Internal Revenue
bulletin

Bulletin No. 2008-2
January 14, 2008

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2008–1, page 248.

Foreign currency exchange traded notes. This ruling holds that a foreign currency exchange traded note is debt for U.S. federal tax purposes, even when the initial investment and repayment are made in U.S. dollars and the investor may get back fewer U.S. dollars than it invested. A companion publication to this ruling, Notice 2008–2, will ask for comments on prepaid forward contracts and similar arrangements that are not treated as debt for U.S. federal tax purposes.

Rev. Rul. 2008–2, page 247.

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period January through March 2008. This ruling provides the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through March 2008.

Rev. Rul. 2008–3, page 249.

Section 1274A — Inflation adjusted numbers for 2008. This ruling provides the dollar amounts, increased by the 2008 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2007–4 supplemented and superseded.

Notice 2008–1, page 251.

This notice provides rules under which a 2-percent shareholder-employee in an S corporation is entitled to the deduction under section 162(l) of the Code for accident and health insurance premiums that are paid or reimbursed by the S corporation and included in the 2-percent shareholder-employee's gross income.

Notice 2008–2, page 252.

This notice seeks comments on, among other things, whether the parties to a prepaid forward contract or similar arrangement (that is not otherwise indebtedness for U.S. federal tax purposes) should be required to accrue income/expense during the term of a contract and asks for comments on an appropriate method for accruing income or expense. The notice also asks for comments on various domestic and international issues (including character and source) that would need to be addressed if income/expense accruals were deemed appropriate. This notice is a companion publication to Rev. Rul. 2008–1, which concludes that a prepaid forward contract on foreign currency is treated as debt for federal tax purposes.

Notice 2008–3, page 253.

On January 1, 2008, the impuesto empresarial a tasa única (IETU), a single rate business tax adopted by Mexico, will become effective. This notice provides that, pending the outcome of a study to determine whether the IETU is a creditable income tax, the IRS will not challenge a taxpayer's position that the IETU is an income tax that is eligible for a credit under Article 24(1) of the U.S.-Mexico income tax treaty.

Notice 2008–4, page 253.

This notice provides interim guidance to the public on how to file claims with the IRS Whistleblower Office for payment of awards to persons who detect and report underpayments of tax.

Notice 2008–5, page 256.

This notice provides guidance under section 152(d) of the Code for determining whether an individual is a qualifying relative for whom the taxpayer may claim a dependency exemption deduction under section 151(c).

(Continued on the next page)

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

EXEMPT ORGANIZATIONS

Rev. Proc. 2008–9, page 258.

Determination letters and rulings. This document sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under sections 501 and 521 of the Code. The procedures also apply to the revocation and modification of determination letters or rulings, and provide guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under section 7428. Rev. Proc. 2007–52 superseded.

Announcement 2008–3, page 269.

The IRS has revoked its determination that The Stevens Foundation of New York, NY; American Assistance Corporation of Plano, TX; Tri-State Community Development Resource Center, Inc., of Camden, NJ; Cytogenetics Foundation of Omaha, NE; Proyecto Esperanza of Los Angeles, CA; Community Fellowship for Battered Women of Silicon Valley, Inc., of San Jose, CA; Brooklyn Community Counseling Center, Inc., of Brooklyn, NY; Peace Parents and Elders of Africa for Common Efforts of Minneapolis, MN; The Healing Center of Children with Disabilities, Inc., of Macon, GA; Mahisekar Charitable Supporting Organization of Orland Park, IL; and Down Payment Assistance Foundation, Inc., of Glendora, CA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

TAX CONVENTIONS

Notice 2008–3, page 253.

On January 1, 2008, the impuesto empresarial a tasa única (IETU), a single rate business tax adopted by Mexico, will become effective. This notice provides that, pending the outcome of a study to determine whether the IETU is a creditable income tax, the IRS will not challenge a taxpayer's position that the IETU is an income tax that is eligible for a credit under Article 24(1) of the U.S.-Mexico income tax treaty.

ADMINISTRATIVE

Notice 2008–4, page 253.

This notice provides interim guidance to the public on how to file claims with the IRS Whistleblower Office for payment of awards to persons who detect and report underpayments of tax.

Announcement 2008–4, page 269.

This document contains notice of a public hearing on proposed regulations (REG–113891–07, 2007–42 I.R.B. 821) providing guidance regarding the use of certain funding balances maintained for defined benefit pension plans and regarding benefit restrictions for certain underfunded defined benefit pension plans. A public hearing is scheduled for January 28, 2008.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

Section 42.—Low-Income Housing Credit

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period January through March 2008. This ruling provides the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period January through March 2008.

Rev. Rul. 2008–2

In Rev. Rul. 90–60, 1990–2 C.B. 3, the Internal Revenue Service provided guidance to taxpayers concerning the general methodology used by the Treasury Department in computing the bond factor amounts used in calculating the amount of bond considered satisfactory by the Secretary under § 42(j)(6) of the Internal Revenue Code. It further announced that the Secretary would publish in the Internal Revenue Bulletin a table of bond factor amounts for dispositions occurring during each calendar month.

Rev. Proc. 99–11, 1999–1 C.B. 275, established a collateral program as an alternative to providing a surety bond for taxpayers to avoid or defer recapture of the low-income housing tax credits under § 42(j)(6). Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) or the amount of United States Treasury securities to pledge in a Treasury Direct Account under Rev. Proc. 99–11 for dispositions of qualified low-income buildings or interests therein during the period January through March 2008.

Table 1
Rev. Rul. 2008–2
Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year										
Month of Disposition	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Jan '08	16.41	30.70	43.23	54.19	63.81	65.42	67.35	69.63	72.14	74.79	77.33
Feb '08	16.41	30.70	43.23	54.19	63.81	65.27	67.19	69.46	71.96	74.59	77.11
Mar '08	16.41	30.70	43.23	54.19	63.81	65.12	67.04	69.29	71.78	74.39	76.89

Table 1 (cont'd)
Rev. Rul. 2008–2
Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year										
Month of Disposition	2005	2006	2007	2008							
Jan '08	79.56	81.57	83.59	83.98							
Feb '08	79.31	81.30	83.27	83.98							
Mar '08	79.07	81.05	82.99	83.98							

For a list of bond factor amounts applicable to dispositions occurring during other calendar years, see: Rev. Rul. 98–3, 1998–1 C.B. 248; Rev. Rul. 2001–2, 2001–1 C.B. 255; Rev. Rul. 2001–53, 2001–2 C.B. 488; Rev. Rul. 2002–72, 2002–2 C.B. 759; Rev. Rul. 2003–117, 2003–2 C.B. 1051; Rev. Rul. 2004–100, 2004–2 C.B. 718; Rev. Rul. 2005–67, 2005–2 C.B. 771; Rev. Rul. 2006–51, 2006–2 C.B. 632; and Rev. Rul. 2007–62, 2007–41 I.R.B. 767.

DRAFTING INFORMATION

The principal author of this revenue ruling is David McDonnell of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling,

contact Mr. McDonnell at (202) 622–3040 (not a toll-free call).

Section 162.—Trade or Business Expenses

A notice provides rules under which a 2-percent shareholder-employee in an S corporation is entitled to the deduction under section 162(l) of the Internal Revenue Code for accident and health insurance premiums that are paid or reimbursed by the S corporation and included in the 2-percent shareholder-employee's gross income. See Notice 2008-1, page 251.

Section 483.—Interest on Certain Deferred Payments

A ruling provides the dollar amounts, increased by the 2008 inflation adjustment, for section 1274A of the Code. See Rev. Rul. 2008-3, page 249.

Section 988.—Treatment of Certain Foreign Currency Transactions

26 CFR 1.988–1: Certain definitions and special rules.
(Also § 1.988–2.)

Foreign currency exchange traded notes. This ruling holds that a foreign currency exchange traded note is debt for U.S. federal tax purposes, even when the initial investment and repayment are made in U.S. dollars and the investor may get back fewer U.S. dollars than it invested. A companion publication to this ruling, Notice 2008–2, will ask for comments on prepaid forward contracts and similar arrangements that are not treated as debt for U.S. federal tax purposes.

Rev. Rul. 2008–1

ISSUE

What is the characterization for U.S. federal tax purposes of an instrument (described further below) that is issued and redeemed for U.S. dollars, but that provides an economic return that is determined by reference to the euro and market interest rates in respect of the euro?

FACTS

Assume that on January 1, 2007, the spot rate of exchange of U.S. dollars for euros was $1 = €0.75. On January 1, 2007, Holder delivered $100 to Issuer in exchange for the Issuer's obligation (the "Instrument") to deliver to Holder, on January 1, 2010, the U.S. dollar equivalent of an amount of euros (the "U.S. Dollar Equivalent Amount"). The U.S. Dollar Equivalent Amount is determinable on January 1, 2010, and is the sum of the following amounts translated into U.S. dollars at the spot rate on January 1, 2010: (i) €75, and (ii) an amount of euros calculated by reference to a compound stated rate of return applied to €75 from January 1, 2007, until January 1, 2010. The compound stated rate of return is the excess of a rate based on euro interest rates over a rate labeled as a "fee" for the benefit of the Issuer. (The U.S. Dollar Equivalent Amount to be paid by Issuer to Holder on January 1, 2010, may also be determined by reference to a mathematical formula that generates the same substantive effect as the methodology described above.)

Holder and Issuer expect that Issuer will pay the U.S. Dollar Equivalent Amount on January 1, 2010. The legal remedies provided in the Instrument are not materially different than legal remedies associated with instruments that are debt for federal tax purposes.

The U.S. dollar is the functional currency of Holder.

There is a significant possibility that the U.S. Dollar Equivalent Amount payable by Issuer to Holder on January 1, 2010, may be significantly less than $100.

ANALYSIS

An instrument that requires payments to be made in a foreign currency (that is, nonfunctional currency) can be debt for U.S. federal income tax purposes. *See, e.g.*, section 988(c)(1)(B)(i) of the Internal Revenue Code. Thus, although nonfunctional currency is considered to be "property" for U.S. federal tax purposes (*see, e.g.*, *Philip Morris Inc. v. Commissioner*, 71 F.3d 1040 (2d Cir. 1995), *aff'g* 104 T.C. 61 (1995); *National-Standard Company v. Commissioner*, 749 F.2d 369 (6th Cir. 1984), *aff'g* 80 T.C. 551 (1983)), it is treated like money for purposes of determining the amount and timing of interest that accrues on debt. *See* §1.988–2(b)(2) of the Income Tax Regulations; S. Rep. No. 313, 99th Cong., 2d Sess., 1986–3 (Vol. 3) C.B. 461–463 (1986). Section 988 and regulations thereunder also provide that the acquisition of a debt instrument or becoming the obligor under a debt instrument is a section 988 transaction if the amount that a taxpayer is entitled to receive or is required to pay is determined by reference to the value of a nonfunctional currency. *See, e.g.*, section 988(c)(1); §§ 1.988–1(a)(1) (flush language), 1.988–2(b)(2)(i)(B)(2). These provisions indicate that a financial instrument all the payments of which are determined by reference to a single currency can be debt, notwithstanding the fact that (i) all actual payments due under the instrument are made in a different payment currency, and (ii) the amount of the different payment currency that the issuer pays at maturity may be less than the amount of the different payment currency that was initially advanced. Indeed, section 988 was adopted, in part, to negate suggestions "that U.S. tax consequences can be manipulated by arranging to repay a foreign-currency denominated loan in U.S. dollars equivalent in value at repayment to the foreign currency borrowed." S. Rep. No. 313, 99th Cong., 2d Sess., 1986–3 (Vol. 3) C.B. 451 (1986). *See also* H.R. Rep. No. 426, 99th Cong. 1st Sess. 1986–3 (Vol. 2) C.B. 466 (1985) and General Explanation of the Tax Reform Act of 1986, 100th Cong., 1st Sess., 1087 (1987).

The Instrument, in form, resembles a U.S. dollar denominated derivative contract in which the Holder prepays its obligations under the contract, and is entitled to receive a return based exclusively on the value of property at maturity. (*See* Notice 2008–2, 2008–2 I.R.B. 252, dated January 14, 2008, requesting comments with respect to these types of derivative contracts.) However, the U.S. Dollar Equivalent Amount that is payable at maturity by the Issuer under the terms of the Instrument is determined exclusively by reference to (i) the U.S. dollar value of the euros at issuance and at maturity, and (ii) market interest rates in respect of the euro. At inception (on January 1, 2007), the Holder delivers the U.S. dollar equivalent of €75, and at maturity (on January 1, 2010) the Issuer is required to pay the U.S. dollar equivalent of €75, plus the U.S. dollar value at maturity of a return based on euro interest rates. The fact that intervening currency fluctuations may cause

the amount of U.S. dollars that Holder receives at maturity (on January 1, 2010) to be less than the amount of U.S. dollars that the Holder paid for the Instrument (on January 1, 2007) does not affect the characterization of the Instrument as debt, which is based on an analysis of payments with respect to the euro. The Issuer's translation of U.S. dollars into euros (on January 1, 2007) and euros into U.S. dollars (on January 1, 2010) is not relevant to the Instrument's characterization.

HOLDING

For U.S. federal tax purposes, the Instrument is euro-denominated indebtedness of Issuer. This result is not affected if the Instrument is (i) privately offered, (ii) publicly offered, or (iii) traded on an exchange.

DRAFTING INFORMATION

The principal authors of this revenue ruling are John W. Rogers III of the Office of the Associate Chief Counsel (Financial Institutions & Products) and Margaret Harris of the Office of Associate Chief Counsel (International). For further information regarding this revenue ruling, contact Mr. Rogers at (202) 622–3950 or Ms. Harris at 202–622–3870 (not toll-free calls).

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

A ruling provides the dollar amounts, increased by the 2008 inflation adjustment, for section 1274A of the Code. See Rev. Rul. 2008-3, page 249.

Section 1274A.—Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed $2,800,000

26 CFR 1.1274A–1: Special rules for certain transactions where stated principal amount does not exceed $2,800,000.
(Also §§ 483, 1274.)

Section 1274A — Inflation adjusted numbers for 2008. This ruling provides the dollar amounts, increased by the 2008 inflation adjustment, for section 1274A of the Code. Rev. Rul. 2007–4 supplemented and superseded.

Rev. Rul. 2008–3

This revenue ruling provides the dollar amounts, increased by the 2008 inflation adjustment, for § 1274A of the Internal Revenue Code.

BACKGROUND

In general, §§ 483 and 1274 determine the principal amount of a debt instrument given in consideration for the sale or exchange of nonpublicly traded property. In addition, any interest on a debt instrument subject to § 1274 is taken into account under the original issue discount provisions of the Code. Section 1274A, however, modifies the rules under §§ 483 and 1274 for certain types of debt instruments.

In the case of a "qualified debt instrument," the discount rate used for purposes of §§ 483 and 1274 may not exceed 9 percent, compounded semiannually. Section 1274A(b) defines a qualified debt instrument as any debt instrument given in consideration for the sale or exchange of property (other than new § 38 property within the meaning of § 48(b), as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) if the stated principal amount of the instrument does not exceed the amount specified in § 1274A(b). For debt instruments arising out of sales or exchanges before January 1, 1990, this amount is $2,800,000.

In the case of a "cash method debt instrument," as defined in § 1274A(c), the borrower and lender may elect to use the cash receipts and disbursements method of accounting. In particular, for any cash method debt instrument, § 1274 does not apply, and interest on the instrument is accounted for by both the borrower and the lender under the cash method of accounting. A cash method debt instrument is a qualified debt instrument that meets the following additional requirements: (A) In the case of instruments arising out of sales or exchanges before January 1, 1990, the stated principal amount does not exceed $2,000,000; (B) the lender does not use an accrual method of accounting and is not a dealer with respect to the property sold or exchanged; (C) § 1274 would have applied to the debt instrument but for an election under § 1274A(c); and (D) an election under § 1274A(c) is jointly made with respect to the debt instrument by the borrower and lender. Section 1.1274A–1(c)(1) of the Income Tax Regulations provides rules concerning the time for, and manner of, making this election.

Section 1274A(d)(2) provides that, for any debt instrument arising out of a sale or exchange during any calendar year after 1989, the dollar amounts stated in § 1274A(b) and § 1274A(c)(2)(A) are increased by the inflation adjustment for the calendar year. Any increase due to the inflation adjustment is rounded to the nearest multiple of $100 (or, if the increase is a multiple of $50 and not of $100, the increase is increased to the nearest multiple of $100). The inflation adjustment for any calendar year is the percentage (if any) by which the CPI for the preceding calendar year exceeds the CPI for calendar year 1988. Section 1274A(d)(2)(B) defines the CPI for any calendar year as the average of the Consumer Price Index as of the close of the 12-month period ending on September 30 of that calendar year.

INFLATION-ADJUSTED AMOUNTS UNDER § 1274A

For debt instruments arising out of sales or exchanges after December 31, 1989, the inflation-adjusted amounts under § 1274A are shown in Table 1.

Rev. Rul. 2008–3 Table 1
Inflation-Adjusted Amounts Under § 1274A

Calendar Year of Sale or Exchange	1274A(b) Amount (qualified debt instrument)	1274A(c)(2)(A) Amount (cash method debt instrument)
1990	$2,933,200	$2,095,100
1991	$3,079,600	$2,199,700
1992	$3,234,900	$2,310,600
1993	$3,332,400	$2,380,300
1994	$3,433,500	$2,452,500
1995	$3,523,600	$2,516,900
1996	$3,622,500	$2,587,500
1997	$3,723,800	$2,659,900
1998	$3,823,100	$2,730,800
1999	$3,885,500	$2,775,400
2000	$3,960,100	$2,828,700
2001	$4,085,900	$2,918,500
2002	$4,217,500	$3,012,500
2003	$4,280,800	$3,057,700
2004	$4,381,300	$3,129,500
2005	$4,483,000	$3,202,100
2006	$4,630,300	$3,307,400
2007	$4,800,800	$3,429,100
2008	$4,913,400	$3,509,600

Note: These inflation adjustments were computed using the All-Urban, Consumer Price Index, 1982–1984 base, published by the Bureau of Labor Statistics.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2007–4, 2007–4 I.R.B. 351, is supplemented and superseded.

DRAFTING INFORMATION

The author of this revenue ruling is Richard C. LaFalce of the Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this revenue ruling, please contact Mr. LaFalce at (202) 622–3930 (not a toll-free call).

Section 1372.—Tax Treatment of S Corporations and Their Shareholders

This notice provides rules under which a 2-percent shareholder-employee in an S corporation is entitled to the deduction under section 162(l) of the Internal Revenue Code for accident and health insurance premiums that are paid or reimbursed by the S corporation and included in the 2-percent shareholder-employee's gross income. See Notice 2008-1, page 251.

Part III. Administrative, Procedural, and Miscellaneous

Special Rules for Health Insurance Costs of 2-Percent Shareholder-Employees

Notice 2008–1

PURPOSE

This notice provides rules under which a 2-percent shareholder-employee in an S corporation is entitled to the deduction under §162(l) of the Internal Revenue Code for accident and health insurance premiums that are paid or reimbursed by the S corporation and included in the 2-percent shareholder-employee's gross income.

LAW AND ANALYSIS

Section 1372(a) provides that, for purposes of applying the income tax provisions of the Code relating to employee fringe benefits, an S corporation shall be treated as a partnership, and any 2-percent shareholder of the S corporation shall be treated as a partner of such partnership. For purposes of § 1372, the term "2-percent shareholder" is any person who owns (or is considered as owning within the meaning of § 318) on any day during the taxable year of the S corporation more than 2 percent of the outstanding stock of such corporation or stock possessing more than 2 percent of the total combined voting power of all stock of such corporation. Section 1372(b).

Accident and health insurance premiums paid or furnished by an S corporation on behalf of its 2-percent shareholders in consideration for services rendered are treated for income tax purposes like partnership guaranteed payments under § 707(c) of the Code. Rev. Rul. 91–26, 1991–1 C.B. 184. An S corporation is entitled to deduct the cost of such employee fringe benefits under § 162(a) if the requirements of that section are satisfied (taking into account the rules of § 263). The premium payments are included in wages for income tax withholding purposes on the shareholder-employee's Form W–2, *Wage and Tax Statement*, but are not wages subject to Social Security and Medicare taxes if the requirements for exclusion under section 3121(a)(2)(B) are satisfied. See § 3121(a)(2)(B); Ann. 92–16, 1992–5 I.R.B. 53. The 2-percent shareholder is required to include the amount of the accident and health insurance premiums in gross income under § 61(a).

Section 106 provides an exclusion from the gross income of an employee for employer-provided coverage under an accident and health plan. A 2-percent shareholder is not an employee for purposes of §106. Treas. Reg. §1.106–1; section 1372(a). Accordingly, the premiums are not excludible from the 2-percent shareholder-employee's gross income under §106.

Section 162(l)(1)(A) allows an individual who is an employee within the meaning of § 401(c)(1) to take a deduction in computing adjusted gross income for amounts paid during the taxable year for insurance that constitutes medical care for the taxpayer, his or her spouse, and dependents. The deduction is not allowed to the extent that the amount of the deduction exceeds the earned income (within the meaning of section 401(c)(2)) derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established. Section 162(l)(2)(A). Also, the deduction is not allowed for amounts during a month in which the taxpayer is eligible to participate in any subsidized health plan maintained by an employer of the taxpayer or of the spouse of the taxpayer. Section 162(l)(2)(B).

A 2-percent shareholder-employee in an S corporation, who otherwise meets the requirements of section 162(l), is eligible for the deduction under section 162(l) if the plan providing medical care coverage for the 2-percent shareholder-employee is established by the S corporation. Rev. Rul. 91–26, 1991–1 C.B. 184. A plan providing medical care coverage for the 2-percent shareholder-employee in an S corporation is established by the S corporation if: (1) the S corporation makes the premium payments for the accident and health insurance policy covering the 2-percent shareholder-employee (and his or her spouse or dependents, if applicable) in the current taxable year; or (2) the 2-percent shareholder makes the premium payments and furnishes proof of premium payment to the S corporation and then the S corporation reimburses the 2-percent shareholder-employee for the premium payments in the current taxable year. If the accident and health insurance premiums are not paid or reimbursed by the S corporation and included in the 2-percent shareholder-employee's gross income, a plan providing medical care coverage for the 2-percent shareholder-employee is not established by the S corporation and the 2-percent shareholder-employee in an S corporation is not allowed the deduction under § 162(l).

In order for the 2-pecent shareholder-employee to deduct the amount of the accident and health insurance premiums, the S corporation must report the accident and health insurance premiums paid or reimbursed as wages on the 2-percent shareholder-employee's Form W–2 in that same year. In addition, the shareholder must report the premium payments or reimbursements from the S corporation as gross income on his or her Form 1040, *U.S. Individual Income Tax Return*.

EXAMPLES

The following examples illustrate these rules. The following examples assume that each shareholder is a 2-percent shareholder-employee in an S corporation, whose earned income from the S corporation exceeds the amount of the premiums for the accident and health insurance policies covering the shareholder, his or her spouse and dependents. None of the shareholders in the following examples are eligible to participate in any subsidized health plan maintained by an employer of the shareholder or the shareholder's spouse.

Example 1. (i) For 2008, shareholder A obtains an accident and health insurance policy in the name of shareholder A and makes the premium payments on the policy. The S corporation makes no payments or reimbursements with respect to the premiums.

(ii) A plan providing medical care for shareholder A is not established by the S corporation and shareholder A is not entitled to the deduction under § 162(l).

Example 2. (i) For 2008, the S corporation obtains an accident and health insurance plan in the name of the S corporation. The health plan provides coverage for shareholder B, B's spouse and dependents. The S corporation makes all the premium payments to the insurance company. The S corporation reports the amount of the premiums as wages on

shareholder B's Form W–2 for 2008 and shareholder B reports that amount as gross income on Form 1040 for 2008.

(ii) A plan providing medical care for shareholder B has been established by the S corporation and shareholder B is allowed the deduction under § 162(l) for 2008.

Example 3. (i) For 2008, shareholder C obtains an accident and health insurance policy in the name of shareholder C. The S corporation makes all the premium payments to the insurance company. The S corporation reports the amount of the premiums as wages on shareholder C's Form W–2 for 2008 and shareholder C reports that amount as gross income on Form 1040 for 2008.

(ii) A plan providing medical care for shareholder C has been established by the S corporation and shareholder C is allowed the deduction under § 162(l) for 2008.

Example 4. (i) For 2008, shareholder D obtains an accident and health insurance policy in the name of shareholder D. Shareholder D makes the premium payments to the insurance company and furnishes proof of premium payment to the S corporation. The S corporation then reimburses shareholder D for the premium payments. The S corporation reports the amount of the premium reimbursements as wages on shareholder D's Form W–2 for 2008 and shareholder D reports that amount as gross income on Form 1040 for 2008.

(ii) A plan providing medical care for shareholder D has been established by the S corporation and shareholder D is allowed the deduction under § 162(l) for 2008.

AMENDED RETURNS FOR PRIOR TAXABLE YEARS

Taxpayers who did not claim deductions for fringe benefits described in this notice may file timely amended tax returns to claim the deduction under § 162(l) if the taxpayers satisfy the requirements of this notice. The statement "Filed Pursuant to Notice 2008–1" should be written on the top of any amended return.

The Service does not consider payments of accident and health insurance premiums by an S corporation on behalf of 2-percent shareholder-employees to be distributions for purposes of the single class of stock requirement of §1361(b)(1)(D).

DRAFTING INFORMATION

The principal authors of this notice are Mireille Khoury of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Charles D. Wien of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice as it relates to accident and health insurance costs of self-employed individuals generally, contact Mireille Khoury at (202) 622–6080 (not a toll-free call). For further information relating to accident and health insurance costs of 2-percent shareholder-employees of S corporations, contact Charles D. Wien at (202) 622–3070 (not a toll-free call).

Timing, Character, Source and Other Issues Respecting Prepaid Forward Contracts and Similar Arrangements

Notice 2008–2

SECTION 1. PURPOSE

The purpose of this notice is to request comments from the public with respect to issues that arise in connection with certain financial transactions frequently referred to in the marketplace as prepaid forward contracts (or in certain circumstances as exchange traded notes).

SECTION 2. BACKGROUND

The Internal Revenue Service and the Treasury Department are considering the tax policy issues raised by certain financial transactions frequently referred to in the marketplace as prepaid forward contracts (or in certain circumstances as exchange traded notes). These transactions resemble typical forward contracts (that is, bilateral, executory contracts in which one party agrees to purchase an asset on a future date for a specific forward purchase price, payable at that future time), but the purchase price is paid in advance of future delivery or cash settlement. Thus, these transactions typically involve an initial payment by one party in exchange for a promise of either (i) a future delivery of a particular asset or group of assets (for example, stocks or commodities), or (ii) a future payment determined exclusively by reference to the value of such assets.

In particular, the Internal Revenue Service and the Treasury Department are considering whether the parties to such a transaction should be required to accrue income/expense during the term of the transaction, if the transaction is not otherwise indebtedness for U.S. federal income tax purposes. *See* Rev. Rul. 2008–1, 2008–2 I.R.B. 248, dated January 14, 2008 (holding that an instrument resembling, in form, a prepaid forward contract is debt). The Internal Revenue Service and the Treasury Department are also considering a number of other issues associated with these transactions, including:

- The appropriate methodology for accruing income or expense, if that is deemed appropriate (for example, a mark-to-market methodology or a method resembling the noncontingent bond method set forth in §1.1275–4 of the Income Tax Regulations);
- How an accrual regime might be designed so that it does not inappropriately or inadvertently cover routine commercial transactions involving property sales in the ordinary channels of commerce;
- The appropriate character (capital vs. ordinary, and if ordinary, whether interest) of any income accruals required under such an accrual regime, as well as the character of amounts less than, or in excess of, these accruals;
- Whether the tax treatment of the transactions should vary depending on the nature of the underlying asset (for example, stocks vs. commodities);
- Whether the tax treatment of the transactions should vary depending on whether the transactions are (i) executed on a futures exchange (and are not otherwise subject to section 1256 of the Internal Revenue Code), or (ii) memorialized in an instrument that is traded on a securities exchange;
- Whether the transactions should be treated as indebtedness pursuant to regulations issued under section 7872;
- Whether section 1260 applies, or should apply, to prepaid forward contracts and similar transactions;
- The degree to which such transactions (and any income accruals that may be mandated) should be taxed under sections 871 and 881;
- How the income with respect to such instruments should be treated for purposes of section 954 (for example, as

income equivalent to interest or gains from property that does not give rise to income);

- How investments in such contracts should be treated under section 956;
- Whether there are other issues that should be considered with respect to these transactions (for example, whether short term transactions should be subject to the accrual regime);
- Identifying arrangements similar to prepaid forward contracts that should be accorded tax treatment similar to that of prepaid forward contracts; and
- Appropriate transition rules and effective dates.

SECTION 3. REQUEST FOR COMMENTS

The Internal Revenue Service and the Treasury Department request public comments with respect to the issues described in Section 2 of this notice. Comments must be submitted by May 13, 2008. All materials submitted will be available for public inspection and copying. Comments may be submitted to Internal Revenue Service, CC:PA:LPD:RU (Notice 2008–2), Room 5203, PO Box 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to the Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:RU (Notice 2008–2), Room 5203. Submissions may also be sent electronically via the internet to the following email address: *Notice.Comments@irscounsel.treas.gov*. Include the notice number (Notice 2008–2) in the subject line.

DRAFTING INFORMATION

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

Creditability of Mexican Single Rate Business Tax

Notice 2008–3

The Internal Revenue Service (IRS) and the Treasury Department are evaluating the *impuesto empresarial a tasa única* (IETU), a single rate business tax recently adopted by Mexico effective January 1, 2008, to determine whether it is a creditable income tax under Article 24(1) (Relief from Double Taxation) of the Convention Between the Government of the United States of America and the Government of the United Mexican States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Treaty).

Article 24(1) of the Treaty generally provides that the United States will allow a credit for income tax paid to Mexico by or on behalf of a U.S. resident. The taxes in paragraphs 3 and 4 of Article 2 (Taxes Covered by the Convention) of the Treaty are treated as income taxes for purposes of Article 24(1) and are therefore eligible for a credit. In the case of Mexico, these taxes are the income tax imposed by Mexico's Income Tax Law and any substantially similar taxes imposed in addition to, or in place of, the taxes listed in paragraph 3 of Article 2 after September 18, 1992, the date the Treaty was signed.

The IRS and the Treasury Department believe that the provisions, design, and full operation of the IETU, including its interaction with Mexico's regular income tax, require study to determine whether the IETU is a creditable income tax. In view of the responsibility of the IRS to administer U.S. tax laws and treaties, pending the conclusion of this study, the IRS will not challenge a taxpayer's position that the IETU is an income tax that is eligible for a credit under Article 24(1) of the Treaty. This notice is effective for the IETU paid or accrued on or after January 1, 2008. Any change in the foreign tax credit treatment of the IETU as a result of the study will be prospective, and apply solely to the IETU paid or accrued in taxable years beginning after the date that further guidance is issued.

DRAFTING INFORMATION

Various personnel from the IRS and the Treasury Department participated in the development of this notice. For further information regarding this notice, contact Nina E. Chowdhry of the Office of Associate Chief Counsel (International) at (202) 622–3880 (not a toll-free call).

Claims Submitted to the IRS Whistleblower Office Under Section 7623

Notice 2008–4

SECTION 1. PURPOSE

This notice provides guidance to the public on how to file claims under Internal Revenue Code section 7623 as amended by the Tax Relief and Health Care Act of 2006, Pub. L. No. 109–432 (120 Stat. 2958) (the Act) enacted on December 20, 2006.

SECTION 2. BACKGROUND

Section 406 of the Act amended section 7623 of the Internal Revenue Code concerning the payment of awards to certain persons who detect underpayments of tax. Prior statutory authority to pay awards at the discretion of the Secretary was re-designated as section 7623(a), and a new section 7623(b) was added to the Code. Additional provisions in section 406 of the Act establish a Whistleblower Office within the IRS and address reward program administration issues. These provisions were not incorporated into the Code.

The award program authorized by section 7623(a) has been previously implemented through regulations appearing at section 301.7623–1 of the Procedure and Administration Regulations, the substance of which is reprinted as IRS Publication 733, with additional administrative guidance appearing in the Internal Revenue Manual. Those regulations and Internal Revenue Manual provisions will continue to be followed for award claims within the scope of section 7623(a), except to the extent Sections 3.02 and 3.03 of this notice provides interim guidance regarding

submissions of information under section 7623(a).

New section 7623(b) requires that awards be made for submissions meeting certain criteria. Individuals are eligible for section 7623(b) awards based on the amount collected as a result of any administrative or judicial action resulting from the information provided. Because new section 7623(b) includes several requirements that are inconsistent with existing regulations and administrative guidance applicable to award claims under section 7623(a), the regulations which appear at section 301.7623–1 will not apply to the new award program authorized by section 7623(b). This notice provides interim guidance applicable to award claims submitted under the authority of section 7623(b). In addition, this notice seeks public comment on the topics covered herein.

SECTION 3. INTERIM GUIDANCE

3.01 *Eligibility Requirements to Submit Claims Under Section 7623(b)*

To be eligible for an award under section 7623(b), the tax, penalties, interest, additions to tax, and additional amounts in dispute must exceed in the aggregate $2,000,000 and, if the allegedly noncompliant person is an individual, the individual's gross income must exceed $200,000 for any taxable year at issue in a claim. If the thresholds in section 7623(b) are not met, section 7623(a) authorizes, but does not require, the Service to pay for information relating to violations of the internal revenue laws that result in the government's recovery of tax. Submissions that do not qualify under section 7623(b) will be processed under section 7623(a). Unlike payments made on claims under section 7623(b), there is no requirement that payments made on claims under section 7623(a) be subject to the statutory award percentages. The United States Tax Court appeal provisions added by the Act and codified in section 7623(b)(4) are applicable exclusively to award claims under section 7623(b). Accordingly, there is no right to appeal to the Tax Court for claims under section 7623(a).

3.02. *Submission of Information for Award under Sections 7623(a) or (b)*

(1) Individuals submitting information under section 7623(a) or (b) must complete IRS Form 211, *Application for Award for Original Information*, (available on *www.irs.gov*) and send the completed Form 211 to:

Internal Revenue Service
Whistleblower Office
SE:WO
1111 Constitution Ave., NW
Washington, D.C. 20224

(2) All claims for awards must be submitted under penalty of perjury in accordance with section 3.03(9) below.

Until further guidance is issued, claims for awards may not be submitted electronically or by fax.

3.03 *Information to be Included with IRS Form 211*

The Form 211 must be completed in its entirety and should include the following information:

(1) The date the claimant submits the claim;

(2) Claimant's name;

(3) Name of claimant's spouse (if applicable);

(4) Claimant's contact information, including address with zip code and telephone number;

(5) Claimant's date of birth;

(6) Claimant's Taxpayer Identification Number (*e.g.*, Social Security Number or Individual Taxpayer Identification Number) and Taxpayer Identification Number of claimant's spouse, if applicable.

(7) Specific and credible information concerning the person(s) that the claimant believes have failed to comply with tax laws and which will lead to the collection of unpaid taxes. This information should include the following:

(i) The legal name of the person(s) (*e.g.*, individual or entity), and any related person(s), that committed the violation of tax laws;

(ii) The person's aliases, if any;

(iii) The person's address;

(iv) The person's Taxpayer Identification Number(s);

(v) A description of the amount(s) and tax year(s) of Federal tax claimed to be owed, and facts supporting the basis for the amount(s) claimed to be owed;

(vi) Documentation to substantiate the claim (*e.g.*, financial data; the location of bank accounts, assets, books, and records; transaction documents or analyses relevant to the claim); and

(vii) Any and all other facts and information pertaining to the claim.

If available information is not provided by the claimant, the claimant bears the risk that such information may not be considered by the Whistleblower Office in making any award determination. If documents or supporting evidence are known to the claimant but are not in his or her possession or control, the claimant should describe these documents and identify their location to the best of his or her ability.

(8) Explanation of how the information that forms the basis of the claim came to the attention of the claimant, including the date(s) on which this information was acquired, and a complete description of the claimant's present or former relationship (if any) to the person that is the subject of the claim (*e.g.*, family member, acquaintance, client, employee, accountant, lawyer, bookkeeper, customer). If the claimant identifies multiple person(s) as the subject of a claim, describe his or her relationship to each person.

(9) Information submitted under section 7623 must be accompanied by an original signed declaration under penalty of perjury, as follows:

> I declare, under penalty of perjury, that I have examined this application and my accompanying statement and supporting documentation and aver that such application is true, correct and complete, to the best of my knowledge.

The requirement to submit information under penalty of perjury precludes submissions by: (1) a person serving as a representative of the claimant, or (2) an entity other than a natural person. With respect to claims under section 7623(b), the requirement to submit information under penalty of perjury precludes submissions made anonymously or under an alias.

(10) Joint claims must be signed by each claimant and each claimant must sign the claim under penalty of perjury as described in 3.03(8).

3.04 *Examples of Grounds for not Processing Claims Under Section 7623(b)*

Examples of claims that will not be processed under section 7623(b) include:

(1) Claims submitted by an individual who is an employee of the Department of Treasury, or who is acting within the scope of his/her duties as an employee of any Federal, State, or local Government.

(2) Claims submitted by an individual who is required by Federal law or regulation to disclose the information, or by an individual who is precluded by Federal law or regulation from making the disclosure.

(3) Claims submitted by an individual who obtained or was furnished the information while acting in an official capacity as a member of a State body or commission having access to such materials as Federal returns, copies or abstracts.

(4) Claims submitted by an individual who had access to taxpayer information arising out of a contract with the Federal government that forms the basis of the claim.

(5) Claims that upon initial review have no merit or that lack sufficient specific and credible information.

(6) Claims submitted anonymously or under an alias.

(7) Claims filed by a person other than a natural person (such as a corporation or a partnership).

(8) The alleged noncompliant person is an individual whose gross income is below $200,000 for all taxable years at issue in a claim.

3.05 *Acknowledgment of Claim by Whistleblower Office*

The Whistleblower Office will acknowledge receipt of a claim in writing. If required information has not been submitted on a Form 211, the Whistleblower Office may return a Form 211 to the claimant for completion and submission. Following submission of the claim, the Whistleblower Office may, in its sole discretion, offer the opportunity to confer with the claimant to discuss the claim to ensure that the Service fully understands the information submitted with the claim. The Whistleblower Office, in its sole discretion, may ask for additional assistance from the claimant or any legal representative of such individual. Any assistance shall be under the direction and control of the Whistleblower Office or the office assigned to investigate the matter. The submission of a claim does not create an agency relationship between the claimant and the Federal Government, nor does the claimant act in any way on behalf of the Federal Government.

3.06 *Confidentiality of Claimant's Identity*

The Service will protect the identity of the claimant to the fullest extent permitted by law. Under some circumstances, such as when the claimant is needed as a witness in a judicial proceeding, it may not be possible to pursue the investigation or examination without revealing the claimant's identity. The Service will make every effort to inform the claimant before proceeding in such a case.

3.07 *IRS Process for Evaluating Claim*

The process for evaluating a claim is initiated by Service consideration of the information provided by the claimant in light of the facts developed by the Service in investigating the claim. This process will also consider whether the information submitted by the claimant resulted in administrative action taken by the Service or judicial action. For example, in the case of large entities where the entities' tax returns are subject to annual examination by the Service, an administrative action can mean the creation of a new issue under the Audit Plan or a change in the way information about an issue is collected or analyzed, which would not otherwise have occurred without the information provided by the claimant. In other cases, an administrative action may include initiating an examination of the person which would not otherwise have occurred without information provided by the claimant. Alternatively, a claimant's description of information when the alleged noncompliant person is already under investigation and when the information results in no change in the manner regarding how the issue is approached or resolved would not generally be regarded as resulting in administrative or judicial action and therefore would not be eligible for an award.

3.08 *Duration of Process from Submitted Claim to Award Determination*.

The process, from submission of complete information to the Service until the proceeds that serve as the basis for any award determination are collected, may take several years. Accordingly, the Service is unable to make any commitment to the claimant concerning the expected duration of the process.

Payment of awards will not be made until there is a final determination of the tax liability (including taxes, penalties, interest, additions to tax and additional amounts) owed to the Service and such amounts have been collected by the Service. Examples of when a final determination of tax liability can be made include, but are not limited to: (1) at the administrative level, when the Service and person that is the subject of the claimant's allegations enter into a closing agreement which conclusively waives the right to appeal or otherwise challenge a deficiency or additional tax liability determined by the Service; (2) if the person that is the subject of the claimant's allegations petitions the United States Tax Court for a redetermination of a deficiency, when the decision in that case becomes final within the meaning of section 7481; and (3) after the expiration of the statutory period for a taxpayer to file a claim for refund and to file a refund suit based on that claim against the United States or, if a refund suit is filed, when the judgment in that suit becomes final. In a case in which litigation is commenced, any award consideration will be delayed until that litigation has been concluded with finality.

3.09 *Percentages Applied to Awards Under 7623(b)*

The Whistleblower Office will make the final determination whether an award will be paid and the amount of the award for claims which it processes. Awards will be paid in proportion to the value of information furnished voluntarily with respect to proceeds collected, including penalties, interest, additions to tax and additional amounts. The amount of the award will be at least 15% but no more than 30% of the collected proceeds in cases in which the Service determines that the information submitted by the claimant substan-

tially contributed to the Service's detection and recovery of tax. If the claimant planned and initiated the actions that led to the underpayment of tax, or to the violation of the internal revenue laws, the Whistleblower Office may reduce the award. If the claimant is convicted of criminal conduct arising from his or her role in planning and initiating the action, the Whistleblower Office will deny the claim.

If an action is based principally on allegations resulting from judicial or administrative proceedings, government reports, hearing, audit, or investigation, or the media, an award of a lesser amount, subject to the discretion of the Whistleblower Office, may be provided; such an award, however, may not exceed 10% of the collected proceeds, including penalties, interest, additions to tax, and additional amounts resulting from the action. This reduction in award percentage does not apply if the Service determines that the claimant was the initial source of the information that resulted in the judicial or administrative proceedings, government reports, hearing, audit, or investigation, or the media's report on the allegations.

3.10 *Tax Treatment of Awards*

All awards will be subject to current federal tax reporting and withholding requirements. Award recipients will receive a Form 1099 or such other form as may be prescribed by law, regulation or publication.

3.11 *Appeal Rights*

When the Whistleblower Office has made a final determination regarding a claim, the Whistleblower Office will send correspondence to the claimant regarding its final award determination. Final Whistleblower Office determinations regarding awards under section 7623(b) may, within 30 days of such determination, be appealed to the United States Tax Court. In accordance with section 7623(b)(4), decisions under section 7623(a) may not be appealed to the Tax Court.

3.12 *Claims Submitted Prior to Date of Enactment of the Act*

Information provided prior to December 20, 2006 (the date of enactment of the Act) is covered by the law and policies in place at the time the information was submitted. Supplemental information provided on or after December 20, 2006, will not be considered a new claim unless its receipt prompts the Service to take an administrative or judicial action that would not otherwise have been taken on the basis of the earlier-supplied information alone.

3.13 *Additional Questions*

An electronic mailbox for email inquiries has been set up and may be accessed at *WO@IRS.gov.*

SECTION 4. REQUEST FOR COMMENTS

Interested parties are invited to submit comments on or before February 13, 2008. Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2008–4), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20224. Alternatively, comments may be hand delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (Notice 2008–4), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Comments may also be submitted electronically via the following email address: *Notice.Comments@irscounsel.treas.gov*. Please include "Notice 2008–4" in the subject line of any electronic submissions.

SECTION 5. EFFECTIVE DATE

This notice is effective as of January 14, 2008.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Holly Styles of the Office of Associate Chief Counsel, General Legal Services. For further information regarding this notice, contact Holly Styles at (202) 927–0900 (not a toll-free call).

Qualifying Relative for Purposes of Section 152(d)(1)

Notice 2008–5

PURPOSE

This notice provides guidance under section 152(d) of the Internal Revenue Code for determining whether an individual is a qualifying relative for whom the taxpayer may claim a dependency exemption deduction under section 151(c). Section 152(d)(1)(D) provides that an individual is not a qualifying relative of the taxpayer if the individual is a qualifying child of any other taxpayer. This notice clarifies that an individual is not a qualifying child of "any other taxpayer" if the individual's parent (or other person with respect to whom the individual is defined as a qualifying child) is not required by section 6012 to file an income tax return and (i) does not file an income tax return, or (ii) files an income tax return solely to obtain a refund of withheld income taxes.

BACKGROUND

Section 151 allows a taxpayer a deduction for each individual who is a dependent (as defined in section 152) of the taxpayer for the taxable year. Section 152(a) provides that the term "dependent" means a "qualifying child" (as defined in section 152(c)) or a "qualifying relative" (as defined in section 152(d)). The terms "qualifying child" and "qualifying relative" were added to section 152 by section 201 of the Working Families Tax Relief Act of 2004 (WFTRA), Pub. L. No. 108–311, 118 Stat. 1169, effective for taxable years beginning after December 31, 2004. WFTRA established a uniform definition of a "qualifying child" pursuant to section 152(c) for determining whether a taxpayer may claim certain child-related tax benefits, namely head of household filing status, the earned income credit, child tax credit, the child and dependent care credit, and the dependency exemption deduction. See §§ 2(b), 32, 24, 21, 152. WFTRA also established the term "qualifying relative" to identify individuals (other than a qualifying child) for whom a dependency exemption deduction may be allowed.

Definition of a "qualifying child" and "qualifying relative"

Section 152(c)(1) defines a "qualifying child" of a taxpayer as an individual who: (A) bears a certain relationship to the taxpayer, (B) has the same principal place of abode as the taxpayer for more than one-half of the taxable year, (C) meets certain age requirements, and (D) has not provided over one-half of his or her own support for the calendar year.

Section 152(d)(1) provides, in part, that to be a "qualifying relative" of a taxpayer, an individual must: (A) bear a certain relationship to the taxpayer, (B) have gross income for the calendar year that is less than the exemption amount (as defined in section 151(d)), and (C) derive over one-half of his or her support for the calendar year from the taxpayer. In addition, section 152(d)(1)(D) requires that the individual not be a qualifying child of the taxpayer or of "any other taxpayer" for the taxable year. Section 152(d)(2)(H) provides that a qualifying relative may include an individual who has the same principal place of abode as the taxpayer and who is a member of the taxpayer's household.

Requests for guidance

Commentators have indicated that section 152(d)(1)(D) may lead to unintended tax consequences that differ from the tax consequences under prior law. For example, commentators cite an example of a taxpayer who supports as members of her household two minor orphans who are brother and sister. The commentators question whether the children are qualifying children of "any other taxpayer" (*i.e.,* one another), thus making the taxpayer ineligible to claim dependency exemption deductions for the children. Commentators have requested that the Service issue written guidance under section 152(d)(1)(D).

Prior to amendment by WFTRA, under sections 151 and 152 a taxpayer could claim a dependency exemption deduction for an unrelated child who was a member of the taxpayer's household for the entire year, provided all relevant requirements of section 151 and 152 were satisfied. WFTRA generally permits taxpayers to continue to apply the dependency exemption rules of present law to claim a dependency exemption for a qualifying relative who does not satisfy the qualifying child definition. *See* H.R. Conf. Rep. 696, 108th Cong., 2d Sess. at 56, 62, and 64 (2004). The Service, therefore, concludes that a taxpayer otherwise eligible to claim a dependency exemption deduction for an unrelated child is not prohibited by section 152(d)(1)(D) from claiming the deduction if the child's parent (or other person with respect to whom the child is defined as a qualifying child) is not required by section 6012 to file an income tax return and (i) does not file an income tax return, or (ii) files an income tax return solely to obtain a refund of withheld income taxes. *See* Rev. Rul. 54–567, 1954–2 C.B. 108, *aff'd* Rev. Rul. 65–34, 1965–1 C.B. 86.

APPLICATION

For purposes of section 152(d)(1)(D), an individual is not a qualifying child of "any other taxpayer" if the individual's parent (or other person with respect to whom the individual is defined as a qualifying child) is not required by section 6012 to file an income tax return and (i) does not file an income tax return, or (ii) files an income tax return solely to obtain a refund of withheld income taxes.

EXAMPLES

Example 1.

A supports as members of his household for the taxable year an unrelated friend, *B*, and her 3-year-old child, *C*. *B* has no gross income, is not required by section 6012 to file an income tax return, and does not file an income tax return for the taxable year. Accordingly, because *B* does not have a filing requirement and did not file an income tax return, *C* is not treated as a qualifying child of *B* or any other taxpayer, and *A* may claim both *B* and *C* as his qualifying relatives, provided all other requirements of sections 151 and 152 to qualify for the deduction are met.

Example 2.

Same facts as Example 1, except that *B* has earned income of $1,500 during the taxable year 2006, had income tax withheld from her wages, and is not required by section 6012 to file an income tax return. With one qualifying child, *B* may claim the earned income credit (EIC) in the amount of $519 for the taxable year. *B* files an income tax return solely to obtain a refund of withheld income taxes and does not claim the EIC. Accordingly, because *B* does not have a filing requirement and filed only to obtain a refund of withheld income taxes, *C* is not a qualifying child of *B* or any other taxpayer, and *A* may claim both *B* and *C* as his qualifying relatives, provided all other requirements of sections 151 and 152 to qualify for the deduction are met.

Example 3.

Same facts as Example 1, except that *B* has earned income of $8,000 during the taxable year 2006, had income tax withheld from her wages, and is not required by section 6012 to file an income tax return for the taxable year. With one qualifying child, *B* may claim the EIC in the amount of $2,729 for the taxable year. *B* files an income tax return for the taxable year to obtain a refund of withheld income taxes, and *B* claims the EIC on the return. Accordingly, because *B* filed an income tax return to obtain the EIC, and not solely to obtain a refund of withheld income taxes, *C* is a qualifying child of another taxpayer, *B*, and *A* may not claim *C* as a qualifying relative.

EFFECTIVE DATE

This notice applies to taxable years beginning after December 31, 2004.

DRAFTING INFORMATION

The principal author of this notice is Christina Glendening of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Ms. Glendening at (202) 622–4920.

Rev. Proc. 2008–9

TABLE OF CONTENTS

SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under §§ 501 and 521 of the Internal Revenue Code other than those subject to Rev. Proc. 2008–6, 2008–1 I.R.B. 192 (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans). Generally, the Service issues these determination letters and rulings in response to applications for recognition of exemption from Federal income tax. These procedures also apply to revocation or modification of determination letters or rulings. This revenue procedure also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under § 7428 of the Code.

Description of terms used in this revenue procedure

.01 For purposes of this revenue procedure –

(1) the term "Service" means the Internal Revenue Service.

(2) the term "application" means the appropriate form or letter that an organization must file or submit to the Service for recognition of exemption from Federal income tax under the applicable section of the Internal Revenue Code. *See* section 3 for information on specific forms.

(3) the term "EO Determinations" means the office of the Service that is primarily responsible for processing initial applications for tax-exempt status. It includes the main EO Determinations office located in Cincinnati, Ohio, and other field offices that are under the direction and control of the Manager, EO Determinations.

(4) the term "EO Technical" means the office of the Service that is primarily responsible for issuing letter rulings to taxpayers on exempt organization matters, and for providing technical advice or technical assistance to other offices of the Service on exempt organization matters. The EO Technical office is located in Washington, DC.

(5) the term "Appeals Office" means any office under the direction and control of the Chief, Appeals. The purpose of the Appeals Office is to resolve tax controversies, without litigation,

on a fair and impartial basis. The Appeals Office is independent of EO Determinations and EO Technical.

(6) the term "determination letter" means a written statement issued by EO Determinations or an Appeals Office in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521. This includes a written statement issued by EO Determinations or an Appeals Office on the basis of advice secured from EO Technical pursuant to the procedures prescribed herein and in Rev. Proc. 2008–5, 2008–1 I.R.B. 164.

(7) the term "ruling" means a written statement issued by EO Technical in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521.

Updated annually

.02 This revenue procedure is updated annually, but may be modified or amplified during the year.

SECTION 2. NATURE OF CHANGES AND RELATED REVENUE PROCEDURES

Rev. Proc. 2007–52 is superseded and the processing of applications is now centralized

.01 This revenue procedure updates Rev. Proc. 2007–52, 2007–30 I.R.B. 222, which is hereby superseded.

(1) The responsibility for processing applications is now centralized in the EO Determinations office in Cincinnati, Ohio. Key district offices no longer exist.

(2) Although applications are generally processed in the Cincinnati office, some applications may be processed in other EO Determinations offices or referred to EO Technical.

Related revenue procedures

.02 This revenue procedure supplements Rev. Proc. 76–34, 1976–2 C.B. 656, with respect to the effects of § 7428 of the Code on the classification of organizations under §§ 509(a) and 4942(j)(3). Rev. Proc. 80–27, 1980–1 C.B. 677, sets forth procedures under which exemption may be recognized on a group basis for subordinate organizations affiliated with and under the general supervision and control of a central organization. Rev. Proc. 72–5, 1972–1 C.B. 709, provides information for religious and apostolic organizations seeking recognition of exemption under § 501(d). General procedures for requests for a determination letter or ruling are provided in Rev. Proc. 2008–4, 2008–1 I.R.B. 121. User fees for requests for a determination letter or ruling are set forth in Rev. Proc. 2008–8, 2008–1 I.R.B. 233.

SECTION 3. WHAT ARE THE PROCEDURES FOR REQUESTING RECOGNITION OF EXEMPT STATUS?

In general

.01 An organization seeking recognition of exempt status under § 501 or § 521 is required to submit the appropriate application. In the case of a numbered application form, the current version of the form must be submitted. A central organization that has previously received recognition of its own exemption can request a group exemption letter by submitting a letter application with Form 8718, *User Fee for Exempt Organization Determination Letter Request*. *See* Rev. Proc. 80–27.

User fee

.02 An application must be submitted with the correct user fee, as set forth in Rev. Proc. 2008–8.

Form 1023 application

.03 An organization seeking recognition of exemption under § 501(c)(3) and §§ 501(e), (f), (k), (n) or (q) must submit a completed Form 1023. In the case of an organization that provides credit counseling services, see § 501(q) of the Code.

Form 1024 application

.04 An organization seeking recognition of exemption under §§ 501(c)(2), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19) or (25) must submit a completed Form 1024 with Form 8718. In the case of an organization that provides credit counseling services and seeks recognition of exemption under section 501(c)(4), see § 501(q) of the Code.

Letter application

.05 An organization seeking recognition of exemption under §§ 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27) or (28) or under § 501(d) must submit a letter application with Form 8718.

Form 1028 application

.06 An organization seeking recognition of exemption under § 521 must submit a completed Form 1028 with Form 8718.

Form 8871 notice for political organizations

.07 A political party, a campaign committee for a candidate for federal, state or local office, and a political action committee are all political organizations subject to tax under § 527. To be tax-exempt, a political organization may be required to notify the Service that it is to be treated as a § 527 organization by electronically filing Form 8871, *Political Organization Notice of Section 527 Status*. For details, go to the IRS website at *www.irs.gov/polorgs*.

Requirements for a substantially completed application

.08 A substantially completed application, including a letter application, is one that:

(1) is signed by an authorized individual.

(2) includes an Employer Identification Number (EIN).

(3) includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years). If the organization has not yet commenced operations, or has not completed one accounting period, a substantially completed application generally includes a proposed budget for two full accounting periods and a current statement of assets and liabilities.

(4) includes a detailed narrative statement of proposed activities, including each of the fundraising activities of a § 501(c)(3) organization, and a narrative description of anticipated receipts and contemplated expenditures.

(5) includes a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise meets the requirements of a "conformed copy" as outlined in Rev. Proc. 68–14, 1968–1 C.B. 768.

(6) if the organizing or enabling document is in the form of articles of incorporation, includes evidence that it was filed with and approved by an appropriate state official (*e.g.*, stamped "Filed" and dated by the Secretary of State). Alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state. If a copy is submitted, the written declaration must include the date the articles were filed with the state.

(7) if the organization has adopted by-laws, includes a current copy. The by-laws need not be signed if submitted as an attachment to the application for recognition of exemption. Otherwise, the by-laws must be verified as current by an authorized individual.

(8) is accompanied by the correct user fee and Form 8718, when applicable.

Terrorist organizations not eligible to apply for recognition of exemption

.09 An organization that is identified or designated as a terrorist organization within the meaning of § 501(p)(2) of the Code is not eligible to apply for recognition of exemption.

SECTION 4. WHAT ARE THE STANDARDS FOR ISSUING A DETERMINATION LETTER OR RULING ON EXEMPT STATUS?

Exempt status must be established in application and supporting documents

.01 A favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from Federal income tax is claimed.

Determination letter or ruling based solely on administrative record

.02 A determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record.

(1) The applicant is responsible for the accuracy of any factual representations contained in the application.

(2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an authorized individual.

(3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Exempt status may be recognized in advance of actual operations

.03 Exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed.

(1) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

(2) The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

(3) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Internal Revenue Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling. *See also* section 7.

No letter if exempt status issue in litigation or under consideration within the Service

.04 A determination letter or ruling on exempt status will not ordinarily be issued if an issue involving the organization's exempt status under § 501 or § 521 is pending in litigation, is under consideration within the Service, or if issuance of a determination letter or ruling is not in the interest of sound tax administration. If the Service declines to issue a determination or ruling to an organization seeking exempt status under § 501(c)(3), the organization may be able to pursue a declaratory judgment under § 7428 provided that it has exhausted its administrative remedies.

Incomplete application

.05 If an application does not contain all of the items set out in section 3.08, the Service may return it to the applicant for completion.

(1) In lieu of returning an incomplete application, the Service may retain the application and request additional information needed for a substantially completed application.

(2) In the case of an application or a group exemption request under § 501(c)(3) that is returned incomplete, the 270-day period referred to in § 7428(b)(2) will not be considered as starting until the date a substantially completed Form 1023 or group exemption request is refiled with or remailed to the Service. If the application or group exemption request is mailed to the Service and a postmark is not evident, the 270-day period will start to run on the date the Service actually receives the substantially completed Form 1023 or group exemption request. The same rules apply for purposes of the notice requirement of § 508.

(3) Generally, the user fee will not be refunded if an incomplete application is filed. *See* Rev. Proc. 2008–8, section 10.

Even if application is complete, additional information may be required

.06 Even though an application is substantially complete, the Service may request additional information before issuing a determination letter or ruling.

(1) If the application involves an issue where contrary authorities exist, an applicant's failure to disclose and distinguish contrary authorities may result in requests for additional information, which could delay final action on the application.

(2) In the case of an application under § 501(c)(3), the period of time beginning on the date the Service requests additional information until the date the information is submitted to the Service will not be counted for purposes of the 270-day period referred to in § 7428(b)(2).

Expedited handling

.07 Applications are normally processed in the order of receipt by the Service. However, expedited handling of an application may be approved where a request is made in writing and contains a compelling reason for processing the application ahead of others. Upon approval of a request for expedited handling an application will be considered out of its normal order. This does not mean the application will be immediately approved or denied. Circumstances generally warranting expedited processing include:

(1) A grant to the applicant is pending and the failure to secure the grant may have an adverse impact on the organization's ability to continue to operate.

(2) The purpose of the newly created organization is to provide disaster relief to victims of emergencies such as flood and hurricane.

(3) There have been undue delays in issuing a determination letter or ruling caused by a Service error.

SECTION 5. WHAT OFFICES ISSUE AN EXEMPT STATUS DETERMINATION LETTER OR RULING?

EO Determinations issues a determination letter in most cases

.01 Under the general procedures outlined in Rev. Proc. 2008–4, EO Determinations is authorized to issue determination letters on applications for exempt status under §§ 501 and 521.

Certain applications referred to EO Technical

.02 EO Determinations will refer to EO Technical those applications that present issues which are not specifically covered by statute or regulations, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. In addition, EO Determinations will refer those applications that have been specifically reserved by revenue procedure or by other official Service instructions for handling by EO Technical for purposes of establishing uniformity or centralized control of designated categories of cases. EO Technical will notify the applicant organization upon receipt of a referred application, and will consider each such application and issue a ruling directly to the organization.

Technical advice may be requested in certain cases

.03 If at any time during the course of consideration of an exemption application by EO Determinations the organization believes that its case involves an issue on which there is no published precedent, or there has been non-uniformity in the Service's handling of similar cases, the organization may request that EO Determinations either refer the application to EO Technical or seek technical advice from EO Technical. *See* Rev. Proc. 2008–5, section 4.04.

Technical advice must be requested in certain cases

.04 If EO Determinations proposes to recognize the exemption of an organization to which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations must seek technical advice from EO Technical before issuing a determination letter. This does not apply where EO Technical issued an adverse ruling and the organization subsequently made changes to its purposes, activities, or operations to remove the basis for which exempt status was denied.

SECTION 6. WITHDRAWAL OF AN APPLICATION

Application may be withdrawn prior to issuance of a determination letter or ruling

.01 An application may be withdrawn upon the written request of an authorized individual at any time prior to the issuance of a determination letter or ruling. Therefore, an application may not be withdrawn after the issuance of a proposed adverse determination letter or ruling.

(1) When an application is withdrawn, the Service will retain the application and all supporting documents. The Service may consider the information submitted in connection with the withdrawn request in a subsequent examination of the organization.

(2) Generally, the user fee will not be refunded if an application is withdrawn. *See* Rev. Proc. 2008–8, section 10.

§ 7428 implications of withdrawal of application under § 501(c)(3)

.02 The Service will not consider the withdrawal of an application under § 501(c)(3) as either a failure to make a determination within the meaning of § 7428(a)(2) or as an exhaustion of administrative remedies within the meaning of § 7428(b)(2).

SECTION 7. WHAT ARE THE PROCEDURES WHEN EXEMPT STATUS IS DENIED?

Proposed adverse determination letter or ruling

.01 If EO Determinations or EO Technical reaches the conclusion that the organization does not satisfy the requirements for exempt status pursuant to the section of the Internal Revenue Code under which exemption is claimed, the Service will generally issue a proposed adverse determination letter or ruling, which will:

(1) Include a detailed discussion of the Service's rationale for the denial of tax-exempt status.

(2) Advise the organization of its opportunity to appeal or protest the decision and request a conference.

Appeal of a proposed adverse determination letter issued by EO Determinations

.02 A proposed adverse determination letter issued by EO Determinations will advise the organization of its opportunity to appeal the determination by requesting Appeals Office consideration. To do this, the organization must submit a statement of the facts, law and arguments in support of its position within 30 days from the date of the adverse determination letter. The organization must also state whether it wishes an Appeals Office conference. Any determination letter issued on the basis of technical advice from EO Technical may not be appealed to the Appeals Office on issues that were the subject of the technical advice.

Protest of a proposed adverse ruling issued by EO Technical

.03 A proposed adverse ruling issued by EO Technical will advise the organization of its opportunity to file a protest statement within 30 days and to request a conference. If a conference is requested, the conference procedures outlined in Rev. Proc. 2008–4, section 12, are applicable.

Final adverse determination letter or ruling where no appeal or protest is submitted

.04 If an organization does not submit a timely appeal of a proposed adverse determination letter issued by EO Determinations, or a timely protest of a proposed adverse ruling issued by EO Technical, a final adverse determination letter or ruling will be issued to the organization. The final adverse letter or ruling will provide information about the filing of tax returns and the disclosure of the proposed and final adverse letters or rulings.

How EO Determinations handles an appeal of a proposed adverse determination letter

.05 If an organization submits an appeal of the proposed adverse determination letter, EO Determinations will first review the appeal, and if it determines that the organization qualifies for tax-exempt status issue a favorable exempt status determination letter. If EO Determinations maintains its adverse position after reviewing the appeal, it will forward the appeal and the exemption application case file to the Appeals Office.

Consideration by the Appeals Office

.06 The Appeals Office will consider the organization's appeal. If the Appeals Office agrees with the proposed adverse determination, it will either issue a final adverse determination or, if a conference was requested, contact the organization to schedule a conference. At the end

of the conference process, which may involve the submission of additional information, the Appeals Office will either issue a final adverse determination letter or a favorable determination letter. If the Appeals Office believes that an exemption or private foundation status issue is not covered by published precedent or that there is non-uniformity, the Appeals Office must request technical advice from EO Technical in accordance with Rev. Proc. 2008–5, section 4.04.

If a protest of a proposed adverse ruling is submitted to EO Technical

.07 If an organization submits a protest of a proposed adverse exempt status ruling, EO Technical will review the protest statement. If the protest convinces EO Technical that the organization qualifies for tax-exempt status, a favorable ruling will be issued. If EO Technical maintains its adverse position after reviewing the protest, it will either issue a final adverse ruling or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, EO Technical will either issue a final adverse ruling or a favorable exempt status ruling.

An appeal or protest may be withdrawn

.08 An organization may withdraw its appeal or protest before the Service issues a final adverse determination letter or ruling. Upon receipt of the withdrawal request, the Service will complete the processing of the case in the same manner as if no appeal or protest was received.

Appeal or protest and conference rights not applicable in certain situations

.09 The opportunity to appeal or protest a proposed adverse determination letter or ruling and the conference rights described above are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

SECTION 8. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS AND RULINGS

Sections 6104 and 6110 of the Code provide rules for the disclosure of applications, including supporting documents, and determination letters and rulings.

Disclosure of applications, supporting documents, and favorable determination letters or rulings

.01 The applications, any supporting documents, and the favorable determination letter or ruling issued are available for public inspection under § 6104(a)(1) of the Code. However, there are certain limited disclosure exceptions for a trade secret, patent, process, style of work, or apparatus if the Service determines that the disclosure of the information would adversely affect the organization.

(1) The Service is required to make the applications, supporting documents, and favorable determination letters or rulings available upon request. The public can request this information by submitting Form 4506–A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*.

(2) The exempt organization is required to make its exemption application, supporting documents, and determination letter or ruling available for public inspection without charge. For more information about the exempt organization's disclosure obligations, *see* Publication 557, *Tax-Exempt Status for Your Organization*.

Disclosure of adverse determination letters or rulings

.02 The Service is required to make adverse determination letters and rulings available for public inspection under § 6110 of the Code. Upon issuance of the final adverse determination letter or ruling to an organization, both the proposed adverse determination letter or ruling and the final adverse determination letter or ruling will be released under § 6110.

(1) These documents are made available to the public after the deletion of names, addresses, and any other information that might identify the taxpayer. *See* § 6110(c) for other specific disclosure exemptions.

(2) The final adverse determination letter or ruling will enclose Notice 437, *Notice of Intention to Disclose*, and redacted copies of the final and proposed adverse determination letters or rulings. Notice 437 provides instructions if the organization disagrees with the deletions proposed by the Service.

Disclosure to State officials when the Service refuses to recognize exemption under § 501(c)(3)

.03 The Service may notify the appropriate State officials of a refusal to recognize an organization as tax-exempt under § 501(c)(3). *See* § 6104(c) of the Code. The notice to the State officials may include a copy of a proposed or final adverse determination letter or ruling the Service issued to the organization. In addition, upon request by the appropriate State official, the Service may make available for inspection and copying the exemption application and other information relating to the Service's determination on exempt status.

Disclosure to State officials of information about § 501(c)(3) applicants

.04 The Service may disclose to State officials the name, address, and identification number of any organization that has applied for recognition of exemption under § 501(c)(3).

SECTION 9. REVIEW OF DETERMINATION LETTERS BY EO TECHNICAL

Determination letters may be reviewed by EO Technical to assure uniformity

.01 Determination letters issued by EO Determinations may be reviewed by EO Technical, or the Office of the Associate Chief Counsel (Passthroughs and Special Industries) (for cases under § 521), to assure uniform application of the statutes or regulations, or rulings, court opinions, or decisions published in the Internal Revenue Bulletin.

Procedures for cases where EO Technical takes exception to a determination letter

.02 If EO Technical takes exception to a determination letter issued by EO Determinations, the manager of EO Determinations will be advised. If EO Determinations notifies the organization of the exception taken, and the organization disagrees with the exception, the file will be returned to EO Technical. The referral to EO Technical will be treated as a request for technical advice and the procedures in Rev. Proc. 2008–5 will be followed.

SECTION 10. DECLARATORY JUDGMENT PROVISIONS OF § 7428

Actual controversy involving certain issues

.01 Generally, a declaratory judgment proceeding under § 7428 of the Code can be filed in the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia with respect to an actual controversy involving a determination by the Service or a failure of the Service to make a determination with respect to the initial or continuing qualification or classification of an organization under § 501(c)(3) (charitable, educational, etc.); § 170(c)(2) (deductibility of contributions); § 509(a) (private foundation status); or § 4942(j)(3) (operating foundation status).

Exhaustion of administrative remedies

.02 Before filing a declaratory judgment action, an organization must exhaust its administrative remedies by taking, in a timely manner, all reasonable steps to secure a determination from the Service. These include:

(1) the filing of a substantially completed application Form 1023 or group exemption request under § 501(c)(3) pursuant to section 3.08 of this Revenue Procedure or the request for a determination of foundation status pursuant to Rev. Proc. 76–34;

(2) in appropriate cases, requesting relief pursuant to § 301.9100–1 of the Procedure and Administration Regulations regarding the extension of time for making an election or application for relief from tax (*see* Rev. Proc. 92–85, 1992–2 C.B. 490);

(3) the timely submission of all additional information requested by the Service to perfect an exemption application or request for determination of private foundation status; and

(4) exhaustion of all administrative appeals available within the Service pursuant to section 7.

Not earlier than 270 days after seeking determination

.03 An organization will in no event be deemed to have exhausted its administrative remedies prior to the earlier of:

(1) the completion of the steps in section 10.02, and the sending by the Service by certified or registered mail of a final determination letter or ruling; or

(2) the expiration of the 270-day period described in § 7428(b)(2) in a case where the Service has not issued a final determination letter or ruling and the organization has taken, in a timely manner, all reasonable steps to secure a determination letter or ruling.

Service must have reasonable time to act on an appeal or protest

.04 The steps described in section 10.02 will not be considered completed until the Service has had a reasonable time to act upon an appeal or protest as the case may be.

Final determination to which § 7428 applies

.05 A final determination to which § 7428 of the Code applies is a determination letter or ruling, sent by certified or registered mail, which holds that the organization is not described in § 501(c)(3) or § 170(c)(2), is a public charity described in a part of § 509 or § 170(b)(1)(A) other than the part under which the organization requested classification, is not a private foundation as defined in § 4942(j)(3), or is a private foundation and not a public charity described in a part of § 509 or § 170(b)(1)(A).

SECTION 11. EFFECT OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION

Effective date of exemption

.01 A determination letter or ruling recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities prior to the date of the determination letter or ruling were consistent with the requirements for exemption. However, special rules under § 508(a) of the Code may apply to an organization applying for exemption under § 501(c)(3), and special rules under § 505(c) may apply to an organization applying for exemption under §§ 501(c)(9), (17), or (20).

(1) If the Service requires the organization to alter its activities or make substantive amendments to its enabling instrument, the exemption will be effective as of the date specified in a determination letter or ruling.

(2) If the Service requires the organization to make a nonsubstantive amendment, exemption will ordinarily be recognized as of the date of formation. Examples of nonsubstantive amendments include correction of a clerical error in the enabling instrument or the addition of a dissolution clause where the activities of the organization prior to the determination letter or ruling are consistent with the requirements for exemption.

Reliance on determination letter or ruling

.02 A determination letter or ruling recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization. Also, a determination letter or ruling may not be relied upon if it was based on any inaccurate material factual representations. *See* section 12.01.

SECTION 12. REVOCATION OR MODIFICATION OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION

A determination letter or ruling recognizing exemption may be revoked or modified by (1) a notice to the taxpayer to whom the determination letter or ruling was issued, (2) enactment of legislation or ratification of a tax treaty, (3) a decision of the United States Supreme Court, (4) the issuance of temporary or final regulations, or (5) the issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin.

Revocation or modification of a determination letter or ruling may be retroactive

.01 The revocation or modification of a determination letter or ruling recognizing exemption may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which § 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. In certain cases an organization may seek relief from retroactive revocation or modification of a determination letter or ruling under § 7805(b). Requests for § 7805(b) relief are subject to the procedures set forth in Rev. Proc. 2008–5.

(1) Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change.

(2) In the case where a determination letter or ruling is issued in error or is no longer in accord with the Service's position and § 7805(b) relief is granted (*see* sections 13 and 14 of Rev. Proc. 2008–4), ordinarily, the revocation or modification will be effective not earlier than the date when the Service modifies or revokes the original determination letter or ruling.

Appeal and conference procedures in the case of revocation or modification of exempt status letter

.02 In the case of a revocation or modification of a determination letter or ruling, the appeal and conference procedures are generally the same as set out in section 7 of these procedures, including the right of the organization to request that EO Determinations or the Appeals Office seek technical advice from EO Technical. However, appeal and conference rights are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

(1) If the case involves an exempt status issue on which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations generally must seek technical advice from EO Technical.

(2) EO Determinations does not have to seek technical advice if the prior ruling or technical advice has been revoked by subsequent contrary published precedent or if the proposed revocation involves a subordinate unit of an organization that holds a group exemption letter issued by EO Technical, the EO Technical ruling or technical advice was issued under the Internal Revenue Code of 1939 or prior revenue acts, or if the ruling was issued in response to Form 4653, *Notification Concerning Foundation Status*.

SECTION 13. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2007–52 is superseded.

SECTION 14. EFECTIVE DATE

This revenue procedure is effective January 7, 2008.

SECTION 15. PAPERWORK REDUCTION ACT

The collection of information for a letter application under section 3.05 of this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–2080. All other collections of information under this revenue procedure have been approved under separate OMB control numbers.

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

The collection of this information is required if an organization wants to be recognized as tax-exempt by the Service. We need the information to determine whether the organization meets the legal requirements for tax-exempt status. In addition, this information will be used to help the Service delete certain information from the text of an adverse determination letter or ruling before it is made available for public inspection, as required by § 6110.

The time needed to complete and file a letter application will vary depending on individual circumstances. The estimated average time is 10 hours.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. The rules governing the confidentiality of letter applications are covered in § 6104.

DRAFTING INFORMATION

The principal author of this revenue procedure is Ted Lieber of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the TE/GE Customer Service office at (877) 829–5500 (a toll-free call).

Part IV. Items of General Interest

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

Announcement 2008–3

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on January 14, 2008, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

The Stevens Foundation
New York, NY
American Assistance Corporation
Plano, TX
Tri-State Community Development Resource Center, Inc.
Camden, NJ
Cytogenetics Foundation
Omaha, NE
Proyecto Esperanza
Los Angeles, CA
Community Fellowship for Battered Women of Silicon Valley, Inc.
San Jose, CA
Brooklyn Community Counseling Center, Inc
Brooklyn, NY
Peace Parents and Elders of Africa for Common Efforts
Minneapolis, MN
The Healing Center of Children with Disabilities, Inc.
Macon, GA
Mahisekar Charitable Supporting Organization
Orland Park, IL
Down Payment Assistance Foundation, Inc.
Glendora, CA

Benefit Restrictions for Underfunded Pension Plans; Hearing

Announcement 2008–4

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides a notice of public hearing on proposed rulemaking (REG–113891–07, 2007–42 I.R.B. 821) providing guidance regarding the use of certain funding balances maintained for defined benefit pension plans and regarding benefit restrictions for certain underfunded defined benefit pension plans.

DATES: The public hearing is being held on Monday, January 28, 2008, at 10:00 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by January 7, 2008.

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

Mail outlines to CC:PA:LPD:PR (REG–113891–07), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to CC:PA:LPD:PR (REG–113891–07), Couriers Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS–REG–113891–07).

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

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed rulemaking (REG–113891–07) that was published in the **Federal Register** on Friday, August 31, 2007 (72 FR 50544). The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by January 7, 2008.

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

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

(Filed by the Office of the Federal Register on December 18, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 19, 2007, 72 F.R. 71842)

Definition of Terms

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2007–27 through 2007–52 is in Internal Revenue Bulletin 2007–52, dated December 26, 2007.

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[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2007–27 through 2007–52 is in Internal Revenue Bulletin 2007–52, dated December 26, 2007.

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