operated as qualified low-income building(s) (within the meaning of § 42) for the remainder of the compliance period with respect to such building(s), and (ii) the taxpayer elects the application of these rules to such disposition. Rev. Proc. 2008–60, 2008–2 C.B. 1006, provides taxpayers with the procedures for making the election to apply these rules to dispositions of buildings (or interests therein) on or before July 30, 2008.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that—

.01 Dispose of a low-income housing building (or interest therein) in a transaction to which the amendments made by section 3004(c) of the Act apply; and

.02 Seek to make the notification prescribed by § 42(j)(6)(B)(i) of the Code.

SECTION 4. NOTIFICATION PROCEDURES

.01 To make the notification prescribed by § 42(j)(6)(B)(i) of the Code a taxpayer that disposed of a low-income building (or interest therein) must submit a letter to the Internal Revenue Service, signed by the taxpayer, containing the following:

(1) A lead-in declaration stating: "By this letter I am making the notification prescribed by § 42(j)(6)(B)(i) of the Internal Revenue Code.";

(2) The taxpayer's name, address, and taxpayer identification number;

(3) The name (if any), address, and Building Identification Number of each building to which the taxpayer's disposition relates. If a taxpayer received a credit from a pass-through entity but does not know the information required by the preceding sentence, the taxpayer must provide the name and employer identification number of the pass-through entity from which the taxpayer received the credit;

(4) To the extent known, the name, address, and taxpayer identification number of any person(s) to whom the increase in tax under § 42(j)(6)(B) applies as a result of a reduction in the qualified basis of any building to which the taxpayer's disposition relates; and

(5) A concluding declaration stating: "Under penalties of perjury, I declare that I have examined this letter and the represen-

tations made therein, and to the best of my knowledge and belief, they are true, correct, and complete."

.02 The taxpayer must mail the letter to the address where the most current Form 8609, *Low-Income Housing Credit Allocation and Certification*, would be filed. For purposes of determining the 3-year period described in § 42(j)(6)(B)(i), the Secretary is deemed to be notified as of the postmark date of the letter. The instructions to Form 8609 contain the address for filing the most current Form 8609 and may be accessed electronically at: *http://www.irs.gov/app/picklist/list/formslnstructions.html*.

SECTION 5. EFFECTIVE DATE

.01 This revenue procedure is effective for notifications under § 42(j)(6)(B)(i) of the Code made on or after May 2, 2012.

.02 Except to the extent provided in section 5.03 of this revenue procedure, a notification sent by a taxpayer to the Internal Revenue Service prior to May 2, 2012, is not effective to begin the 3-year statutory period for assessing a deficiency with respect to that taxpayer under § 42(j)(6)(B)(i).

.03 A notification received from a taxpayer by the Internal Revenue Service prior to May 2, 2012, is effective to begin the 3-year statutory period if it complies with the substance of this revenue procedure. A notification complies with the substance of this revenue procedure only if it provides the information described in section 4.01(2) and (3) of this revenue procedure, and it contains a declaration under penalties of perjury substantially similar to that described in section 4.05 of this revenue procedure.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–2120.

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

The reporting requirement is contained in section 4 of this revenue procedure. The information is required so that taxpayers may notify the Service of any increase in tax resulting from a reduction in the qualified basis of a low-income housing tax credit building in order to begin the 3-year statutory period for assessing a deficiency with respect to that taxpayer pursuant to § 42(j)(6)(B)(i) of the Code.

The likely respondents are taxpayers that have disposed of a low-income building (or interest therein). The estimated total annual reporting burden is 10 hours. The estimated annual burden per respondent is 1 hour, depending on the individual circumstances. The estimated total number of respondents is 10.

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

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Julie Hanlon-Bolton of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Hanlon-Bolton at (202) 622–3040 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Local Lodging Expenses

REG–137589–07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the deductibility of expenses for lodging when not traveling away from home (local lodging). The regulations affect taxpayers who pay or incur expenses for local lodging.

DATES: Comments or a request for a public hearing must be received by July 24, 2012.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–137589–07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–137589–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–137589–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, R. Matthew Kelley, (202) 622–7900; concerning submission of comments or a request for a hearing, Funmi Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 relating to the deduction of local lodging expenses.

Section 1.262–1 of the Income Tax Regulations generally disallows a deduction for local lodging expenses. The proposed regulations allow taxpayers to deduct local lodging expenses as ordinary and necessary business expenses in appropriate circumstances.

Business Expenses Generally

Section 162(a) of the Internal Revenue Code (Code) allows a deduction for all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Whether an expense is ordinary and necessary is a question of fact. In general, a trade or business expense is ordinary if it is normal, usual, or customary in the taxpayer's type of business. An expense is necessary if it is appropriate and helpful for the development of the taxpayer's business. See Commissioner v. Heininger, 320 U.S. 467, 475 (1943). An expense that serves primarily to furnish the taxpayer with a social or personal benefit, and is only secondarily related to business, is not a necessary business expense under section 162(a).

Employee Expenses

An expense that an employee must bear as a condition of employment may be a deductible employee business expense. See Sibla v. Commissioner, 611 F.2d 1260 (9th Cir. 1980), acq. (1985–2 C.B. viii) (contributions to firemen's mess required as a condition of employment are deductible business expenses). However, expenses that primarily are for the employee's personal benefit or convenience are not deductible employee business expenses. See Commissioner v. Flowers, 326 U.S. 465 (1946) (a taxpayer's expenses for lodging near his principal work location, to avoid a long commute to and from his primary residence, were nondeductible personal expenses incurred solely because of the taxpayer's decision to maintain his primary residence far from his work location).

Deductible Employee Expenses

The tax consequences to an employee who is reimbursed by an employer for an expense, or who receives property or services resulting from an employer's payment of an expense, depend on whether the expense is one that would have been deductible if paid directly by the employee.

For example, if an employee pays an expense and an employer reimburses the employee under a reimbursement or other expense allowance arrangement, the reimbursement is not includible in the employee's income if it is made under an accountable plan. A reimbursement is treated as made under an accountable plan only if it is made for an expense that would be deductible by the employee under sections 161 through 199. See sections 62(a)(2)(A) and 62(c).

Similarly, if an employer provides property or services to an employee in the course of business, the value of the benefit to the employee is excludable from the employee's income if the benefit constitutes a working condition fringe under section 132(a)(3). A working condition fringe is defined as property or services provided to an employee to the extent that, if the employee paid for the property or services, the payment would be allowable as a deduction to the employee under section 162 or 167.

Nondeductible Personal Expenses

Section 262(a) provides that, except as otherwise provided in Chapter 1 of the Code, no deduction is allowed for personal, living, or family expenses.

Section 1.262–1(b)(5) provides, as examples of personal, living, and family expenses, that the costs of a taxpayer's meals incurred when not traveling away from home (local meals) are generally nondeductible personal expenses. Local meal expenses may be deducted, however, if they otherwise qualify as ordinary and necessary business expenses under section 162 or as expenses for the production of income under section 212. In contrast, lodging expenses incurred when not traveling away from home (local lodging) are nondeductible personal expenses. Thus, local lodging expenses that would otherwise qualify as trade or business expenses under section 162 or as production of income expenses under section 212 are not deductible under the current general rule.

Local Lodging Expenses

The cost of local lodging that a taxpayer pays or incurs primarily for the taxpayer's convenience or personal benefit is not an ordinary and necessary expense of a business or income-producing activity. Similarly, the cost of local lodging provided to an employee by an employer for the employee's convenience or personal benefit would not be deductible by the employee if the employee paid the cost directly. Therefore, the value of the lodging under those circumstances is not excludible from the gross income of an employee as a working condition fringe under section 132(a)(3), and reimbursement for the cost of the lodging under those circumstances is not a payment under an accountable plan under §1.62–2(c). Consequently, unless excludible on another basis, the value of the lodging or the amount of reimbursement under those circumstances is includible in the employee's income under section 61 as compensation for services. *See* §§1.61–21(a)(3), 1.62–2, and 1.132–1.

The cost of local lodging is for the convenience or personal benefit of an employee (or other recipient) if, for example, the lodging is provided to the employee (1) as additional compensation, such as to provide a weekend at a luxury hotel or resort; (2) to enable the employee to avoid a long-distance commute (Commissioner v. Flowers); (3) because the employee is required to work overtime (Coombs v. Commissioner, 608 F.2d 1269, 1273 (9th Cir. 1979)); (4) as housing for a recently relocated employee while the employee searches for permanent housing; or (5) for the employee's indefinite personal use (International Artists, Ltd, v. Commissioner, 55 T.C. 94 (1970)). An employer may deduct the costs the employer incurs in providing the lodging in each of these cases under section 162(a) as compensation for services. See §§1.162–7(a) and 1.162–25T. However, because the primary purpose of the lodging is to provide the employee with a personal benefit, if the employee pays the cost of the lodging directly, the employee may not deduct the expense as an ordinary and necessary business expense under section 162(a). Therefore, a cash reimbursement of the cost is not excludible from the employee's gross income under section 62(c) and the value of the lodging is not excludible from the employee's gross income under section 132(d) as a working condition fringe.

Expenditures for local lodging may qualify as deductible ordinary and necessary expenses under appropriate circumstances if all other requirements of section 162 are met. For example, an employer may require its employees to stay at a local hotel for the *bona fide* purpose of facilitating training or team building directly connected with the employer's trade or business. Similarly, a professional sports team may require its employees (players and coaches) to stay at a local hotel the night before a home game to ensure physical preparedness and allow for last minute training. Under these circumstances, the cost of the lodging is primarily for the business purposes of the employer and not to provide a personal benefit to the employees. The cost of the lodging would be deductible by an employee under section 162 if the employee paid the cost directly, and thus the value of the lodging may be excluded from the employee's gross income as a working condition fringe if other requirements are satisfied. Similarly, a payment from the employer reimbursing the employee for the cost of the lodging may be excluded from the employee's gross income as a payment under an accountable plan if all the requirements of an accountable plan are met.

Notice 2007–47, 2007–1 C.B. 1393 (see §601.601(d)(2) of this chapter) advises taxpayers that the IRS and the Treasury Department intend to amend the treatment of the costs of a taxpayer's local lodging under §1.262–1(b)(5). The notice provides that, pending issuance of additional published guidance, the IRS will not apply §1.262–1(b)(5) to expenses for local lodging of an employee that an employer provides to the employee or requires the employee to obtain, if: (1) the lodging is provided on a temporary basis; (2) the lodging is necessary for the employee to participate in or be available for a *bona fide* business meeting or function of the employer; and (3) the expenses are otherwise deductible by the employee, or would be deductible if paid by the employee, under section 162(a).

Explanation of Provisions

These regulations propose to amend the regulations under sections 162 and 262. The proposed regulations under section 162 provide that expenses paid or incurred for local lodging may be deductible as ordinary and necessary expenses of a taxpayer's trade or business, including the trade or business of being an employee. The proposed regulations provide a safe harbor for certain local lodging at a business meeting, conference, or other activity or function. Other local lodging expenses may be deductible as business expenses depending on the facts and circumstances.

The proposed regulations under section 262 provide that a taxpayer's costs incurred for local lodging are personal expenses unless the expenses are deductible under section 162. Comments are specifically requested on whether the section 262 regulations should be amended to provide that local lodging expenses are not personal expenses if they are deductible under section 212.

The proposed regulations also amend the regulations under section 262 to remove references to section 217 that are obsolete. Section 217 was amended by the Revenue Reconciliation Act of 1993, Public Law 103–66 (107 Stat. 417). Under the amendments, lodging when not traveling away from home and meals are not deductible as moving expenses.

Effective/Applicability Date

The regulations are proposed to apply to expenses paid or incurred on or after the date these regulations are published as final regulations in the **Federal Register**. However, until these regulations are published as final regulations in the **Federal Register**, taxpayers may apply the proposed regulations to expenses paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired.

Effect on Other Documents

Notice 2007–47 is obsoleted as of April 25, 2012.

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The Treasury Department and the IRS invite comments on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is R. Matthew Kelley of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.162–31 is added to read as follows:

§1.162–31 Expenses paid or incurred for lodging when not traveling away from home.

(a) *In general*. Expenses paid or incurred for lodging when not traveling away from home (local lodging) generally are personal, living, or family expenses that are nondeductible under section 262(a). Under certain circumstances, however, expenses for local lodging may be deductible under section 162(a) as ordinary and necessary expenses paid or incurred in connection with carrying on a taxpayer's trade or business, including a trade or business as an employee. Whether local lodging expenses are paid or incurred in carrying on a taxpayer's trade or business is determined under all the facts and circumstances. One factor is whether the taxpayer incurs the expense because of a *bona fide* condition or requirement of employment imposed by the taxpayer's employer. Expenses paid or incurred for local lodging that is lavish or extravagant under the circumstances or that primarily provides an individual with a social or personal benefit are not incurred in carrying on a taxpayer's trade or business.

(b) *Safe harbor for local lodging at business meetings and conferences*. An individual's expenses for local lodging will be treated as ordinary and necessary business expenses if—

(1) The lodging is necessary for the individual to participate fully in or be available for a *bona fide* business meeting, conference, training activity, or other business function;

(2) The lodging is for a period that does not exceed five calendar days and does not recur more frequently than once per calendar quarter;

(3) If the individual is an employee, the employee's employer requires the employee to remain at the activity or function overnight; and

(4) The lodging is not lavish or extravagant under the circumstances and does not provide any significant element of personal pleasure, recreation, or benefit.

(c) *Examples*. The provisions of this section are illustrated by the following examples. In each example the employer and the employees meet all other requirements (such as substantiation) for deductibility of the expense and for exclusion from income as a working condition fringe or payment under an accountable plan.

Example 1. (i) Employer conducts training for its employees at a hotel near Employer's main office. The training is directly connected with Employer's trade or business. Some employees attending the training are traveling away from home and some employees are not traveling away from home. Employer requires all employees attending the training to remain at the hotel overnight for the *bona fide* purpose of facilitating the training. Employer pays the costs of the lodging at the hotel directly to the hotel and does not treat the value as compensation to the employees.

(ii) Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the expenses primarily to provide a social or personal benefit to the employees. If the employees who are not traveling away from home had paid for their own lodging, the expenses would have been deductible under section 162(a) as ordinary and necessary business expenses of the employees. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe under section 132(a) and (d).

(iii) Employer may deduct the lodging expenses, including lodging for employees who are not traveling away from home, as ordinary and necessary business expenses under section 162(a).

Example 2. (i) The facts are the same as in *Example 1*, except that the employees pay the cost of their lodging at the hotel directly to the hotel, Employer reimburses the employees for the cost of the lodging, and Employer does not treat the reimbursement as compensation to the employees.

(ii) Employer is reimbursing the lodging expenses for a noncompensatory business purpose and not primarily to provide a social or personal benefit to the employees. The employees incur the expenses in performing services for the employer. If Employer had not reimbursed the employees who are not traveling away from home for the cost of the lodging, the expenses would have been deductible under section 162(a) as ordinary and necessary business expenses of the employees. Therefore, the reimbursements to the employees are made under an accountable plan and are excluded from the employees' gross income.

(iii) Employer may deduct the lodging expense reimbursements, including reimbursements for employees who are not traveling away from home, as ordinary and necessary business expenses under section 162(a).

Example 3. (i) Employer is a professional sports team. Employer requires its employees (players and coaches) to stay at a local hotel the night before a home game to conduct last minute training and ensure the physical preparedness of the players. Employer pays the lodging expenses directly to the hotel and does not treat the value as compensation to the employees.

(ii) Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not paying the lodging expenses primarily to provide a social or personal benefit to the employees. If the employees had paid for their own lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iii) Employer may deduct the expenses for lodging the players and coaches at the hotel as ordinary and necessary business expenses under section 162(a).

Example 4. (i) Employer hires Employee, who currently resides 500 miles from Employer's business premises. Employer pays for temporary lodging for Employee near Employer's business premises while Employee searches for a residence.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by providing housing while Employee searches for a residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary employee business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and §1.162–25T.

Example 5. (i) Employee normally travels two hours each way between her home and her office. Employee is working on a project that requires Employee to work late hours. In order to maximize Employee's availability to work on the project, Employer provides Employee with lodging at a hotel near the office.

(ii) Employer is paying the temporary lodging expense primarily to provide a personal benefit to Employee by relieving her of the daily commute to her residence. Employer incurs the expense only as additional compensation and not for a noncompensatory business purpose. If Employee paid the temporary lodging expense, the expense would not be an ordinary and necessary business expense under section 162(a) because the lodging primarily provides a personal benefit to Employee. Therefore, the value of the lodging is includible in Employee's gross income as additional compensation.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a) and §1.162–25T.

Example 6. (i) Employer requires an employee to be "on duty" each night to respond quickly to emergencies that may occur outside of normal working hours. Employees who work daytime hours each serve a "duty shift" once each month in addition to their normal work schedule. Emergencies that require the duty shift employee to respond occur regularly. Employer has no sleeping facilities on its business premises and pays for a hotel room nearby where the duty shift employee stays until called to respond to an emergency.

(ii) Employer has a noncompensatory business purpose for paying the lodging expenses. Employer is not providing the lodging to duty shift employees primarily to provide a social or personal benefit to the employees. If the employees had paid for their lodging, the expenses would have been deductible by the employees under section 162(a) as ordinary and necessary business expenses. Therefore, the value of the lodging is excluded from the employees' income as a working condition fringe.

(iii) Employer may deduct the lodging expenses as ordinary and necessary business expenses under section 162(a).

(d) *Effective/applicability date*. This section applies to expenses paid or incurred on or after the date these regulations are published as final regulations in the **Federal Register**. However, until these proposed regulations are published as final regulations in the **Federal Register**, taxpayers may apply the proposed regulations to local lodging expenses that are paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired.

Par. 3. In §1.262–1, paragraph (b)(5) is amended to read as follows:

§1.262–1 Personal, living, and family expenses.

* * * * *

(b) * * *

(5) Expenses incurred in traveling away from home (which include transportation expenses, meals, and lodging) and any other transportation expenses are not deductible unless they qualify as expenses deductible under section 162 (relating to trade or business expenses), section 170 (relating to charitable contributions), section 212 (relating to expenses for production of income), section 213 (relating to medical expenses), or section 217 (relating to moving expenses), and the regulations under those sections. The taxpayer's costs of commuting to his place of business or employment are personal expenses and do not qualify as deductible expenses. For expenses paid or incurred before the date these regulations are published as final regulations in the **Federal Register**, a taxpayer's expenses for lodging when not traveling away from home (local lodging) are nondeductible personal expenses. For expenses paid or incurred on or after the date these regulations are published as final regulations in the **Federal Register**, a taxpayer's expenses for local lodging are personal expenses and are not deductible unless they qualify as deductible expenses under section 162. However, until these regulations are published as final regulations in the **Federal Register**, taxpayers may deduct local lodging expenses that qualify under section 162 and are paid or incurred in taxable years for which the period of limitation on credit or refund under section 6511 has not expired. Except as permitted under section 162 or 212, the costs of a taxpayer's meals not incurred in traveling away from home are nondeductible personal expenses.

* * * * *

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

(Filed by the Office of the Federal Register on April 24, 2012, 8:45 a.m., and published in the issue of the Federal Register for April 25, 2012, 77 F.R. 24657)

Notice of Proposed Rulemaking

Certain Transfers of Property to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs)

REG–139991–08

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to regulations under section 337(d) of the Internal Revenue Code. The proposed regulations provide guidance concerning certain transfers of property from a C corporation to a Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT) and will affect the parties to such transactions. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by July 16, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–139991–08), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–139991–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–139991–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grid Glyer (202) 622–7930 or Maury Passman (202) 622–7750 with respect to the corporate issues, and David H. Kirk (202) 622–3060 with respect to the partnership issues; concerning submissions of comments, Oluwafunmilayo Taylor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Congress repealed the *General Utilities* doctrine in the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2085), as amended by the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647, 102 Stat. 3342), when sections 336 and 337 of the Internal Revenue Code were amended to require corporations to recognize gain or loss on the distribution of property in connection with complete liquidations other than certain subsidiary liquidations. Section 337(d)(1) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of *General Utilities* repeal, including rules to "ensure that such purposes may not be circumvented * * * through the use of a regulated investment company, a real estate investment trust, or tax-exempt entity * * *."

On March 18, 2003, regulations under §1.337(d)–7 (the regulations) were published in the **Federal Register** (T.D. 9047, 2003–1 C.B. 676 [68 Fed. Reg. 12817]). The regulations generally provide (in paragraphs (a) and (b)(1)) that if property of a C corporation (the C corporation transferor) becomes the property of a RIC or REIT by the qualification of that C corporation as a RIC or REIT or by the transfer of assets of that C corporation to a RIC or REIT (a conversion transaction), then the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the underlying regulations. This treatment, however, does not apply if the C corporation transferor elects to recognize gain and loss as if it sold the converted property to an unrelated party at fair market value (deemed sale treatment).

Explanation and Summary of Comments

This preamble first discusses the proposal as it relates to net built-in gain property acquired by a RIC or REIT either in a like-kind exchange (where the C corporation transferor's gain is not recognized by reason of section 1031) or in an involuntary conversion (where such gain is not recognized by reason of section 1033). This preamble then discusses a proposed revision to the definition of a C corporation in the regulations, which provides that a transfer of property by a tax-exempt entity to a RIC or REIT is not treated as a conversion transaction unless the tax-exempt entity would have been subject to tax if a deemed sale election had been made.

In addition, the proposed regulations also add definitions for the terms RIC, REIT, and S corporation. While these terms are not explicitly defined in the regulations, their meanings are both self-evident and unambiguous in that context. Nonetheless, for clarification and ease of use, the proposed regulations add explicit definitions.

A. *Like-Kind Exchanges and Involuntary Conversions*.

The current regulations generally provide that if property of a C corporation becomes the property of a RIC or REIT in a conversion transaction, then, absent a deemed sale election, the RIC or REIT will be subject to tax on the net built-in gain in the converted property under the rules of section 1374 and the underlying regulations (as modified in paragraph (b) of the regulations), as if the RIC or REIT were an S corporation.

Commentators have expressed concern that the general rule may inappropriately expose property transferred in certain exchanged basis transactions – specifically, like-kind exchanges and involuntary conversions – to this treatment. In these transactions, the C corporation transferor replaces property it transferred to a RIC or REIT with property that has an equivalent basis and built-in gain, and as a result, the built-in gain remains subject to corporate tax in the hands of the transferor. Therefore, there would not be any circumvention of the purposes of *General Utilities* repeal. Section 1.337(d)–4(b)(3) provides an exception in an analogous context (where a C corporation transfers all or substantially all of its assets to a tax-exempt entity) to the extent the transaction qualifies for nonrecognition treatment under section 1031 or section 1033.

Accordingly, the proposed regulations provide an exception from the general rule of the current regulations for a transfer of property by a C corporation to a RIC or REIT to the extent that the transfer qualifies for non-recognition treatment under either section 1031 or 1033. In such a transaction, the C corporation transferor's basis in the property it receives is derived from its basis in the transferred property, and thus reflects the built-in gain. At the same time, the basis of the transferee RIC or REIT in the converted property has no relation to the C corporation transferor's basis therein.

Treasury and the IRS are not proposing to extend this treatment to all exchanged basis transactions, such as exchanges that would otherwise qualify for nonrecognition treatment under section 351 of the Code, out of a concern that such an exemption could create opportunities to avoid corporate-level tax on built-in gains and would give rise to administrative difficulties that could be addressed only through extensive rulemaking.

B. *Transfers by Tax-Exempt Entities*.

The regulations apply to property transferred by a C corporation directly to a RIC or REIT, and indirectly through a partnership to the extent of any C corporation partner's proportionate share of the transferred property (the partnership rule). The regulations state that if the partnership elects deemed sale treatment with respect to such transfer, then any net gain recognized by the partnership on the deemed sale must be allocated to the C corporation partner.

Commentators have expressed concern that the partnership rule presents unintended effects when the partnership has multiple C corporation partners including both taxable and tax-exempt entities. If such a partnership transfers built-in gain property to a RIC or REIT in a conversion transaction without making a deemed sale election (that is, section 1374 treatment applies), and if the transferee RIC or REIT sells the converted property during the recognition period, then the RIC or REIT is subject to a corporate-level tax on the net built-in gain, including the portion of the net built-in gain that otherwise would have been allocated to tax-exempt C corporation partners had a deemed sale election been made. This is because the net recognized built-in gain is determined with reference to the amount of gain that would have been allocated to all C corporation partners, regardless of their taxable or tax-exempt status. In contrast, if the transferring partnership were to make a deemed sale election, the taxable C corporation partners would recognize gain that otherwise could have been deferred if section 1374 treatment had applied.

Treasury and the IRS believe that the inclusion of direct or indirect transfers by tax-exempt entities in the scope of the final regulations furthers the purposes of *General Utilities* repeal only to the extent that those entities would have been subject to tax had a deemed sale election been made (for example, if a deemed sale election would have generated unrelated business taxable income or would have adversely affected the entity's tax-exempt status). Accordingly, the proposed regulations would amend the final regulations to provide that the definition of a C corporation excludes tax-exempt entities within the meaning of §1.337(d)–4(c)(2). As a result, transfers of property by a tax-exempt entity to a RIC or REIT (or by a partnership to a RIC or REIT to the extent of a tax-exempt partner's distributive share of the gain in the transferred property) generally will not be subject to section 1374 treatment. For this purpose, however, an entity will not be considered to be tax-exempt to the extent it would be subject to tax (such as under section 511) under Title 26 of the United States Code with respect to gain (if any) resulting from a deemed sale election if such an election were made under §1.337(d)–7(c)(5) with respect to the transfer. Thus, for example, if a partnership in which a tax-exempt C corporation described in §1.337(d)–4(c)(2) is a partner transfers property to a RIC or REIT in a conversion transaction, and the tax-exempt entity would not have been subject to unrelated business income tax under section 511 or to tax under any other provision of the Code had the partnership made a deemed sale election in connection with the transfer, the transfer would be excluded from the scope of the final regulations (and the transferee RIC or REIT will not be subject to section 1374 treatment) to the extent of the tax-exempt entity's distributive share of the built-in gain or loss in the converted property. However, to the extent the tax-exempt partner would have been subject to unrelated business income tax under section 511 or to tax under any other provision of the Code with respect to its distributive share of the built-in gain on the property, the transferee RIC or REIT would be subject to tax on the built-in gain on the property under the rules of section 1374 as if the RIC or REIT were an S corporation unless the transferring partnership elects deemed sale treatment.

Section 1.337(d)–7(e) provides that the principles of §1.337(d)–7 apply to property transferred by a partnership to a RIC or REIT to the extent of any C corporation partner's distributive share of the gain or loss in the transferred property. The proposed regulations provide that §1.337(d)–7(e) also applies to determine the distributive share of the gain or loss in the transferred property of a C corporation partner of a higher-tier partnership in a tiered partnership structure in which the transferor partnership is a lower-tier partnership.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13565. Therefore, a regulatory assessment is not required. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities because the proposed regulations limit the situations in which these regulations apply to all businesses, including small businesses. This certification is based on the fact that these proposed regulations do not create additional obligations for, or impose an economic impact on, small entities. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Treasury and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Grid Glyer and Maury Passman of the Office of Associate Chief Counsel (Corporate). Other personnel from Treasury Department and the IRS participated in their development.

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Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.337(d)–7 is also issued under 26 U.S.C. 337(d) * * *

Par. 2. Section 1.337(d)–7 is amended by:

1. Revising paragraphs (a)(2), (d)(1), (e) and (f).

2. Adding paragraph (d)(3).

The revisions and addition read as follows:

§1.337(d)–7 Tax on property owned by a C corporation that becomes property of a RIC or REIT.

(a) * * *

(2) *Definitions*. For purposes of this section:

(i) *C corporation*. The term *C corporation* has the meaning provided in section 1361(a)(2) except that the term does not include a RIC, a REIT, or a tax-exempt entity within the meaning of paragraph (a)(2)(vi) of this section.

(ii) *Conversion transaction*. The term *conversion transaction* means the qualification of a C corporation as a RIC or REIT or the transfer of property owned by a C corporation to a RIC or REIT.

(iii) *RIC*. The term *RIC* means a regulated investment company within the meaning of section 851(a).

(iv) *REIT*. The term *REIT* means a real estate investment trust within the meaning of section 856(a).

(v) *S corporation*. The term *S corporation* has the meaning provided in section 1361(a)(1).

(vi) *Tax-exempt entity*. The term *tax-exempt entity*, with respect to a conversion transaction, means an entity—

(A) Described in §1.337(d)–4(c)(2), and

(B) That would not be subject to tax under Title 26 of the United States Code with respect to gain (if any) resulting from a deemed sale election if such an election were made under paragraph (c)(5) of this section with respect to the conversion transaction.

* * * * *

(d) *Exceptions*.—

(1) *Gain otherwise recognized*. Paragraph (a) of this section does not apply to any conversion transaction to the extent that gain or loss otherwise is recognized on such conversion transaction by the C corporation that either qualifies as a RIC or a REIT or that transfers property to a RIC or REIT. See, for example, sections 311(b), 336(a), 351(b), 351(e), 356, 357(c), 367, 368(a)(2)(F), 1001, 1031(b), and 1033(b).

* * * * *

(3) *Special rules for like-kind exchanges and involuntary conversions*.—(i) *In general*. Paragraph (a) of this section does not apply to a conversion transaction to the extent that a C corporation transfers property with a built-in gain to a RIC or REIT and the C corporation's gain is not recognized by reason of either section 1031 or 1033.

(ii) *Clarification regarding exchanged property previously subject to section 1374 treatment*. Notwithstanding paragraph (d)(3)(i) of this section, if, in a transaction described in paragraph (d)(3)(i) of this section, a RIC or REIT surrenders property that was subject to section 1374 treatment immediately prior to the transaction, the rules of section 1374(d)(6) will apply to continue section 1374 treatment to the replacement property acquired by the RIC or REIT in the transaction.

(iii) *Examples*. The rules of this paragraph (d)(3) are illustrated by the following examples. In each of the examples, X is a REIT, Y is a C corporation, and X and Y are not related.

Example 1. Section 1031(a) exchange. (i) *Facts*. X owned a building that it leased for commercial use (Property A). Y owned a building leased for commercial use (Property B). On January 1, Year 3, Y transferred Property B to X in exchange for Property A in a transaction that qualified for nonrecognition treatment under section 1031(a). Immediately before the exchange, Properties A and B each had a value of $100, X had an adjusted basis of $60 in Property A, Y had an adjusted basis of $70 in Property B, and X was not subject to section 1374 treatment with respect to Property A.

(ii) *Analysis*. The transfer of property (Property B) by Y (a C corporation) to X (a REIT) is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction qualified for nonrecognition treatment under section 1031(a) as to Y; thus, Y did not recognize any of its $30 gain. Therefore, the conversion transaction is not subject to paragraph (a) of this section by reason of paragraph (d)(3)(i) of this section.

Example 2. Section 1031(a) exchange of section 1374 property. (i) *Facts*. The facts are the same as in *Example 1*, except that X had acquired Property A in a conversion transaction in Year 2, and immediately before the Year 3 exchange X was subject to section 1374 treatment with respect to $25 of net built-in gain in Property A.

(ii) *Analysis*. The Year 3 transfer of Property B by Y to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction qualified for nonrecognition treatment under section 1031(a) as to Y; thus, Y did not recognize any of its $30 gain. Therefore, the Year 3 transfer is not subject to paragraph (a) of this section by reason of paragraph (d)(3)(i) of this section. However, X had been subject to section 1374 treatment with respect to $25 of net built-in gain in Property A immediately before the Year 3 transfer, and X's basis in Property B is determined (in whole or in part) by reference to its adjusted basis in Property A. Accordingly, the rules of section 1374(d)(6) apply and X is subject to section 1374 treatment on Property B with respect to the $25 net built-in gain. See paragraph (d)(3)(ii) of this section.

Example 3. Section 1031(b) exchange. (i) *Facts*. The facts are the same as in *Example 1*, except that immediately before the Year 3 exchange Property A had a value of $92, and X transferred Property A and $8 to Y in exchange for Property B in a transaction that qualified for nonrecognition treatment under section 1031(b).

(ii) *Analysis*. The transfer of Property B by Y to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction qualified for nonrecognition treatment as to Y under section 1031(b) (resulting from the receipt of $8 in money or other property in addition to the replacement property); as a result, Y recognized $8 of its $30 gain, and did not recognize the remaining $22 of gain. Paragraph (a) of this section does not apply to the transaction to the extent of the $8 gain recognized by Y by reason of paragraph (d)(1) of this section, or to the extent of the $22 gain realized but not recognized by Y by reason of paragraph (d)(3)(i) of this section.

Example 4. Section 1033(a) involuntary conversion of property held by a C corporation transferor. (i) *Facts*. Y owned uninsured, improved property (Property 1) that was involuntarily converted (within the meaning of section 1033(a)) in a fire. Y sold Property 1 for $100 to X, which owned an adjacent property and wanted Property 1 for use as a parking lot. Y had a $70 basis in Property 1 immediately before the sale. Y elected to defer gain recognition under section 1033(a)(2), and purchased qualifying replacement property (Property 2) for $100 from an unrelated party prior to the expiration of the period described in section 1033(a)(2)(B).

(ii) *Analysis*. The transfer of Property 1 by Y to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The conversion transaction (combined with Y's purchase of Property 2) qualified for nonrecognition treatment under section 1033(a) as to Y; thus, Y did not recognize any of its $30 gain. Therefore, the conversion transaction is not subject to paragraph (a) of this section by reason of paragraph (d)(3)(i) of this section.

Example 5. Section 1033(a) involuntary conversion of property held by a REIT. (i) *Facts*. X owned property (Property 1). On January 1, Year 2, Property 1 had a fair market value of $100 and a basis of $70, and X was not subject to section 1374 treatment with respect to Property 1. On that date, when Property 1 was under a threat of condemnation, X sold Property 1 to an unrelated party for $100 (First Transaction). X elected to defer gain recognition under section 1033(a)(2), and purchased qualifying replacement property (Property 2) for $100 from Y (Second Transaction) prior to the expiration of the period described in section 1033(a)(2)(B).

(ii) *Analysis*. The transfer of Property 2 by Y to X in the Second Transaction is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section. The Second Transaction (combined with the First Transaction) qualified for nonrecognition treatment under section 1033(a) as to X, but not as to Y. Assume no nonrecognition provision applied to Y; thus, Y recognized gain or loss on its sale of Property 2 in the Second Transaction, and the Second Transaction is not subject to paragraph (a) of this section by reason of paragraph (d)(3)(i) of this section.

(e) *Special rule for partnerships*—(1) *In general*. The principles of this section apply to property transferred by a partnership to a RIC or REIT to the extent of any gain or loss in the converted property that would be allocated directly or indirectly, through one or more partnerships, to a C corporation if the partnership sold the converted property to an unrelated party at fair market value on the deemed sale date (as defined in paragraph (c)(3) of this section). If the partnership were to elect deemed sale treatment under paragraph (c) of this section in lieu of section 1374 treatment under paragraph (b) of this section with respect to such transfer, then any net gain recognized by the partnership on the deemed sale must be allocated to the C corporation partner, but does not increase the capital account of any partner. Any adjustment to the partnership's basis in the RIC or REIT stock as a result of deemed sale treatment under paragraph (c) of this section shall constitute an adjustment to the basis of that stock with respect to the C corporation partner only. The principles of section 743 apply to such basis adjustment.

(2) *Example*. *Transfer by partnership of property to REIT*. (i) *Facts*. PRS, a partnership for Federal income tax purposes, has three partners: TE, a tax-exempt entity (within the meaning of §1.337(d)–7(a)(2)(vi)), owns 50 percent of the capital and profits of PRS; A, an individual, owns 30 percent of the capital and profits of PRS; and Y, a C corporation (within the meaning of §1.337(d)–7(a)(2)(i)), owns the remaining 20 percent. PRS owns a building that it leases for commercial use (Property 1). On January 1, Year 2, when PRS has an adjusted basis in Property 1 of $100 and Property 1 has a fair market value of $500, PRS transfers Property 1 to X, a REIT, in exchange for stock of X in an exchange described in section 351. PRS does not elect deemed sale treatment under paragraph (c) of this section.

(ii) *Analysis*. The transfer of Property 1 by PRS to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section to the extent of any gain or loss that would be allocated to any C corporation partner if PRS sold Property 1 at fair market value to an unrelated party on the deemed sale date. Y is a C corporation, but neither TE nor A is a C corporation within the meaning of paragraph (a)(2)(i) of this section. Therefore, the transfer of Property 1 by PRS to X is a conversion transaction within the meaning of paragraph (a)(2)(ii) of this section to the extent of Y's share of any such gain of PRS in Property 1. If PRS were to sell Property 1 to an unrelated party at fair market value on the deemed sale date, PRS would allocate $80 of built-in gain to Y. Thus, X is subject to section 1374 treatment on Property 1 with respect to $80 of built-in gain.

(f) *Effective/Applicability date*— (1) *In general*. Except as provided in paragraph (f)(2) of this section, this section applies to conversion transactions that occur on or after January 2, 2002. For conversion transactions that occurred on or after June 10, 1987, and before January 2, 2002, see §§1.337(d)–5 and 1.337(d)–6.

(2) *Special rule*. Paragraphs (a)(2), (d)(1), (d)(3) and (e) of this section apply to conversion transactions that occur on or after **[INSERT DATE OF PUBLICATION OF THE TREASURY DECISION ADOPTING THESE RULES AS FINAL REGULATIONS IN THE FEDERAL REGISTER]**. However, taxpayers may apply paragraphs (a)(2), (d)(1), (d)(3) and (e) of this section to conversion transactions that occurred before **[INSERT DATE OF PUBLICATION OF THE TREASURY DECISION ADOPTING THESE RULES AS FINAL REGULATIONS IN THE FEDERAL REGISTER]**. For conversion transactions that occurred on or after January 2, 2002 and before **[INSERT DATE OF PUBLICATION OF THE TREASURY DECISION ADOPTING THESE RULES AS FINAL REGULATIONS IN THE FEDERAL REGISTER]**, see §1.337(d)–7 as contained in 26 CFR part 1 in effect on April 1, 2011.

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

(Filed by the Office of the Federal Register on April 13, 2012, 8:45 a.m., and published in the issue of the Federal Register for April 16, 2012, 77 F.R. 22516)

Notice of Proposed Rulemaking

Examples of Program-Related Investments

REG–144267–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance to private foundations on program-related investments. These proposed regulations provide a series of new examples illustrating investments that qualify as program-related investments. In addition to private foundations, these proposed regulations affect foundation managers who participate in the making of program-related investments.

DATES: Comments and requests for a public hearing must be received by July 18, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–144267–11), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–144267–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–144267–11).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Courtney D. Jones at (202) 622–6070; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 4944(a) of the Internal Revenue Code (Code) imposes an excise tax on a private foundation that makes an investment that jeopardizes the carrying out of any of the private foundation's exempt purposes (a "jeopardizing investment"). Section 4944(a) also imposes an excise tax on foundation managers who knowingly participate in the making of a jeopardizing investment. Section 4944(b) imposes additional excise taxes on private foundations and foundation managers when investments are not timely removed from jeopardy.

Generally, under §53.4944–1(a)(2), a jeopardizing investment occurs when, based on the facts and circumstances at the time the investment is made, foundation managers fail to exercise ordinary business care and prudence in providing for the long- and short-term financial needs of the foundation. The determination of whether an investment is a jeopardizing investment is made on an investment-by-investment basis, taking into account the private foundation's entire portfolio. In exercising the requisite standard of care and prudence, foundation managers may take into account the expected investment return, price volatility, and the need for portfolio diversification.

Section 4944(c) excepts program-related investments ("PRIs") from treatment as jeopardizing investments. The regulations under section 4944(c) define a PRI as an investment: (1) the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B); (2) no significant purpose of which is the production of income or the appreciation of property; and (3) no purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(D) (attempting to influence legislation or participating in or intervening in any political campaign).

An investment is made primarily to accomplish one or more of the purposes described in section 170(c)(2)(B) (referred to as "charitable purposes") if it significantly furthers the accomplishment of the private foundation's exempt activities and would not have been made but for the relationship between the investment and the accomplishment of those exempt activities. In determining whether a significant purpose of an investment is the production of income or the appreciation of property, §53.4944–3(a)(2)(iii) provides that it shall be relevant whether investors who are engaged in the investment solely for the production of income would be likely to make the investment on the same terms as the private foundation.

The regulations under other Code sections in Chapter 42 accord special tax treatment to PRIs. For example, §53.4942(a)–2(c)(3)(ii)(d) excludes PRIs from the assets a private foundation takes into account when determining how much it must distribute under section 4942 as a "distributable amount" for the taxable year. In addition, §53.4942(a)–3(a)(2)(i) generally includes distributions that qualify as PRIs as "qualifying distributions" for purposes of meeting the distribution requirements under section 4942. Section 53.4943–10(b) excludes PRIs from being treated as business holdings for the purpose of calculating excess business holdings subject to excise tax under section 4943. Sections 53.4945–5(b)(4) and 53.4945–6(c)(1)(i) also make clear that PRIs will not constitute taxable expenditures under section 4945, provided the private foundation exercises "expenditure responsibility" in circumstances in which it is required to do so. Among other expenditure responsibility requirements, a private foundation must require a written commitment from the recipient of the PRI that the funds received will be used only for the purposes of the program-related investment. As noted, the primary purpose of a program-related investment must be the accomplishment of a charitable purpose.

Section 53.4944–3(b) contains nine examples illustrating investments that qualify as PRIs and one example of an investment that does not qualify as a PRI. The existing examples focus on domestic situations principally involving economically disadvantaged individuals and deteriorated urban areas.

The Treasury Department and the IRS are aware that the private foundation community would find it helpful if the regulations could include additional PRI examples that reflect current investment practices and illustrate certain principles, including that: (1) an activity conducted in a foreign country furthers a charitable purpose if the same activity would further a charitable purpose if conducted in the United States; (2) the charitable purposes served by a PRI are not limited to situations involving economically disadvantaged individuals and deteriorated urban areas; (3) the recipients of PRIs need not be within a charitable class if they are the instruments for furthering a charitable purpose; (4) a potentially high rate of return does not automatically prevent an investment from qualifying as program-related; (5) PRIs can be achieved through a variety of investments, including loans to individuals, tax-exempt organizations and for-profit organizations, and equity investments in for-profit organizations; (6) a credit enhancement arrangement may qualify as a PRI; and (7) a private foundation's acceptance of an equity position in conjunction with making a loan does not necessarily prevent the investment from qualifying as a PRI.

Explanation of Provisions

The proposed regulations add nine new examples that illustrate that a wider range of investments qualify as PRIs than the range currently presented in §53.4944–3(b). The proposed regulations do not modify the existing regulations; rather, they provide additional examples that illustrate the application of the existing regulations. Generally, the charitable activities illustrated in the new examples are based on published guidance and on financial structures described in private letter rulings.

The new examples demonstrate that a PRI may accomplish a variety of charitable purposes, such as advancing science, combating environmental deterioration, and promoting the arts. Several examples also demonstrate that an investment that funds activities in one or more foreign countries, including investments that alleviate the impact of a natural disaster or that fund educational programs for poor individuals, may further the accomplishment of charitable purposes and qualify as a PRI. One example illustrates that the existence of a high potential rate of return on an investment does not, by itself, prevent the investment from qualifying as a PRI. Another example illustrates that a private foundation's acceptance of an equity position in conjunction with making a loan does not necessarily prevent the investment from qualifying as a PRI, and two examples illustrate that a private foundation's provision of credit enhancement can qualify as a PRI.

The last example demonstrates that a guarantee arrangement may qualify as a PRI. The proposed regulations address solely the impact of section 4944 on the facts described and do not address whether there is a qualifying distribution under section 4942. However, the Treasury Department and the IRS conclude that, based on the facts described in the last example, there would be no qualifying distribution under section 4942 at the time the foundation enters into the guarantee arrangement. Under certain circumstances, a private foundation may treat payments made under a guarantee arrangement as qualifying distributions.

Finally, the proposed regulations include examples illustrating that loans and capital may be provided to individuals or entities that are not within a charitable class themselves, if the recipients are the instruments through which the private foundation accomplishes its exempt activities.

Proposed Effective/Applicability Date

Paragraph (b), *Examples 11* through *19* of this section will be effective on the date of publication of the Treasury decision adopting these examples as final regulations in the **Federal Register**. Taxpayers may rely on paragraph (b), *Examples 11* through *19* of this section before these proposed regulations are finalized.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the "Addresses" heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Courtney D. Jones, Office of the Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 53 is proposed to be amended as follows:

Part 53—FOUNDATION AND SIMILAR EXCISE TAXES

Par. 1. The authority citation for part 53 continues to read in part as follows:

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

Par. 2. Section 53.4944–3 is amended by adding *Examples 11*, *12*, *13*, *14*, *15*, *16*, *17*, *18*, and *19* to paragraph (b) and adding paragraph (c) to read as follows:

§53.4944–3. Exception for program-related investments.

* * * * *

(b) * * *

Example 11. X is a business enterprise that researches and develops new drugs. X's research demonstrates that a vaccine can be developed within ten years to prevent a disease that predominantly affects poor individuals in developing countries. However, neither X nor other commercial enterprises like X will devote their resources to develop the vaccine because the potential return on investment is significantly less than required by X or other commercial enterprises to undertake a project to develop new drugs. Y, a private foundation, enters into an investment agreement with X in order to induce X to develop the vaccine. Pursuant to the investment agreement, Y purchases shares of the common stock of S, a subsidiary corporation that X establishes to research and develop the vaccine. The agreement requires S to distribute the vaccine to poor individuals in developing countries at a price that is affordable to the affected population. The agreement also requires S to publish the research results, disclosing substantially all information about the results that would be useful to the interested public. S agrees that the publication of its research results will be made as promptly after the completion of the research as is reasonably possible without jeopardizing S's right to secure patents necessary to protect its ownership or control of the results of the research. The expected rate of return on Y's investment in S is less than the expected market rate of return for an investment of similar risk. Y's primary purpose in making the investment is to advance science. No significant purpose of the investment involves the production of income or the appreciation of property. The investment significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the investment and Y's exempt activities. Accordingly, the purchase of the common stock of S is a program-related investment.

Example 12. Q, a developing country, produces a substantial amount of recyclable solid waste materials that are currently disposed of in landfills and by incineration, contributing significantly to environmental deterioration in Q. X is a new business enterprise located in Q. X's only activity will be collecting recyclable solid waste materials in Q and delivering those materials to recycling centers that are inaccessible to a majority of the population. If successful, the recycling collection business would prevent pollution in Q caused by the usual disposition of solid waste materials. X has obtained funding from only a few commercial investors who are concerned about the environmental impact of solid waste disposal. Although X made substantial efforts to procure additional funding, X has not been able to obtain sufficient funding because the expected rate of return is significantly less than the acceptable rate of return on an investment of this type. Because X has been unable to attract additional investors on the same terms as the initial investors, Y, a private foundation, enters into an investment agreement with X to purchase shares of X's common stock on the same terms as X's initial investors. Although there is a high risk associated with the investment in X, there is also the potential for a high rate of return if X is successful in the recycling business in Q. Y's primary purpose in making the investment is to combat environmental deterioration. No significant purpose of the investment involves the production of income or the appreciation of property. The investment significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the investment and Y's exempt activities. Accordingly, the purchase of the common stock is a program-related investment.

Example 13. Assume the facts as stated in *Example 12*, except that X offers Y shares of X's common stock in order to induce Y to make a below-market rate loan to X. X previously made the same offer to a number of commercial investors. These investors were unwilling to provide loans to X on such terms because the expected return on the combined package of stock and debt was below the expected market return for such an investment based on the level of risk involved, and they were also unwilling to provide loans on other terms X considers economically feasible. Y accepts the stock and makes the loan on the same terms that X offered to the commercial investors. Y plans to liquidate its stock in X as soon as the recycling collection business in Q is profitable or it is established that the business will never become profitable. Y's primary purpose in making the investment is to combat environmental deterioration. No significant purpose of the investment involves the production of income or the appreciation of property. The investment significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the investment and Y's exempt activities. Accordingly, the loan accompanied by the acceptance of common stock is a program-related investment.

Example 14. X is a business enterprise located in V, a rural area in State Z. X employs a large number of poor individuals in V. A natural disaster occurs in V, causing significant damage to the area. The business operations of X are harmed because of damage to X's equipment and buildings. X has insufficient funds to continue its business operations and conventional sources of funds are unwilling or unable to provide loans to X on terms it considers economically feasible. In order to enable X to continue its business operations, Y, a private foundation, makes a loan to X bearing interest below the market rate for commercial loans of comparable risk. Y's primary purpose in making the loan is to provide relief to the poor and distressed. No significant purpose of the loan involves the production of income or the appreciation of property. The loan significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the loan and Y's exempt activities. Accordingly, the loan is a program-related investment.

Example 15. A natural disaster occurs in W, a developing country, causing significant damage to W's infrastructure. Y, a private foundation, makes loans bearing interest below the market rate for commercial loans of comparable risk to H and K, poor individuals who live in W, to enable each of them to start a small business. H will open a roadside fruit stand. K will start a weaving business. Conventional sources of funds were unwilling or unable to provide loans to H or K on terms they consider economically feasible. Y's primary purpose in making the loans is to provide relief to the poor and distressed. No significant purpose of the loans involves the production of income or the appreciation of property. The loans significantly further the accomplishment of Y's exempt activities and would not have been made but for such relationship between the loans and Y's exempt activities. Accordingly, the loans to H and K are program-related investments.

Example 16. X is a limited liability company treated as a partnership for federal income tax purposes. X purchases coffee from poor farmers residing in a developing country, either directly or through farmer-owned cooperatives. To fund the provision of efficient water management, crop cultivation, pest management, and farm management training to the poor farmers by X, Y, a private foundation, makes a loan to X bearing interest below the market rate for commercial loans of comparable risk. The loan agreement requires X to use the proceeds from the loan to provide the training to the poor farmers. X would not provide such training to the poor farmers absent the loan. Y's primary purpose in making the loan is to educate poor farmers about advanced agricultural methods. No significant purpose of the loan involves the production of income or the appreciation of property. The loan significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the loan and Y's exempt activities. Accordingly, the loan is a program-related investment.

Example 17. X is a social welfare organization that is recognized as an organization described in section 501(c)(4). X was formed to develop and encourage interest in painting, sculpture and other art forms by, among other things, conducting weekly community art exhibits. X needs to purchase a large exhibition space to accommodate the demand for exhibition space within the community. Conventional sources of funds are unwilling or unable to provide funds to X on terms it considers economically feasible. Y, a private foundation, makes a loan to X at an interest rate below the market rate for commercial loans of comparable risk to fund the purchase of the new space. Y's primary purpose in making the loan is to promote the arts. No significant purpose of the loan involves the production of income or the appreciation of property. The loan significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the loan and Y's exempt activities. Accordingly, the loan is a program-related investment.

Example 18. X is a non-profit corporation that provides child care services in a low-income neighborhood, enabling many residents of the neighborhood to be gainfully employed. X meets the requirements of section 501(k) and is recognized as an organization described in section 501(c)(3). X's current child care facility has reached capacity and has a long waiting list. X has determined that the demand for its services warrants the construction of a new child care facility in the same neighborhood. X is unable to obtain a loan from conventional sources of funds including B, a commercial bank, because X lacks sufficient credit to support the financing of a new facility. Pursuant to a deposit agreement, Y, a private foundation, deposits $h in B, and B lends an identical amount to X to construct the new child care facility. The deposit agreement requires Y to keep $h on deposit with B during the term of X's loan and provides that if X defaults on the loan, B may deduct the amount of the default from the deposit. To facilitate B's access to the funds in the event of default, the agreement requires that the funds be invested in instruments that allow B to access them readily. The deposit agreement also provides that Y will earn interest at a rate of t% on the deposit. The t% rate is substantially less than Y could otherwise earn on this sum of money, if Y invested it elsewhere. The loan agreement between B and X requires X to use the proceeds from the loan to construct the new child care facility. Y's primary purpose in making the deposit is to further its educational purposes by enabling X to provide child care services within the meaning of section 501(k). No significant purpose of the deposit involves the production of income or the appreciation of property. The deposit significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the deposit and Y's exempt activities. Accordingly, the deposit is a program-related investment.

Example 19. Assume the same facts as stated in *Example 18*, except that instead of making a deposit of $h into B, Y enters into a guarantee agreement with B. The guarantee agreement provides that if X defaults on the loan, Y will repay the balance due on the loan to B. B was unwilling to make the loan to X in the absence of Y's guarantee. X must use the proceeds from the loan to construct the new child care facility. At the same time, X and Y enter into a reimbursement agreement whereby X agrees to reimburse Y for any and all amounts paid to B under the guarantee agreement. The signed guarantee and reimbursement agreements together constitute a "guarantee and reimbursement arrangement." Y's primary purpose in entering into the guarantee and reimbursement arrangement is to further Y's educational purposes. No significant purpose of the guarantee and reimbursement arrangement involves the production of income or the appreciation of property. The guarantee and reimbursement arrangement significantly furthers the accomplishment of Y's exempt activities and would not have been made but for such relationship between the guarantee and reimbursement arrangement and Y's exempt activities. Accordingly, the guarantee and reimbursement arrangement is a program-related investment.

(c) *Effective/applicability date*. Paragraph (b), *Examples 11* through *19* of this section will be effective on the date of publication of the Treasury decision adopting these examples as final regulations in the **Federal Register**. Taxpayers may rely on paragraph (b), *Examples 11* through *19* of this section before these proposed regulations are finalized.

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

(Filed by the Office of the Federal Register on April 18, 2012, 8:45 a.m., and published in the issue of the Federal Register for April 19, 2012, 77 F.R. 23429)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

Numerical Finding List[1]

Bulletins 2012–1 through 2012–21

Announcements:

Notices:

Notices— Continued:

Proposed Regulations:

Revenue Procedures:

Revenue Procedures— Continued:

Revenue Rulings:

Treasury Decisions:

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2011–27 through 2011–52 is in Internal Revenue Bulletin 2011–52, dated December 27, 2011.

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

Bulletins 2012–1 through 2012–21

Announcements:

2002-44
Supplemented by
Notice 2012-13, 2012-9 I.R.B. *421*

2010-19
Obsoleted by
Ann. 2012-12, 2012-12 I.R.B. *562*

2011-63
Corrected by
Ann. 2012-9, 2012-7 I.R.B. *377*

Notices:

2006-52
As clarified and amplified by Notice 2008-40, is modified by
Notice 2012-26, 2012-17 I.R.B. *847*

2006-87
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2006-99
Superseded in part by
Notice 2012-20, 2012-13 I.R.B. *574*

2007-25
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2007-47
Obsoleted by
REG-137589-07, 2012-21 I.R.B. *942*

2007-77
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2007-95
Obsoleted in part by
T.D. 9576, 2012-15 I.R.B. *723*

2008-98
Modified by
Notice 2012-29, 2012-18 I.R.B. *872*

2008-107
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2009-86
Modified by
Notice 2012-29, 2012-18 I.R.B. *872*

2010-27
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

Notices— Continued:

2010-88
As modified by Ann. 2011-40, is superseded by
Notice 2012-1, 2012-2 I.R.B. *260*

2010-92
Obsoleted by
T.D. 9577, 2012-15 I.R.B. *730*

2011-8
Superseded by
Notice 2012-19, 2012-10 I.R.B. *440*

2011-28
Superseded by
Notice 2012-9, 2012-4 I.R.B. *315*

Proposed Regulations:

REG-208274-86
Withdrawn by
Ann. 2012-11, 2012-13 I.R.B. *611*

Revenue Procedures:

2000-43
Amplified, modified and superseded by
Rev. Proc. 2012-18, 2012-10 I.R.B. *455*

2003-61
Superseded by
Notice 2012-8, 2012-4 I.R.B. *309*

2007-44
Modified by
Ann. 2012-3, 2012-4 I.R.B. *335*

2010-43
Superseded by
Rev. Proc. 2012-22, 2012-17 I.R.B. *853*

2011-1
Superseded by
Rev. Proc. 2012-1, 2012-1 I.R.B. *1*

2011-2
Superseded by
Rev. Proc. 2012-2, 2012-1 I.R.B. *92*

2011-3
Superseded by
Rev. Proc. 2012-3, 2012-1 I.R.B. *113*

2011-4
Superseded by
Rev. Proc. 2012-4, 2012-1 I.R.B. *125*

2011-5
Superseded by
Rev. Proc. 2012-5, 2012-1 I.R.B. *169*

2011-6
Superseded by
Rev. Proc. 2012-6, 2012-1 I.R.B. *197*

Revenue Procedures— Continued:

2011-7
Superseded by
Rev. Proc. 2012-7, 2012-1 I.R.B. *232*

2011-8
Superseded by
Rev. Proc. 2012-8, 2012-1 I.R.B. *235*

2011-9
Superseded by
Rev. Proc. 2012-9, 2012-2 I.R.B. *261*

2011-10
Superseded by
Rev. Proc. 2012-10, 2012-2 I.R.B. *273*

2011-14
Modified and clarified by
Rev. Proc. 2012-19, 2012-14 I.R.B. *689*
Rev. Proc. 2012-20, 2012-14 I.R.B. *700*

2011-23
Obsoleted in part by
Rev. Proc. 2012-25, 2012-20 I.R.B. *914*

2011-37
Obsoleted in part by
Rev. Proc. 2012-16, 2012-10 I.R.B. *452*

2011-40
Corrected by
Ann. 2012-6, 2012-6 I.R.B. *366*

2011-49
Modified by
Ann. 2012-3, 2012-4 I.R.B. *335*

2011-50
Corrected by
Ann. 2012-6, 2012-6 I.R.B. *366*

2011-51
Corrected by
Ann. 2012-6, 2012-6 I.R.B. *366*

2011-62
Corrected by
Ann. 2012-17, 2012-18 I.R.B. *876*

2012-8
Corrected by
Ann. 2012-7, 2012-6 I.R.B. *367*

Revenue Rulings:

92-19
Supplemented in part by
Rev. Rul. 2012-6, 2012-6 I.R.B. *349*

2008-40
Modified by
Notice 2012-6, 2012-3 I.R.B. *293*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2011–27 through 2011–52 is in Internal Revenue Bulletin 2011–52, dated December 27, 2011.

Revenue Rulings— Continued:

2011-1

Modified by

Notice 2012-6, 2012-3 I.R.B. *293*

2012-9

Modified by

Rev. Rul. 2012-12, 2012-15 I.R.B. *748*

Treasury Decision:

9517

Corrected by

Ann. 2012-4, 2012-4 I.R.B. *335*
Ann. 2012-5, 2012-5 I.R.B. *348*

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