

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. 2008-46, page 572.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for September 2008.

T.D. 9415, page 570.

Final regulations under section 860G of the Code relate to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The regulations accelerate the time when income is recognized for withholding tax purposes to conform to the timing of income recognition for general income tax purposes.

Notice 2008-70, page 575.

Under section 54B of the Code, up to \$500,000,000 qualified forestry conservation bonds (QFCBs) may be issued for qualified forestry conservation purposes. The Secretary of the Department of Treasury must allocate the QFCB limitation amount among qualified applicants seeking any portion of the limitation. This notice solicits applications from qualified issuers of QFCBs for an allocation of the limitation and sets forth application requirements.

Rev. Proc. 2008-48, page 586.

This procedure provides how, for purposes of sections 105(b), 106(a), 132(h)(2)(B), 220(d)(2), and 223(d)(2) of the Code, the IRS will treat a child of parents who are divorced, separated, or living apart as a dependent of both parents, when the custodial parent has not released the claim to the personal exemption for the child under section 152(e)(2).

Rev. Proc. 2008-52, page 587.

This document provides the procedures by which taxpayers may obtain automatic consent for specifically identified changes in methods of accounting described in its APPENDIX. Rev. Proc. 2001-10, section 6.02(1)(a), modified and amplified. Rev. Proc. 2002-9 clarified, modified, amplified, and superseded. Rev. Proc. 2002-28, section 7.02(1)(a), modified and amplified. Rev. Proc. 2007-14 superseded. Rev. Proc. 2008-43 modified.

Rev. Proc. 2008-53, page 678.

This procedure provides domestic asset/liability percentages and domestic investment yields needed by foreign life insurance companies and foreign property and liability insurance companies to compute their minimum effectively connected net investment income under section 842(b) of the Code for taxable years beginning after December 31, 2006.

EXCISE TAX

REG-120476-07, page 680.

Proposed regulations under section 4980G of the Code as amended by the Tax Relief and Health Care Act of 2006 provide guidance on employer contributions to Health Savings Accounts (HSAs). The regulations provide guidance on contributions to nonhighly compensated employees, guidance for employers that offer qualified HSA distributions, and guidance for employers that choose to make the maximum annual HSA contribution on behalf of all employees who are eligible individuals during the last month of the taxable year. The regulations also provide guidance relating to the requirement of a return to accompany payment of the excise tax under section 4980B, 4980D, 4980E, or 4980G and the time for filing that return. A public hearing is scheduled for October 30, 2008.

Finding Lists begin on page ii.



The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 54A.—Qualified Tax Credit Bonds

A notice soliciting applications and setting forth application requirements for the allocation of the qualified forestry conservation bond volume cap under section 54B of the Internal Revenue Code, and providing guidance with respect to certain other qualified forestry conservation bond requirements. See Notice 2008-70, page 575.

Section 54B.—Qualified Forestry Conservation Bonds

A notice soliciting applications and setting forth application requirements for the allocation of the qualified forestry conservation bond volume cap under section 54B of the Internal Revenue Code, and providing guidance with respect to certain other qualified forestry conservation bond requirements. See Notice 2008-70, page 575.

Section 105.—Amounts Received Under Accident and Health Plans

A revenue procedure describing the circumstances under which the Internal Revenue Service will treat a child of parents who are divorced, separated, or living apart as the dependent of both parents for purposes of sections 105(b), 106(a), 132(h)(2)(B), 213(d)(5), 220(d)(2), and 223(d)(2) of the Internal Revenue Code when the custodial parent has not released the claim to the exemption for the child under section 152(e)(2). See Rev. Proc. 2008-48, page 586.

Section 106.—Contributions by Employer to Accident and Health Plans

A revenue procedure describing the circumstances under which the Internal Revenue Service will treat a child of parents who are divorced, separated, or living apart as the dependent of both parents for purposes of sections 105(b), 106(a), 132(h)(2)(B), 213(d)(5), 220(d)(2), and 223(d)(2) of the Internal Revenue Code when the custodial parent has not released the claim to the exemption for the child

under section 152(e)(2). See Rev. Proc. 2008-48, page 586.

Section 132.—Certain Fringe Benefits

A revenue procedure describing the circumstances under which the Internal Revenue Service will treat a child of parents who are divorced, separated, or living apart as the dependent of both parents for purposes of sections 105(b), 106(a), 132(h)(2)(B), 213(d)(5), 220(d)(2), and 223(d)(2) of the Internal Revenue Code when the custodial parent has not released the claim to the exemption for the child under section 152(e)(2). See Rev. Proc. 2008-48, page 586.

Section 152.—Dependent Defined

A revenue procedure describing the circumstances under which the Internal Revenue Service will treat a child of parents who are divorced, separated, or living apart as the dependent of both parents for purposes of sections 105(b), 106(a), 132(h)(2)(B), 213(d)(5), 220(d)(2), and 223(d)(2) of the Internal Revenue Code when the custodial parent has not released the claim to the exemption for the child under section 152(e)(2). See Rev. Proc. 2008-48, page 586.

Section 213.—Medical, Dental, etc., Expenses

A revenue procedure describing the circumstances under which the Internal Revenue Service will treat a child of parents who are divorced, separated, or living apart as the dependent of both parents for purposes of sections 105(b), 106(a), 132(h)(2)(B), 213(d)(5), 220(d)(2), and 223(d)(2) of the Internal Revenue Code when the custodial parent has not released the claim to the exemption for the child under section 152(e)(2). See Rev. Proc. 2008-48, page 586.

Section 220.—Archer MSAs

A revenue procedure describing the circumstances under which the Internal Revenue Service will treat a child of parents who are divorced, separated, or living apart as the dependent of both parents for purposes of sections 105(b), 106(a), 132(h)(2)(B), 213(d)(5), 220(d)(2), and 223(d)(2) of the Internal Revenue Code when the custodial parent has not released the claim to the exemption for the child under section 152(e)(2). See Rev. Proc. 2008-48, page 586.

Section 223.—Health Savings Accounts

A revenue procedure describing the circumstances under which the Internal Revenue Service will treat a child of parents who are divorced, separated, or living apart as the dependent of both parents for purposes of sections 105(b), 106(a), 132(h)(2)(B), 213(d)(5), 220(d)(2), and 223(d)(2) of the Internal Revenue Code when the custodial parent has not released the claim to the exemption for the child under section 152(e)(2). See Rev. Proc. 2008-48, page 586.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month

of September 2008. See Rev. Rul. 2008-46, page 572.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 860A.—Taxation of REMIC's

Final regulations under section 860G of the Code relate to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. See T.D. 9415, page 570.

Section 860G.—Other Definitions and Special Rules

26 CFR 1.860G-3: Treatment of foreign persons.

T.D. 9415

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

REMIC Residual Interests—Accounting for REMIC Net Income (Including Any Excess Inclusions) (Foreign Holders)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. The foreign persons covered by these regulations include partners in domestic partnerships, shareholders of real estate investment trusts, shareholders of regulated investment companies, participants in common trust funds, and patrons of subchapter T cooperatives. These regulations are necessary to prevent inappropriate avoidance of current income tax liability by foreign persons to whom income from REMIC residual interests is allocated.

DATES: *Effective Date:* These regulations are effective on July 14, 2008.

Dates of Applicability: For dates of applicability, see §§1.860A-1(b)(5), 1.863-1(f) and 1.1441-2(f).

FOR FURTHER INFORMATION CONTACT: Arturo Estrada, (202) 622-3900 (not a toll-free number).

Background

This document contains amendments to 26 CFR part 1 under sections 860A, 860G(b), 863, 1441, and 1442 of the

Internal Revenue Code (Code). On August 1, 2006, temporary regulations (T.D. 9272, 2006-2 C.B. 332) were published in the **Federal Register** (71 FR 43363). A notice of proposed rulemaking (REG-159929-02, 2006-2 C.B. 341) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (71 FR 43398). The preamble to the temporary regulations contains an explanation of these provisions. No comments were received from the public in response to the notice of proposed rulemaking. Accordingly, this Treasury Decision adopts the proposed regulations without any substantive changes. No public hearing was requested or held.

Dates of Applicability

The regulations regarding the timing of REMIC income inclusions apply to REMIC net income of a foreign person with respect to REMIC residual interests with respect to which the first REMIC net income allocation to the foreign person under section 860C occurs on or after August 1, 2006. The regulations regarding the source of excess inclusions are applicable for taxable years ending after August 1, 2006.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. §605(b), it has also been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because these regulations do not have a significant economic impact on a substantial number of small entities. According to the Small Business Administration definition of a "small business," 13 C.F.R. 121.201, a REMIC is classified as an "Other Financial Vehicle," NAICS code 525990, and is considered a small entity if it accumulates less than 6.5 million dollars in annual receipts. It has been determined that REMICs affected by these regulations generally will

have greater than 6.5 million dollars in annual receipts and therefore will not generally be classified as small business entities. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Dale Collinson, formerly with the Office of the Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§860A-1T and 860G-3T to read as follows:

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

Par. 2. Section 1.860A-0 is amended by adding entries for §§1.860A-1(b)(5) and 1.860G-3(b) and removing the entries for §§1.860A-1T and 1.860G-3T to read as follows:

§1.860A-0 Outline of REMIC provisions.

* * * * *

§1.860A-1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) Accounting for REMIC net income of foreign persons.

* * * * *

§1.860G-3 Treatment of Foreign Persons.

* * * * *

(b) Accounting for REMIC net income.

(1) Allocation of partnership income to a foreign partner.

(2) Excess inclusion income allocated by certain pass-through entities to a foreign person.

Par. 3. Section 1.860A-1(b)(5) is revised to read as follows:

§1.860A-1 Effective dates and transition rules.

* * * * *

(b) * * *

(5) Accounting for REMIC net income of foreign persons. Section 1.860G-3(b) is applicable to REMIC net income (including excess inclusions) of a foreign person with respect to a REMIC residual interest if the first net income allocation under section 860C(a)(1) to the foreign person with respect to that interest occurs on or after August 1, 2006.

§1.860A-1T [Removed]

Par. 4. Section 1.860A-1T is removed.

Par. 5. Section 1.860G-3(b) is revised to read as follows:

§1.860G-3 Treatment of foreign persons.

* * * * *

(b) *Accounting for REMIC net income—(1) Allocation of partnership income to a foreign partner.* A domestic partnership shall separately state its allocable share of REMIC taxable income or net loss in accordance with §1.702-1(a)(8). If a domestic partnership allocates all or some portion of its allocable share of REMIC taxable income to a partner that is a foreign person, the amount allocated to the foreign partner shall be taken into account by the foreign partner for purposes of sections 871(a), 881, 1441, and 1442 as if that amount were received on the last day of the partnership's taxable year, except to the extent that some or all of the amount is required to be taken into account by the foreign partner at an earlier time under section 860G(b) as a result of a distribution by the partnership to the foreign partner or a disposition of the foreign partner's indirect interest in the REMIC residual interest. A disposition in whole or in part of the foreign partner's indirect interest in the REMIC residual interest may occur as a result of a termination of the REMIC, a disposition of the partnership's residual interest in the REMIC, a disposition of the foreign partner's interest

in the partnership, or any other reduction in the foreign partner's allocable share of the portion of the REMIC net income or deduction allocated to the partnership. See §1.871-14(d)(2) for the treatment of interest received on a regular or residual interest in a REMIC. For a partnership's withholding obligations with respect to excess inclusion amounts described in this paragraph (b)(1), see §§1.1441-2(b)(5), 1.1441-2(d)(4), 1.1441-5(b)(2)(i)(A), and §§1.1446-1 through 1.1446-7.

(2) *Excess inclusion income allocated by certain pass-through entities to a foreign person.* If an amount is allocated under section 860E(d)(1) to a foreign person that is a shareholder of a real estate investment trust or a regulated investment company, a participant in a common trust fund, or a patron of an organization to which part I of subchapter T applies and if the amount so allocated is governed by section 860E(d)(2) (treating it "as an excess inclusion with respect to a residual interest held by" the taxpayer), the amount shall be taken into account for purposes of sections 871(a), 881, 1441, and 1442 at the same time as the time prescribed for other income of the shareholder, participant, or patron from the trust, company, fund, or organization.

§1.860G-3T [Removed]

Par. 6. Section 1.860G-3T is removed.

Par. 7. Section 1.863-0 is amended by adding an entry for 1.863-1(f) and removing the entries for §1.863-1T to read as follows:

§1.863-1 Allocation of gross income under section 863(a).

* * * * *

(f) *Effective/applicability date.*

Par. 8. Section 1.863-1 paragraphs (e)(2) and (f) are revised to read as follows:

§1.863-1 Allocation of gross income under section 863(a).

* * * * *

(e) * * * (1) * * *

(2) *Excess inclusion income and net losses.* An excess inclusion (as defined in section 860E(c)) shall be treated as income from sources within the United States. To the extent of excess inclusion income previously taken into account with respect to

a residual interest (reduced by net losses previously taken into account under this paragraph), a net loss (described in section 860C(b)(2)) with respect to the residual interest shall be allocated to the class of gross income and apportioned to the statutory grouping(s) or residual grouping of gross income to which the excess inclusion income was assigned.

(f) *Effective/applicability date.* Paragraph (e)(2) of this section applies for taxable years ending after August 1, 2006.

§1.863-1T [Removed]

Par. 9. Section 1.863-1T is removed.

Par. 10. Section 1.1441-0 is amended by revising the entry for §1.1441-2(f) and removing the entries for §1.1441-2T to read as follows:

§1.1441-0 *Outline of regulation provisions for section 1441.*

§1.1441-2 *Amounts subject to withholding.*

(f) *Effective/applicability date.*

Par. 11. Section 1.1441-2(b)(5), (d)(4) and (f) are revised to read as follows:

§1.1441-2 *Amounts subject to withholding.*

(b) *****

(5) *REMIC residual interests.* Amounts subject to withholding include an excess inclusion described in §1.860G-3(b)(2) and the portion of an amount described in §1.860G-3(b)(1) that is an excess inclusion.

(d) *****

(4) *Withholding exemption inapplicable.* The exemption in §1.1441-2(d) from the obligation to withhold shall not apply to amounts described in §1.860G-3(b)(1) (regarding certain partnership allocations of REMIC net income with respect to a REMIC residual interest).

(f) *Effective/applicability date.* This section applies to payments made after December 31, 2000. Paragraphs (b)(5) and (d)(4) of this section apply to payments made after August 1, 2006.

§1.1441-2T [Removed]

Par. 12. Section 1.1441-2T is removed.

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

Approved June 30, 2008.

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

(Filed by the Office of the Federal Register on July 11, 2008, 8:45 a.m., and published in the issue of the Federal Register for July 14, 2008, 73 F.R. 40171)

Section 863.—Special Rules for Determining Source

Final regulations under section 860G of the Code relate to income that is associated with a residual interest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. See T.D. 9415, page 570.

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

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for September 2008.

Rev. Rul. 2008-46

This revenue ruling provides various prescribed rates for federal income tax purposes for September 2008 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2008-46 TABLE 1
Applicable Federal Rates (AFR) for September 2008

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
	<i>Short-term</i>			
AFR	2.38%	2.37%	2.36%	2.36%
110% AFR	2.63%	2.61%	2.60%	2.60%
120% AFR	2.86%	2.84%	2.83%	2.82%
130% AFR	3.10%	3.08%	3.07%	3.06%
	<i>Mid-term</i>			
AFR	3.46%	3.43%	3.42%	3.41%
110% AFR	3.81%	3.77%	3.75%	3.74%
120% AFR	4.16%	4.12%	4.10%	4.09%
130% AFR	4.51%	4.46%	4.44%	4.42%
150% AFR	5.22%	5.15%	5.12%	5.10%
175% AFR	6.09%	6.00%	5.96%	5.93%
	<i>Long-term</i>			
AFR	4.58%	4.53%	4.50%	4.49%
110% AFR	5.04%	4.98%	4.95%	4.93%
120% AFR	5.51%	5.44%	5.40%	5.38%
130% AFR	5.98%	5.89%	5.85%	5.82%

REV. RUL. 2008-46 TABLE 2
Adjusted AFR for September 2008

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	1.81%	1.80%	1.80%	1.79%
Mid-term adjusted AFR	3.21%	3.18%	3.17%	3.16%
Long-term adjusted AFR	4.53%	4.48%	4.46%	4.44%

REV. RUL. 2008-46 TABLE 3
Rates Under Section 382 for September 2008

Adjusted federal long-term rate for the current month	4.53%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.65%

REV. RUL. 2008-46 TABLE 4
Appropriate Percentages Under Section 42(b)(2) for September 2008

Appropriate percentage for the 70% present value low-income housing credit	7.93%
Appropriate percentage for the 30% present value low-income housing credit	3.40%

REV. RUL. 2008-46 TABLE 5

Rate Under Section 7520 for September 2008

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

4.2%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 1441.—Withholding of Tax on Nonresident Aliens

Final regulations under section 860G of the Code relate to income that is associated with a residual in-

terest in a Real Estate Mortgage Investment Conduit (REMIC) and that is allocated through certain entities to foreign persons who have invested in those entities. See T.D. 9415, page 570.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2008. See Rev. Rul. 2008-46, page 572.

Part III. Administrative, Procedural, and Miscellaneous

Qualified Forestry Conservation Bonds

Notice 2008-70

SECTION 1. PURPOSE

This notice solicits applications for authority to issue qualified forestry conservation bonds (QFCBs) under section 54B(c) of the Internal Revenue Code (the “Code”). There is a national limitation of \$500,000,000 on the volume of QFCBs that may be authorized (the “QFCB National Limitation”). Applications must be submitted in accordance with this notice.

SECTION 2. INTRODUCTION

Section 15316 of the Food, Conservation, and Energy Act of 2008, Public L. No. 110-246, 122 Stat. 1651 (2008) (the “Act”), added sections 54A and 54B to the Code. Section 54A sets forth general provisions applicable to qualified tax credit bonds and provides that the term “qualified tax credit bond” means a QFCB that is part of an issue that meets the requirements in section 54A(d)(2), (3), (4), (5), and (6). Section 54B(a) defines a QFCB and authorizes the issuance of QFCBs for one or more qualified forestry conservation purposes. No more than \$500,000,000 of QFCBs may be issued. Under section 54B(d), the Secretary of the Treasury (or his or her delegate) must make allocations of the QFCB National Limitation among qualified forestry conservation purposes in the manner that the Secretary determines is appropriate to ensure that all of the QFCB National Limitation is allocated before the date that is 24 months after the date of enactment of the Act. The Internal Revenue Service (IRS) has responsibility for making these allocations in coordination with the United States Forest Service (USFS) and relevant State authorities.

SECTION 3. BACKGROUND AND GENERAL REQUIREMENTS

(1) *Qualified Tax Credit Bonds*

Section 54A(a) provides that a taxpayer that holds a qualified tax credit bond on one or more credit allowance dates of the

bond during the taxable year shall be allowed a credit against the taxpayer’s income tax for the taxable year equal to the sum of the credits determined under section 54A(b).

The credit amount for any credit allowance date is 25 percent of the annual credit determined with respect to the bond. The annual credit is determined by multiplying the applicable credit rate by the outstanding face amount of the bond. The applicable credit rate for the bond is the rate that the Secretary estimates will permit the issuance of the qualified tax credit bond with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.

Section 54A(d) provides that a qualified tax credit bond means a QFCB that is part of an issue that meets the requirements of paragraphs (2) through (6) of section 54A(d). Paragraphs (2), (3), (4), (5), and (6) set forth requirements related to expenditures, reporting, arbitrage, maturity, and conflicts of interest, respectively.

Other definitions are set forth in section 54A(e). For example, the term “credit allowance date” means March 15, June 15, September 15, and December 15 of each year, as well as the last day on which the bond is outstanding. The term “available project proceeds” means the excess of the proceeds from the sale of the issue over the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds) plus the investment return from any investment of the excess.

Section 54A(f) provides that the credit amount determined in section 54A(a) is treated as interest that is includable in gross income.

Under section 54A(g), if an S corporation or a partnership allocates to its shareholders or partners (as the case may be) a credit allowed by section 54A, then the allocation is treated as a distribution.

Section 54A(i) permits, under regulations to be issued by the Secretary, the separation of the ownership of a qualified tax credit bond and the entitlement of the credit with respect to that bond. In the case of any such separation, the credit is allowed to the person who on the credit allowance date holds the instrument evidencing the entitlement to the credit and

not to the holder of the bond, and the rules of section 1286 apply to the qualified tax credit bond as if it were a stripped bond and to the credit under section 54A as if it were a stripped coupon.

(2) *Qualified Forestry Conservation Bonds*

Section 54B(a) defines a QFCB as any bond issued as part of an issue if—

(a) The bond is issued by a qualified issuer;

(b) The issuer designates the bond for purposes of section 54B (under section 54B(b), the maximum amount of QFCBs that may be designated by any issuer shall not exceed the limitation amount allocated to that issuer by the Secretary); and

(c) 100 percent of the available project proceeds of the issue are to be used for one or more qualified forestry conservation purposes.

Qualified issuer. Under section 54B(f), a State or any political subdivision or instrumentality thereof, or a 501(c)(3) organization (as defined in section 150(a)(4)), may be a qualified issuer of a QFCB.

Limitation on the amount of QFCBs designated. Section 54B(c) sets forth the QFCB National Limitation for the aggregate amount of bonds that may be designated under section 54B(a). No more than \$500,000,000 of QFCBs may be designated under section 54B(a). Under section 54B(d), the Secretary shall make allocations of the QFCB National Limitation among qualified forestry conservation purposes in such manner as the Secretary determines appropriate so as to ensure that all of the QFCB National Limitation is allocated before the date that is 24 months after the date of enactment of the Act. The Secretary shall solicit applications for allocations of the National Limitation not later than 90 days after the date of enactment of the Act.

Qualified forestry conservation purpose. Under section 54B(e) the term “qualified forestry conservation purpose” means the acquisition by a State or any political subdivision or instrumentality thereof, or by a 501(c)(3) organization (as defined in section 150(a)(4)), from an unrelated person of forest and forest land meeting all the following qualifications:

- Some portion of the land acquired must be adjacent to USFS Land. For purposes of this qualification, a parcel of land is adjacent to USFS Land if it—
 - Touches any unit of the National Forest System as defined in 16 U.S.C. 1609(a);
 - Shares a common boundary with any unit of the National Forest System, or
 - Is located within the boundaries of a unit of the National Forest System.

If at least one portion of the land acquired is adjacent to USFS Land, it is irrelevant that other non-contiguous acquired parcels are not adjacent to it.

- The amount of acreage acquired must be at least 40,000 acres.
- All of the land must be subject to a native fish habitat conservation plan approved by the United States Fish and Wildlife Service (USFWS).
- The person acquiring the land must satisfy the disposition requirement in section 54B(e)(2).

Disposition requirement. The Code establishes a two-part requirement regarding the disposition of the acquired land. Section 54B(e)(2) provides, “At least half of the land acquired must be transferred to the United States Forest Service at no net cost to the United States, and not more than half of the land acquired may either remain with, or be conveyed to, a State.” The first part of this requirement means that the qualified issuer that acquired the land must transfer to the USFS at least half of the land acquired. The second part means that all of the acquired land that is not transferred to the USFS (land that necessarily is no more than half of the land acquired) either (a) if the qualifying issuer is not a State, must be transferred to one or more States, or (b) if the qualifying issuer is a State, must be retained by that State or conveyed to one or more other States. (For purposes of this requirement, “the land acquired” or “the acquired land” means land that the qualified issuer acquired using proceeds derived from issuance of the bonds or from receipt of the refund of the deemed payment, as described below.)

If the qualified issuer is not a State, the USFS and any State(s) involved may con-

sult with each other as to the identification of land that the qualified issuer proposes to transfer to each of them. If the USFS and the State(s), however, do not agree, requests for allocation that correspond to the preferences of the USFS are expected to be favored. The transfers to the USFS and, if applicable, to one or more States must occur not longer after the qualified issuer acquires the land than is prescribed by the deadlines in Section 6(3)(e)(iii) of this notice.

The requirement that the transfer to the USFS be made “at no net cost to the United States” means that the transferor must cover all costs directly incident to the transfer of the land to the USFS (for example, any survey costs, title insurance, transfer taxes, recordation fees, etc.), but not indirect costs to the Department of Agriculture such as USFS salary and overhead and expenses for travel, legal review, and clearance.

Election to receive cash instead of using the allocation to designate QFCBs. Under section 54B(h)(1), if a qualified issuer receives an allocation of the QFCB National Limitation, then, without regard to whether the issuer is subject to tax under Chapter 1 of the Code, the issuer may elect to be treated as having made a payment (the “deemed payment”) against that tax, for the taxable year preceding the taxable year in which the allocation is received, in an amount equal to 50 percent of the amount of the allocation. Under section 54B(h)(2)(A), the Secretary shall not use the deemed payment of tax as an offset or credit against any tax liability of the issuer but shall refund the deemed payment to the issuer. Under section 54B(h)(2)(B), except as provided in section 54B(h)(3), the deemed payment shall not be taken into account in determining any amount of interest under the Code.

Section 54B(h)(3) provides that an election to be treated as making a deemed payment shall not take effect unless the qualified issuer certifies to the Secretary that any payment of the tax refunded to the issuer will be used exclusively for one or more qualified forestry conservation purposes.

Failure to use all of the refund or all of available project proceeds for a qualified forestry conservation purpose. If the qualified issuer fails to use any portion of the refund for a qualified forestry conservation

purpose (either because the issuer fails to purchase land described in section 54B(e) or because the issuer fails to dispose of the acquired land in a manner that satisfies section 54B(e)(2)), then the issuer shall be liable to the United States in an amount equal to that portion, plus interest at the overpayment rate under section 6621, for the period from the date the portion was refunded to the date the amount is paid to the United States. Any such amount shall be assessed and collected in the same manner as tax imposed by Chapter 1, except that subchapter B of Chapter 63 (relating to deficiency procedures) shall not apply in respect of such assessment or collection.

If a qualified issuer issues QFCBs and, within the expenditure period defined by section 54A(d)(2)(B)(ii) and (iii), fails to use 100 percent of the available project proceeds to acquire land described in section 54B(e), some of the bonds must be redeemed within 90 days after the end of the expenditure period. The bonds to be redeemed are nonqualifying bonds determined in the same manner as under section 142. See section 54A(d)(2)(B)(i). If a qualified issuer issues QFCBs and uses some or all of the available project proceeds to acquire land described in section 54B(e) but some portion of the land so acquired is not disposed of in a manner that satisfies section 54B(e)(2), then, in the same manner as under section 142, a portion of the QFCBs is treated as nonqualifying, and the issuer is treated as if the tax credits allowed under section 54A with respect to the non-qualifying portion of the QFCBs are a refund of the deemed payment under section 54B(h) that was not used for a qualified forestry conservation purpose. The treatment of such a refund is set forth in section 54B(h)(3)(A) (last two sentences). This treatment also applies to all tax credits allowed with respect to non-qualifying QFCBs. For this purpose, each credit allowance date is treated as the beginning of a period for which overpayment interest is to be assessed.

Just as the amount of available project proceeds includes investment return from investment of the net proceeds from the sale of an issue, in the case of a qualified issuer that has made the election under section 54B(h), the amount that must be used for qualified forestry conservation purposes includes any investment return from investment of the money received

as a refund. The requirements, however, that all available project proceeds (including any investment return), or the entire refund (including any investment return), must be used for qualified forestry conservation purposes is not violated by use of some or all of the investment return to pay for one or more surety bonds required by Section 6(3)(e)(vi) of this notice.

Between the time a qualified issuer receives either proceeds from the sale of QFCBs or a refund of a deemed payment under section 54B(h) and the time the land described in section 54B(e) is acquired, the qualified issuer must give a surety bond that complies with 31 USC 9304–9308. The bond must cover the full amount of the proceeds (or the refund) that was received by that qualified issuer and all investment return on those funds. Alternatively, as is provided by 31 CFR Part 225, the qualified issuer may pledge Government obligations (securities whose principal and interest are unconditionally guaranteed by the United States Government) in lieu of a surety bond. If that is done, it is permissible for the qualified issuer to use the proceeds (or the refund) to acquire the Government obligations. No other alternative will be acceptable.

SECTION 4. APPLICATION PROCESS AND DEADLINES

Because each applicant for an allocation of the QFCB National Limitation must address various requirements administered by the IRS, by the USFS, and potentially by one or more States, the process described below is designed to support applicants in efficiently completing their applications. Except to the extent waived by the applicant, all information that the applicant provides in the course of the application process to the IRS, to the USFS, or to any State is confidential tax return information within the meaning of section 6103. If some of the land acquired will be transferred to one or more States (and thus application information will have to be given to that State or those States), the applicant should notify the IRS immediately. Although the process contains deadlines for some of its stages, applicants that have completed one stage before the deadline are encouraged immediately to embark on the next. Nothing in this process prevents some applicants from submitting

their Final Applications even before the due date for other applicants' Expressions of Interest. If all Final Applications are submitted substantially before the deadline below, the IRS and the USFS intend that allocations will be made substantially before the statutory deadline in section 54B(d)(1).

The application process consists of the following five stages:

- *Preliminary Consultation.* Both the USFS and States have specific requirements that must be satisfied in order for land to be transferred to them. In particular, at a minimum, land to be transferred to the USFS must be by general warranty deed or the functional equivalent under applicable State law, with title otherwise acceptable to the Department of Agriculture, Office of the General Counsel, and in conformity with the title standards of the U.S. Attorney General. All lands conveyed to the USFS must be managed pursuant to the laws and regulations governing the National Forest System. Applicants should immediately begin consultations with the USFS and with any relevant States regarding the applicable requirements, including requirements regarding the condition of the land at the time of transfer in light of timber harvesting or other land management activities occurring prior to transfer. (For purposes of this notice, the term "applicant" includes potential applicants.) These consultations should also address how the qualified forestry conservation projects to be included in an application can be structured in ways that maximally advance the statutory purposes of section 54B.
- *Expression of Interest.* To enable the IRS, the USFS, and any affected State to determine the resources that must be dedicated to the allocation process, all persons who may apply for an allocation to issue QFCBs must file an Expression of Interest no later than October 21, 2008. The signed original of the Expression of Interest and a copy must be filed with the IRS, and two additional copies must be sent to the USFS, as well as to each relevant State, if any of the property will be conveyed to a State or States. See Section 17, below, for instructions on where to file. Section 5 of this notice describes the

requirements for the Expression of Interest.

- *Pro Forma application.* The various government agencies need sufficient time to determine whether the proposed land acquisitions and dispositions satisfy all applicable requirements. Although prior informal consultation generally will enable applicants to anticipate most of the requirements that they must meet, materials reflecting a complete application are needed for government officials to perform a thorough evaluation. The due date for the *Pro Forma* application is designed to provide applicants with ample opportunity to revise and refine their applications to address any additional concerns raised and suggestions presented. The complete *Pro Forma* application must be filed with the IRS, the USFS, and any affected State not later than February 18, 2009. Section 7 of this notice describes the requirements for the *Pro Forma* application.
- *Draft of Final Application.* Once all issues have been resolved, a complete draft of the Final Application must be provided to the USFS and to all States involved, for them to provide the required certifications. At this stage of the process, there should have been sufficient consultation and exchange of information so that the USFS and the States have the limited task of confirming that the materials submitted for certification conform in all respects to pre-existing understandings with the applicants. After that confirmation, the USFS and the States will provide to the applicants the certifications that must be incorporated into the applicant's Final Application. The draft of the Final Application must be filed with the USFS and any affected State not later than March 1, 2010, and a copy must simultaneously be filed with the IRS. Section 8 of this notice describes the requirements for the draft of the Final Application.
- *Final Application.* The filing of the Final Application is an applicant's last step in establishing its eligibility for an allocation of the QFCB National Limitation. If the applicant chooses to make the election under section 54B(h), that election is made as part of the Final Application. The original of the Final

Application must be filed with the IRS not later than April 1, 2010, and copies must simultaneously be filed with the USFS and all affected States. Section 6 of this notice describes the requirements for the Final Application. The allocations of the QFCB National Limitation will be made not later than the earlier of—

- 24 months after the date of enactment of the Act; or
- 60 days after the date on which all applicants have filed their Final Applications.

SECTION 5. EXPRESSION OF INTEREST

Each Expression of Interest in applying for an allocation of some or all of the QFCB National Limitation must comply with this Section 5.

(1) *Identification of the applicant.* The Expression of Interest must identify the applicant by name, address, and taxpayer identification number. There must be sufficient information to establish that the applicant is a qualified issuer within the meaning of section 54B(f).

(2) *Contact person.* The Expression of Interest must designate one or more persons with knowledge regarding the contemplated application (including the proposed acquisition and transfer of land) whom the applicant authorizes to discuss these matters with the IRS, the USFS, and any relevant State authorities. This designation must include the designee's name, title, telephone number, fax number, and mailing address. If a designee is not an official or officer of the applicant, the Expression of Interest must include an executed Form 2848 (*Power of Attorney and Declaration of Representative*) that authorizes the IRS, the USFS, and all affected States to discuss with the designee any taxpayer information specifically relating to the potential application, acquisition, and transfer.

(3) *General description of the contemplated qualified forest conservation purpose.* The Expression of Interest must include a general description of the land proposed to be acquired, the portions of the land that are being considered for transfer to the USFS, and the portions that are being considered for retention by the applicant, if the applicant is a State, or for trans-

fer to one or more States. The Expression of Interest must also identify the specific habitat conservation plan approved by the USFWS that applies to the land proposed to be acquired. (The plan must be in effect by the time the Expression of Interest is filed.)

(4) *Declaration and signature.* The declaration described in Section 16 of this notice must be included in the Expression of Interest, and an authorized official or officer of the potential applicant must sign the document.

SECTION 6. FINAL APPLICATION

Each Final Application for an allocation of the QFCB National Limitation must comply with this Section 6.

(1) *Applicant(s).* An application may be filed either by a single applicant or by more than one applicant. (For additional requirements governing applications jointly filed by multiple applicants, see Section 6(4) of this notice.) Each applicant for an allocation of the QFCB National Limitation must be—

(a) A State or any political subdivision or instrumentality thereof; or

(b) A 501(c)(3) organization (as defined in section 150(a)(4)).

The application must demonstrate clearly that each applicant meets this requirement. For this purpose, standards under section 103 of the Code determine whether an entity is a political subdivision or instrumentality. The applicant must have timely filed the Expression of Interest described in Sections 4 and 5 of this notice.

(2) *Dedication of bond proceeds, or of refund of deemed payment, to qualified forestry conservation purposes.* The applicant must certify that, for each issue of its bonds that may be designated pursuant to an allocation of any portion of the QFCB National Limitation and for any amount of the allocation for which an election under section 54B(h) is being made, 100 percent of the available project proceeds of the issue (including any investment return), or 100 percent of the refund of the deemed payment (including any investment return), will be used for one or more qualified forestry conservation purposes. (The expenditure requirement in the preceding sentence is not violated by use of some or all of the investment re-

turn to pay for one or more surety bonds required by Section 6(3)(e)(vi) of this notice.)

(3) *Certifications and additional information.* Each application must contain the information and certifications by the applicant required by this subsection (3).

(a) *Requirements governing the land to be acquired.* With respect to the land to be acquired with the available project proceeds of each issue (or, if applicable, with the refund of the deemed payment), each application must contain a certification by the applicant that includes the following statements and information:

(i) The land is forest and forest land that the applicant has established is suitable for conveyance to the USFS or the State.

(ii) Some portion of the land to be acquired is adjacent to USFS land (within the meaning set forth under "Qualified forestry conservation purpose" in Section 3(2)(c) of this notice).

(iii) All of the land is subject to a native fish habitat conservation plan approved by the USFWS. The conservation plan approved by the USFWS must accompany the application.

(iv) The amount of acreage to be acquired is at least 40,000 acres.

(v) The application must set forth a specific date, no later than three years after issuance of the bonds or, if applicable, after receipt of the refund of the deemed payment, on or before which the applicant expects to acquire the land. See Section 13(2) of this notice regarding the procedure for requesting an extension of this three-year deadline.

(b) *Land description and location.* The application must specifically describe the land to be acquired, with an emphasis on characteristics that qualify the land as forest or forest land. The description must include the location of the land to be acquired and demonstrate that the land is adjacent to USFS land (within the meaning set forth under "Qualified forestry conservation purpose" in Section 3(2)(c) of this notice). United States Geological Survey maps for all quadrants containing any of the land must be included with the application, and the land must be clearly and precisely identified on the map or maps. Legal descriptions must be depicted on a map or plat of a scale of 1:24,000 or larger unless otherwise allowed by the USFS.

(c) *Current owner (or owners) of the land.* The application must state from whom the land is to be acquired and must certify that no such current owner is related, directly or indirectly, to the applicant that will purchase the land.

(d) *Acquisition cost and other financial arrangements.* The application must disclose the acquisition cost of the land to be acquired with the QFCB proceeds (or, if applicable, the refund of the deemed payment).

(e) *Land transfer.* The application must contain a commitment by the applicant that at least one-half of the land to be acquired will be transferred to the USFS by general warranty deed, or the functional equivalent under applicable State law, at no net cost to the United States, and that the entire remainder either will be conveyed to one or more States or, if the applicant is a State, will remain with the applicant.

(i) The application must certify the applicant's intent to transfer the land to the USFS and, if applicable, to the affected State or States.

(ii) With respect to each transferee, the application must contain—

- A legal description of the land to be transferred in at least the level of detail set forth in Section 6(3)(b) of this notice;
- Copies of any land surveys;
- A description of the state of the title of the land to be transferred;
- A statement whether any of the land to be transferred is, or after transfer will be, subject to liens, easements, or other encumbrances and, if so, both a detailed description (including thorough documentation) of all such burdens and a disclosure whether any of those burdens is expected to remain after the land is transferred (in particular, the application must disclose any rights or reservations, including without limitation any contractual rights to be retained with respect to the land by the applicant or any third party);
- A statement whether any of the land contains toxic, hazardous, or other noxious materials that have the potential to impair enjoyment of the land to

be transferred or to subject the transferee to liability; and

- Any other information or documentation requested by that transferee.

(iii) The application must describe in detail the applicant's commitment to satisfying the Disposition Requirement, described above in Section 3(2), and to meeting the deadlines in this Section 6(3)(e)(iii), including the following: With respect to each portion of the land acquired (except for portions that are going to be retained by the applicant if the applicant is a State), either paragraph (A) or paragraph (B) of this Section 6(3)(e)(iii) must be satisfied not later than six months after the completion of the acquisition of the land.

(A) That portion of the acquired land has been transferred to the ultimate recipient of that portion (the USFS or a State);¹ or

(B) The following two events have occurred—

- The applicant and the ultimate recipient of that portion of the land (the USFS or a State) have entered into a contract that satisfies Section 6(3)(e)(iv) and is effective under State or Federal law immediately to vest in the ultimate recipient equitable title to that portion of the land; and
- That contract has been appropriately recorded or referenced in all land records for that portion of the land.

See Section 13(2) of this notice regarding the procedure for requesting an extension of this six-month deadline.

(iv) At a minimum, the contract described in Section 6(3)(e)(iii)(B) must—

- Specify the date by which the portion of the acquired land to which the contract refers will be completely transferred to the ultimate recipient;
- Prescribe the title requirements of the land to be transferred, including requirements for abstracts of title or title reports by a title insurance company;
- Describe requirements for the condition of the land at the time of that transfer to the ultimate recipient including any environmental documen-

tation that the USFS may require pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601, *et seq.*) or that a transferee State may require pursuant to its requirements for land to be transferred to it;

- Prescribe standards for land management by the applicant between the time it transfers equitable title to the ultimate recipient and the time it completely transfers the land to the ultimate recipient; and
- Contain such other terms and conditions as the USFS or State, as appropriate, may require.

(v) Each of the following constitutes a failure to use the corresponding amount of available project proceeds (or the corresponding amount of the refund of the deemed payment) for a qualifying forestry conservation purpose within the meaning of section 54B(e). As such, each produces the consequences, as appropriate, that are described in section 54A(d)(2)(B) of the Code, section 54B(h)(3)(A) of the Code, and Section 3(2) of this notice.

(A) Failure to satisfy Section 6(3)(e)(iii)(A) or (B) before the expiration of the six-month deadline (taking any extensions into account); or

(B) Failure of a qualified issuer to consummate timely all land transfers that were promised in one or more contracts that were intended to satisfy Section 6(3) and Section 6(3)(e)(iv) of this notice. (Whether a transfer is timely is determined taking into account any extensions obtained pursuant to Section 13(3) of this notice.)

- Failure timely to transfer land to the USFS or to a State is not excused on the grounds that the intended recipient refuses to accept the proposed transfer because, in the intended recipient's sole discretion, the proposed transfer for any reason does not satisfy the criteria that apply to the intended recipient at the time of the proposed transfer for accepting a transfer of land.
- See Section 13(3) of this notice for a procedure to request an extension of time for consummating a transfer that

¹ As is stated elsewhere in this notice, transfers to the USFS must be by a general warranty deed, or the functional equivalent under applicable State law, with title otherwise acceptable to the Department of Agriculture, Office of the General Counsel, and in conformity with the title standards of the U.S. Attorney General. Any transfer to a State must meet the analogous requirements under State law.

was promised in a contract that was intended to satisfy Section 6(3)(e)(iii)(B) and Section 6(3)(e)(iv) of this notice.

- See Section 14 of this notice for a procedure for transferring Replacement Land to the USFS or to a State in partial satisfaction of the requirement in section 54B(e)(2).

(vi) If any of the land covered by a contract described in Section 6(3)(e)(iii)(B) of this notice is scheduled to be transferred to the USFS (or, if applicable, to a State), more than three years after the execution of the contract, then the qualified issuer must obtain a surety bond acceptable to the Treasury Department to cover satisfaction of any possible liability from a failure by that qualified issuer to transfer the promised land. (The qualified issuer may also satisfy this bonding requirement by providing a bond that is secured with Government obligations. See 31 CFR Part 225.) The amount of the qualified issuer's bond must be at least five percent of the portion of the available bond proceeds (or, if applicable, of the refund of the deemed overpayment) that is allocable to the qualified issuer's acquisition of the land the transfer of which under the contract is scheduled for more than three years after the execution of the contract. The amount of bond may be reduced from time to time as the qualified issuer's conveyances of land to the USFS (or a State) reduce the portion of the available bond proceeds (or, if applicable, of the refund of the deemed overpayment) that is allocable to the qualified issuer's acquisition of the land the transfer of which under the contract has not yet occurred.

Alternatively, the qualified issuer may reduce or eliminate the amount of this required surety bond if the qualified issuer posts sufficient appropriate land as collateral by deed of trust or by conveyance in escrow in favor of the United States. The USFS must determine, taking into account all of the land's attributes, that the land proposed to be used as collateral will provide effective protection for the interests of the United States. If the IRS and the USFS approve the use of that land as collateral for this purpose, the amount of the required bond shall be reduced by one half of the estimate of value by the USFS for the land that is proposed to be used as collateral.

(Thus, if the value of the land used as collateral is at least twice the amount of the required bond, the need for a surety bond is eliminated.) The USFS need not conduct a formal appraisal of any property for any determination under this provision. The collateral may be partially released from time to time as conveyances of land to the USFS (or a State) reduce the amount of the surety bond required.

(f) *Certification by the United States Forest Service.* The application must be accompanied by a signed statement from the USFS—

(i) Certifying that the land to be acquired satisfies the requirements in Section 6(3)(a)(i) through (iv) of this notice;

(ii) Confirming that the USFS is willing to accept the land proposed for transfer in the application; and

(iii) Containing any other comments the USFS has with respect to the information provided by the applicant.

USFS confirmation of a willingness to accept the offered land does not waive any requirement for conveyance of acceptable title or remediation of hazardous substances, or any other requirement of federal land acquisition.

(g) *Certification of Affected State or States.* With respect to any State to which a portion of the acquired property is to be transferred, a statement signed by an authorized State official confirming that the State is willing to accept the land described in the application proposed to be transferred to the State must accompany the application. Any such confirmation by a State of its willingness to accept the offered land does not waive any requirement for conveyance of acceptable title or remediation of hazardous substances, or any other requirement of land acquisition under the law or policies of the State.

(4) *Applications filed jointly by more than one applicant.* If an application is filed jointly by more than one applicant—

- Each applicant must satisfy the requirements set forth in Section 6(1) of this notice;
- Each applicant must make the certification described in Section 6(2) of this notice;
- Each such proposed use of bond proceeds, or of the refund of the deemed payment, separately must satisfy the

criteria to be a qualified forestry conservation purpose;

- The various qualified forestry conservation purposes for which the application requests allocations must be consistent and complementary with each other; and
- The aggregate allocations that the application requests for all joint applicants must be no more than the QFCB National Limitation.

(5) *Election under section 54B(h).* Any election under section 54B(h) must be included with the Final Application. See Section 11 of this notice.

(6) *Declaration and signatures.* The declaration described in Section 16 of this notice must be included in the Final Application, and an authorized official or officer of each applicant must sign the application.

SECTION 7. PRO FORMA APPLICATION

A *Pro Forma* application is similar to a Final Application with the following differences:

- In lieu of making all of the required certifications, the applicant may describe the certifications that the applicant in good faith expects to make as part of the Final Application but that the applicant cannot yet make. If the applicant does not yet have sufficient information to make a certification, the applicant must describe the additional information it needs and how it intends to obtain that information.
- If the applicant does not have sufficient information satisfactorily to complete the items described in Section 6(3)(a) through (e) of this notice, the applicant must provide the required information that is in its possession and must describe both whatever additional information is required by section 54B, by this notice, by the USFS, or by any affected State and how the applicant intends to obtain that information.
- The certifications required by Section 6(3)(f) and Section 6(3)(g) are not required.
- An executed election under section 54B(h) need not be included, but the applicant must state whether it intends to make the election.

SECTION 8. DRAFT OF FINAL APPLICATION

A draft of the Final Application is similar to a Final Application with the following difference:

- The certifications required by Section 6(3)(f) and Section 6(3)(g) are not required.

SECTION 9. COORDINATION WITH FEDERAL AND STATE AGENCIES

(1) The IRS may consult with the USFS, the USFWS, and any State containing any of the land to be acquired.

(2) If the IRS receives applications for aggregate allocations that are in excess of the QFCB National Limitation or competing applications not all of which can be fulfilled (for example, because they relate in whole or in part to the same land), allocations will be made in a manner consistent with the recommendations of the USFS.

SECTION 10. CONSENT TO DISCLOSURE AND TO USE OF INFORMATION

(1) In order to provide the public with information on how the IRS has allocated the QFCB National Limitation, to disclose the resulting benefits to the USFS and to one or more States, and to facilitate oversight of the QFCB program, the IRS intends to publish the results of the allocation process. The published information will identify the specific allocations awarded and the successful applicants' uses of the resulting funds. Section 6103 requires consent for the IRS to disclose the return information with respect to an applicant to which an allocation has been awarded. Therefore, the IRS requests that each applicant submit with its application a separate document, in the form set forth in Appendix A, consenting to the public disclosure by the IRS of the name of the applicant, the amount of the allocation, and certain other information, including a description (including the location) of the land to be acquired with the proceeds of QFCBs (or, if applicable, the refund of the deemed payment) and the disposition of the land so acquired. An authorized official of the applicant must sign the consent. An applicant is not required to provide

this consent in order to receive an allocation. The IRS will not publish any return information with respect to applications that are not awarded an allocation of the QFCB National Limitation.

(2) In order for the USFS or the State to which land is transferred under section 54B to manage the land, the applicant must consent for the USFS or State, as applicable, to retain and make use of the information described in Appendix B that the applicant provided about the land either during the application process or in connection with the transfer of land or negotiating the contract to transfer land. The applicant is required to provide this consent, in the form set forth in Appendix B, in order to receive an allocation.

SECTION 11. ELECTION TO TREAT HALF OF THE ALLOCATION AS PAYMENT OF TAX

In lieu of issuing bonds pursuant to an allocation of some of the QFCB National Limitation, an applicant may elect to treat 50 percent of any such allocation to it as a deemed payment of a tax, which the IRS must then refund to the applicant. See section 54B(h). Any such election must be included with the Final Application but must be set forth in a document separate from the application. The election document must contain also—

- A certification by the electing applicant that, within three years of the receipt of the refund, the applicant will use the deemed payment, exclusively for the qualified forestry conservation purpose described in the application; and
- A certification by the electing applicant that between the time the applicant receives the refund and the time it acquires the land, it will comply with the last paragraph of Section 3 of this notice.

In describing the amounts to be used for qualifying forestry conservation purposes, the application must be consistent with whether the requested allocation will be used to issue bonds or to qualify for a refund of a deemed payment. Whether an applicant makes the election will affect the amount of funds available for the purchase of land described in section 54B(e). Because the minimum amount of land to be

transferred to USFS is “one half of the land acquired,” making the election will affect the amount of that minimum transfer but will not affect its fractional relation to the amount of land acquired.

SECTION 12. ISSUANCE OF THE QFCBS

If an applicant has not made the election described in Section 11 of this notice and receives an allocation of the QFCB National Limitation, the applicant must issue the bonds within one year of the allocation, unless an extension of time has been granted under Section 13(1) of this notice.

SECTION 13. EXTENSIONS OF TIME

(1) *Time to issue QFCBs.* Pursuant to a written request (not a request for a letter ruling), upon a showing of good cause, the IRS may provide a reasonable extension of the one-year period within which bonds must be issued. Any request for an extension must be sent to the address set forth in Section 17(1)(A) of this notice.

(2) *Time to acquire and transfer land.* Pursuant to a written request (not a request for a letter ruling), following issuance of the bonds (or if applicable, receipt of the refund of the deemed payment), upon a showing of good cause, the IRS may provide a reasonable extension of the three-year period described in Section 6(3)(a)(v) or the six-month period described in Section 6(3)(e)(iii). The original of any request for an extension must be sent to the address set forth in Section 17(1)(A) of this notice, and copies must also be sent to the USFS and to any State to which any of the land to be acquired is planned to be transferred.

(3) *Extension of time to transfer land under a contract intended to satisfy Section 6(3)(e)(iii)(B) and Section 6(3)(e)(iv) of this notice.* If a qualified issuer and the USFS (or a State, as applicable) agree to modify a contract that was intended to satisfy Section 6(3)(e)(iii)(B) and Section 6(3)(e)(iv) of this notice and if the agreed-to modification would create no more than a reasonable delay in the time when land governed by the contract must be transferred to the USFS (or to the State), then, pursuant to a written request (not a request for a letter ruling), and upon a showing of good cause, the IRS may agree

to an extension of the deadlines contained in the contract. The original of any request for such an extension must be sent to the address set forth in Section 17(1)(A) of this notice, and copies must also be sent to the other party to the contract (to which any of the land required to be transferred).

SECTION 14. TRANSFER OF REPLACEMENT LAND IN PARTIAL SATISFACTION OF SECTION 54B(e)(2) AND THE REQUIREMENTS OF THIS NOTICE

(1) *Transfer of Replacement Land treated as transfer of Unacceptable Land for purposes of satisfying the Disposition Requirement.* If land that is required to be transferred to the USFS (or, if applicable, to a State) is not so transferred because it is Unacceptable Land (within the meaning of Section 14(2)(a) of this notice) and if the qualified issuer instead transfers to the USFS or the State land that is Replacement Land with respect to the Unacceptable Land (within the meaning of Section 14(2)(b) of this notice), then the transfer of the Replacement Land is treated like a transfer of the Unacceptable Land for purposes of satisfying the requirements of section 54B(e)(2) and this notice.

(2) Definitions.

(a) *Unacceptable Land.* The term “Unacceptable Land” means land that is required to be transferred to the USFS or to a State under the requirements of section 54B and this notice but that the intended recipient will not accept because of—

- Defects in title—
 - Of which the qualified issuer was unaware at the time it acquired the land; or
 - Of which the qualified issuer was aware at the time it acquired the land, which it reasonably believed that it could remedy, but which were not remedied by the qualified issuer’s reasonable efforts; or
- Conditions that—
 - Existed at the time the qualified issuer acquired the land but of which the qualified issuer was then unaware; or
 - Did not exist at the time the qualified issuer acquired the land and were not subsequently caused by

the qualified issuer or by any person that was related to, or acting on behalf of, the qualified issuer. (If an unrelated person engages in activities on the land with the permission of the qualified issuer—regardless whether the qualified issuer is legally required to allow some form of those activities—that person is treated for this purpose as acting on behalf of the qualified issuer.)

(b) *Replacement Land.* With respect to particular Unacceptable Land, the term “Replacement Land” means land such that—

- If the qualified issuer had acquired the Replacement Land instead of acquiring the Unacceptable Land, the acquisition would have satisfied the requirements of section 54B(e) (other than section 54B(e)(2));
- The total acreage of the land is no less than the total acreage of the Unacceptable Land;
- The intended recipient of the Unacceptable Land explicitly determines that the land is no less desirable than the Unacceptable Land would have been if the cause for its unacceptability did not exist; and
- The intended recipient specifically consents to accept the land in lieu of the Unacceptable Land.

(3) *Application procedure.* If a qualified issuer and the USFS (or a State, as applicable) agree to treat certain land as Replacement Land with respect to certain Unacceptable Land, then, pursuant to a written request (not a request for a letter ruling), and upon a showing of good cause, the IRS may agree to treat the land as Replacement Land. The original of any request for this treatment must be sent to the address set forth in Section 17(1)(A) of this notice, and copies must also be sent to the other party to the contract (to which any of the land is required to be transferred). The request must include complete documentation establishing that both the alleged Unacceptable Land and the requested Replacement Land meet the requirements of this Section 14.

SECTION 15. CERTIFICATIONS OF ACQUISITION AND TRANSFER OF LAND

Each of the following certifications must be submitted to the IRS at the address set forth in Section 17(1)(B) of this notice:

(1) Not later than one month after the expiration (taking into account any extensions) of the three-year period described in Section 6(3)(a)(v), the applicant must certify that it has acquired the land described in the application. The certification must describe in detail how the proceeds from the sale of the QFCBs (or the refund of the deemed payment) were used during that period, between their receipt by the applicant and the applicant’s acquisition of the land described in the application, must account for the entire compound investment return on those funds, and must demonstrate that, during that period, the interests of the United States were protected in a manner consistent with the last paragraph of Section 3 of this notice.

(2) If the IRS grants one or more extensions of the six-month period described in Section 6(3)(e)(iii) of this notice, then, not later than one month after receiving each extension, the applicant must provide to the USFS and to any affected State a copy of the extension document (including any attachments).

(3) Not later than one month after the expiration of each six-month deadline in Section 6(3)(e)(iii) (taking into account any extensions), the applicant must certify that it has complied with Section 6(3)(e)(iii) of this notice and must provide detailed information and documents sufficient to demonstrate that compliance. If the applicant is complying with Section 6(3)(e)(iii)(B) (that is, by contracting to transfer the land in the future), the documents provided must include a copy of the contract or contracts and evidence that the contract has been appropriately recorded or referenced in all relevant land records. The certification must highlight compliance with the requirements designed to ensure satisfaction of any obligation that may arise under section 54B(h)(3)(A) of the Code and Section 3(2) of this notice.

(4) If the applicant has executed a contract that was intended to satisfy Section 6(3)(e)(iii)(B) and Section 6(3)(e)(iv) of this notice, then, not later than one month after the expiration of the deadline for the

transfer of each portion of land as provided in the contract (taking extensions under Section 13(3) of this notice into account), the applicant must certify that the property to which that deadline applies has been properly transferred; and, in the case of the last such deadline, the filing must include a certification that at least one-half of all the land acquired has been conveyed to the USFS at no net cost to the United States and that the remainder of the land acquired has been retained by the applicant if the applicant is a State or has been transferred to one or more States, if the applicant is not a State. All such certifications must contain detailed information and documents sufficient to demonstrate that compliance. The last such filing must contain a certification by the USFS that the applicant has fulfilled its contractual obligations and has conveyed at least one half of the land acquired to the USFS at no cost to the United States. The IRS may request the USFS to provide it corroboration of any certification of an applicant made pursuant to this section.

SECTION 16. REQUIRED DECLARATIONS

Except for the consents described in Section 10 of this notice, each application, certification, report, or other document submitted under this notice must include the following declaration signed by an authorized official or officer who has personal knowledge of the relevant facts and circumstances: "Under penalties of perjury, I declare that I have examined this document (including any attachments) and, to the best of my knowledge and belief, the document (including any attachments) contains all of the relevant facts, and such facts are true, correct, and complete."

SECTION 17. ADDRESSES

(1) *Internal Revenue Service.*

(A) Application materials and requests for extensions—

Internal Revenue Service
Attention CC:FI&P:Branch 5
1111 Constitution Avenue, NW,
Room 4017
Washington, D.C. 20224

Alternatively, these materials and requests may be hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to:

Courier's Desk
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC, attention CC:FI&P:5

(B) Certifications required by Section 15 must be submitted to:

Internal Revenue Service
Attention: SE:T:G:TEB
1111 Constitution Avenue, NW,
PE-5S1
Washington, D.C. 20224

(2) *United States Forest Service.* Applications and materials to be filed with the USFS must be either submitted by postal service or hand delivered Monday through Friday between the hours of 8:00 a.m. and 4:00 p.m. to:

United States Forest Service
Attention: Director of Lands
1400 Independence Avenue, SW
Mailstop:1124
Washington, D.C. 20250

Alternatively applications and materials may be sent by express mail to:

United States Forest Service
Attention: Director of Lands
201 14th Street, SW
Washington, DC 20024

SECTION 18. INFORMATION REPORTING

An applicant that receives an allocation of the QFCB National Limitation must file Form 8038, *Information Return for*

Tax-Exempt Private Activity Bond Issues, in accordance with the instructions for that form and this notice. A copy of the completed and signed Form 8038 must simultaneously be sent to the IRS and USFS at the addresses listed in section 17(1) and (2) of this notice, respectively. An applicant that used the allocation to issue QFCBs must complete Part II by checking the box on Line 11q (Other), writing in "Qualified Forestry Conservation Bonds," and entering the amount of the bonds in the Issue Price column. An applicant that elects the application of section 54B(h) (and thus receives a refund of a deemed payment in lieu of issuing QFCBs) must file the Form 8038 not later than the date that it would have been required to file the form if it had issued QFCBs on the date that it receives the refund. That applicant must complete Part II of the Form 8038 by checking the box on Line 11q (Other), writing in "Refund Under Section 54B(h)," and entering the amount of the refund in the Issue Price column.

SECTION 19. DRAFTING INFORMATION

The principal author of this notice is Timothy L. Jones of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Department of the Treasury participated in its development. For further information regarding this notice, please contact Mr. Jones at (202) 622-3980 (not a toll-free number).

APPENDIX A
CONSENT TO PUBLIC DISCLOSURE OF CERTAIN QUALIFIED
FORESTRY CONSERVATION BOND APPLICATION INFORMATION

In the event that the Application of *[(Insert name of applicant here):]* (the “Applicant”) for an allocation of the QFCB National Limitation to issue QFCBs under section 54B of the Internal Revenue Code is approved, the undersigned authorized representative of the Applicant hereby consents to the disclosure by the Internal Revenue Service through publication of a Notice in the Internal Revenue Bulletin or a press release or press conference of the name of applicant, the amount of the allocation, and a description (including the location) of the property to be acquired with the proceeds of the QFCBs (or if applicable, the refund of the deemed payment).

This authorization shall become effective upon the execution thereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to public disclosure on behalf of the taxpayer named below.

Date:

Signature:

Print name:

Title:

Name of Applicant-Taxpayer:

Taxpayer Identification Number of the Applicant:

Applicant’s Address:

Note: Treasury Regulation § 301.6103(c)–1 requires that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.

**APPENDIX B
CONSENT TO DISCLOSURE OF CERTAIN QUALIFIED FORESTRY
CONSERVATION BOND APPLICATION INFORMATION AND RELATED
DOCUMENTS**

In the event that the Application of [*Insert name of applicant here*]:] (the “Applicant”) for an allocation of the QFCB National Limitation to issue QFCBs under section 54B of the Internal Revenue Code is approved, the undersigned authorized representative of the Applicant hereby consents as follows: At all times after the transfer of title to any land acquired with the proceeds of QFCBs (or the refund of any deemed payment) to the United States Forest Service (USFS) or to [*insert name of any State to which any part of the acquired land may be transferred*], the officers and employees of the USFS or [*insert the name of any State to which any part of the acquired land may be transferred*] may use (and if they so desire, disclose) information from any or all of the following documents related to such transferred land: title reports; title abstracts; surveys; maps; leases and other uses of the land; water rights, habitat conservation plans and related implementation documents; environmental documents; resource inventories; management plans; documents related to the condition of the land; documentation of hazardous contamination, remediation, and clearances; and documents developed in connection with the transfer of the land to the United States Forest Service or [*insert name of any State to which any part of the acquired land may be transferred*].

The undersigned understands that the information described in this consent may be published, broadcast, discussed, or otherwise disseminated in the public record.

This authorization shall become effective upon the execution thereof. Except to the extent disclosure is authorized herein, the returns and return information of the undersigned taxpayer are confidential and are protected by law under the Internal Revenue Code.

I certify that I have the authority to execute this consent to public disclosure on behalf of the taxpayer named below.

Date:

Signature:

Print name:

Title:

Name of Applicant-Taxpayer:

Taxpayer Identification Number of the Applicant:

Applicant’s Address:

Note: Treasury Regulation § 301.6103(c)–1 requires that the Internal Revenue Service must receive this consent within 60 days after it is signed and dated.

Rev. Proc. 2008-48

SECTION 1. PURPOSE

This revenue procedure describes the circumstances under which the Internal Revenue Service will treat a child of parents who are divorced, separated, or living apart as the dependent of both parents for purposes of §§ 105(b), 106(a), 132(h)(2)(B), 213(d)(5), 220(d)(2) and 223(d)(2) of the Internal Revenue Code when the custodial parent has not released the claim to the exemption for the child under § 152(e)(2).

SECTION 2. BACKGROUND

.01 Section 105(b) provides an exclusion from gross income to employees for certain employer-provided medical expense reimbursements, including expenses incurred by the employee for the medical care (as defined in § 213(d)) of the employee, the employee's spouse, or the employee's dependent (as defined under § 152 determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B)).

.02 Section 106(a) provides that the gross income of an employee does not include employer-provided coverage under an accident or health plan. Section 1.106-1 of the Income Tax Regulations provides that the exclusion from gross income extends to contributions that the employer makes to an accident or health plan on behalf of the employee and the employee's spouse or dependents, as defined in § 152. Notice 2004-79, 2004-2 C.B. 898, states that the Service intends to revise § 1.106-1 to provide that the term "dependent" for purposes of § 106 has the same meaning as in § 105(b), and that taxpayers may rely on the notice pending the publication of the regulations.

.03 Section 132(a)(1) and (2) provides an exclusion from gross income for certain fringe benefits that qualify as no-additional-cost services or qualified employee discounts. Section 132(h)(2)(A) provides that use of the fringe benefit by the employee's spouse or dependent is treated as

use by the employee. For this purpose, dependent child means any child (as defined in § 152(f)(1)) of the employee (i) who is a dependent of the employee, or (ii) both of whose parents are deceased and who has not attained age 25.

.04 Section 213(a) allows a deduction for medical expenses of the taxpayer, the taxpayer's spouse, or the taxpayer's dependent (as defined under § 152 determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B)).

.05 Sections 220(f)(1) and 223(f)(1) allow an exclusion from gross income for distributions from Archer Medical Savings Accounts (MSAs) and Health Savings Accounts (HSAs), respectively, if the distributions are used to pay qualified medical expenses (as defined in § 213(d)) of the account beneficiary, the account beneficiary's spouse, or the account beneficiary's dependent (as defined under § 152 determined without regard to subsections (b)(1), (b)(2) and (d)(1)(B)).

.06 For purposes of §§ 105(b), 132(a)(1) and (2), and 213(a), any child to whom § 152(e) applies is treated as a dependent of both parents. Sections 220(d)(2) and 223(d)(2) do not include a similar rule. However, §§ 220(d)(2)(A) and 223(d)(2)(A) define medical care by reference to § 213(d), and under § 213(d)(5), a child to whom § 152(e) applies is treated as the dependent of both parents.

.07 Under prior § 152(e), children of divorced or separated parents were treated as dependents of both parents under §§ 105(b), 132(h)(2)(B), and 213(d)(5) whether or not a parent released the claim to the exemption. The Working Families Tax Relief Act of 2004, Pub. L. 108-311, 118 Stat. 1166, and the Gulf Opportunity Zone Act of 2005, Pub. L. 109-135, 119 Stat. 2577, amended § 152(e) for taxable years beginning after December 31, 2004. Section 152(e) now provides that, in the absence of a qualified pre-1985 instrument (see § 152(e)(3)), a child may be treated as the dependent of the noncustodial parent only if the custodial parent releases the claim to the exemption. Section 152(e)(2). If the custodial parent does not release the claim, the right to the exemption is determined under the general rules of § 152(c) or (d). Consequently, the preamble to § 1.152-4(f), 73 FR 37797 (July 2, 2008), explains that, if a custodial parent does

not release the claim to the exemption, only the taxpayer who is entitled to claim the child as a dependent under § 152(c) or (d) may treat the child as a dependent for purposes of §§ 105(b), 132(h)(2)(B), and 213(d)(5). This guidance provides a limited exception to that conclusion.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers who:

.01 Are divorced, legally separated under a decree of divorce or separate maintenance, legally separated under a written separation agreement, or live apart at all times for the last 6 months of the calendar year; and

.02 Are the parents of a child who:

(1) Receives over one-half of the child's support during the calendar year from the child's parents;

(2) Is in the custody of one or both parents for more than one-half of the calendar year; and

(3) Qualifies under § 152(c) or 152(d) as a qualifying child or qualifying relative of one of the child's parents.

SECTION 4. APPLICATION

The Service will treat a child described in the scope section of this revenue procedure of taxpayers within the scope of this revenue procedure as the dependent of both parents under §§ 105(b), 106(a), 132(h)(2)(B), 213(d)(5), 220(d)(2), and 223(d)(2), whether or not the custodial parent releases the claim to the exemption under § 152(e)(2).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective August 18, 2008. However, taxpayers may apply this revenue procedure in any taxable year beginning after December 31, 2004, for which the period of limitation on credit or refund under § 6511 has not expired as of August 18, 2008.

SECTION 6. ADDITIONAL INFORMATION

The principal author of this revenue procedure is Mireille Khoury of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other individuals

participated in its development. For further information regarding this revenue procedure as it relates to §§ 105, 106, 220 and 223, contact Mireille Khoury at (202) 622-6080 (not a toll-free call).

For further information regarding this revenue procedure as it relates to § 132, contact Neil Shepherd at (202) 622-6040 (not a toll-free call). For further information regarding this revenue procedure

as it relates to §§ 152 and 213, contact Victoria Driscoll at (202) 622-4920 (not a toll-free call).

26 CFR 601.204: Changes in accounting periods and in methods of accounting.

(Also Part I, §§ 56, 61, 1.61-4, 77, 162, 1.162-12, 166, 167, 168, 171, 174, 179B, 181, 194, 197, 263, 263A, 267, 280F, 404, 446, 447, 448, 451, 454, 455, 460, 461, 467, 471, 472, 475, 481, 585, 832, 846, 861, 985, 1012, 1272, 1273, 1278, 1281, 1363, 1400I, 1400L, 1400N; 1.61-1, 1.61-4, 1.61-8, 1.77-1, 1.77-2, 1.471-4, 1.162-1, 1.162-3, 1.162-4, 1.162-11, 1.162-12, 1.166-1, 1.166-4, 1.167(a)-2, 1.167(a)-3(b), 1.167(a)-7, 1.167(a)-8, 1.167(a)-11, 1.167(a)-14, 1.167(e)-1, 1.168(d)-1, 1.168(i)-1, 1.168(i)-4, 1.168(i)-6, 1.168(k)-1, 1.171-4, 1.174-1, 1.174-3, 1.174-4, 1.179-5, 1.181-1T, 1.181-2T, 1.181-3T, 1.194-1, 1.197-2, 1.263(a)-1, 1.263(a)-2, 1.263(a)-4, 1.263(a)-5, 1.263A-1, 1.263A-2, 1.263A-3, 1.263A-4, 1.263A-7, 1.267(a)-1, 1.280F-6, 1.404(b)-1T, 1.446-1, 1.446-1T, 1.446-2, 1.446-6, 447, 1.448-2, 1.467-1, 1.471-4, 1.471-5, 1.471-8, 1.448-1T, 1.451-1, 1.454-1, 1.455-6, 1.460-1, 1.460-4, 1.461-1, 1.461-4, 1.461-5, 1.471-1, 1.471-2, 1.471-3, 1.472-1, 1.472-2, 1.472-6, 1.472-8, 1.481-1, 1.481-4, 1.832-4, 1.860A-6, 1.861-18, 1.985-5, 1.985-8, 1.1012-1, 1.1016-3, 1.1245-3, 1.1272-1, 1.1273-1, 1.1273-2, 1.1363-2, 1.1374-4, 1.1400L(b)-1.)

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SECTION 1. PURPOSE

This revenue procedure provides the procedures by which a taxpayer may obtain automatic consent for a change in method of accounting described in the APPENDIX of this revenue procedure. This revenue procedure clarifies, modifies, amplifies, and supersedes Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and amplified, clarified and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432. It also consolidates automatic consent procedures for changes in several methods of accounting that were published subsequent to the publication of Rev. Proc. 2002-9. Lastly, this revenue procedure provides additional changes in methods

of accounting for which a taxpayer may obtain automatic consent. See section 15 of this revenue procedure for a list of significant changes.

A taxpayer complying with all the applicable provisions of this revenue procedure obtains the consent of the Commissioner to change its method of accounting under § 446(e) of the Internal Revenue Code and the Income Tax Regulations thereunder.

SECTION 2. BACKGROUND

.01 *Change in method of accounting defined.*

(1) Section 1.446-1(e)(2)(ii)(a) provides that a change in method of accounting includes a change in the overall plan of accounting for gross income or deductions, or a change in the treatment of any

material item. A material item is any item that involves the proper time for the inclusion of the item in income or the taking of the item as a deduction. In determining whether a taxpayer's accounting practice for an item involves timing, generally the relevant question is whether the practice permanently changes the amount of the taxpayer's lifetime income. If the practice does not permanently affect the taxpayer's lifetime income, but does or could change the taxable year in which income is reported, it involves timing and is therefore a method of accounting. See Rev. Proc. 91-31, 1991-1 C.B. 566.

(2) Although a method of accounting may exist under this definition without a pattern of consistent treatment of an item, a method of accounting is not adopted in most instances without consistent treatment. The treatment of a material item

in the same way in determining the gross income or deductions in two or more consecutively filed federal income tax returns (without regard to any change in status of the method as permissible or impermissible) represents consistent treatment of that item for purposes of § 1.446-1(e)(2)(ii)(a). If a taxpayer treats an item properly in the first return that reflects the item, however, it is not necessary for the taxpayer to treat the item consistently in two or more consecutive returns to have adopted a method of accounting. If a taxpayer has adopted a method of accounting under these rules, the taxpayer may not change the method by amending its prior income tax return(s). See Rev. Rul. 90-38, 1990-1 C.B. 57.

(3) A change in method of accounting does not include correction of mathematical or posting errors, or errors in the computation of tax liability (such as errors in computation of the foreign tax credit, net operating loss, percentage depletion, or investment credit). See § 1.446-1(e)(2)(ii)(b).

.02 *Securing permission to make a method change.* Section 446(e) and § 1.446-1(e)(2)(i) state that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(i) requires that, in general, in order to obtain the Commissioner's consent to a method change, a taxpayer must file a Form 3115, *Application for Change in Accounting Method*, during the taxable year in which the taxpayer wants to make the proposed change.

.03 *Terms and conditions of a method change.* Section 1.446-1(e)(3)(ii) provides that the Commissioner may prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting in accordance with § 446(e). The terms and conditions the Commissioner may prescribe include the year of change, whether the change is to be made with a § 481(a) adjustment or on a cut-off basis, and the § 481(a) adjustment period.

.04 *No retroactive method change.* Unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in method of accounting, regardless of

whether the change is from a permissible or an impermissible method. See generally Rev. Rul. 90-38. But see section 6.02(3)(c)(i) of this revenue procedure.

.05 *Method change with a § 481(a) adjustment.*

(1) *Need for adjustment.* Section 481(a) requires those adjustments necessary to prevent amounts from being duplicated or omitted to be taken into account when the taxpayer's taxable income is computed under a method of accounting different from the method used to compute taxable income for the preceding taxable year. When there is a change in method of accounting to which § 481(a) is applied, income for the taxable year preceding the year of change must be determined under the method of accounting that was then employed, and income for the year of change and the following taxable years must be determined under the new method of accounting as if the new method had always been used. The § 481(a) adjustment is computed notwithstanding that the period of limitations on assessment and collection of tax may have closed on the years (closed years) in which the events giving rise to the need for an adjustment occurred. See *Superior Coach of Fla., Inc. v. Commissioner*, 80 T.C. 895, 912 (1983).

Example. A taxpayer that is not required to use inventories uses the overall cash receipts and disbursements method and changes to an overall accrual method. The taxpayer has \$120,000 of income earned but not yet received (accounts receivable) and \$100,000 of expenses incurred but not yet paid (accounts payable) as of the end of the taxable year preceding the year of change. A positive § 481(a) adjustment of \$20,000 (\$120,000 accounts receivable less \$100,000 accounts payable) is required as a result of the change.

(2) *Adjustment period.* Section 481(c) and §§ 1.446-1(e)(3)(ii) and 1.481-4 provide that the adjustment required by § 481(a) may be taken into account in determining taxable income in the manner and subject to the conditions agreed to by the Commissioner and the taxpayer. Generally, in the absence of such an agreement, the § 481(a) adjustment is taken into account completely in the year of change, subject to § 481(b), which limits the amount of tax where the § 481(a) adjustment is substantial. However, under the Commissioner's authority in § 1.446-1(e)(3)(ii) to prescribe terms and conditions for changes in methods of accounting, this revenue procedure provides

specific adjustment periods that are intended to achieve an appropriate balance between the goals of mitigating distortions of income that result from accounting method changes and providing appropriate incentives for voluntary compliance.

.06 *Method change using a cut-off basis.* The Commissioner may determine that certain changes in methods of accounting will be made without a § 481(a) adjustment, using a cut-off basis. When a change in method of accounting is made on a cut-off basis, in general, only the items arising on or after the beginning of the year of change (or other operative date) are accounted for under the new method of accounting. Any items arising before the year of change (or other operative date) continue to be accounted for under the taxpayer's former method of accounting. See, for example, sections 2.01, 10.04 and 22.02 of the APPENDIX of this revenue procedure. Because no amounts are duplicated or omitted when a change in method of accounting is made on a cut-off basis, no § 481(a) adjustment is necessary.

.07 *Consistency and clear reflection of income.* Methods of accounting should clearly reflect income on a continuing basis, and the Commissioner exercises discretion under §§ 446(e) and 481(c) in a manner that generally minimizes distortions of income across taxable years and on an annual basis.

.08 *Separate trades or businesses.*

(1) Sections 1.446-1(d)(1) and (2) provide that when a taxpayer has two or more separate and distinct trades or businesses, a different method of accounting may be used for each trade or business provided the method of accounting used for each trade or business clearly reflects the overall income of the taxpayer as well as that of each particular trade or business. No trade or business is separate and distinct unless a complete and separable set of books and records is kept for that trade or business.

(2) Section 1.446-1(d)(3) provides that if, by reason of maintaining different methods of accounting, there is a creation or shifting of profits or losses between the trades or businesses of the taxpayer (for example, through inventory adjustments, sales, purchases, or expenses) so that income of the taxpayer is not clearly reflected, the trades or businesses of the taxpayer are not separate and distinct.

.09 *Penalties.* Any otherwise applicable penalty, addition to the tax, or additional amount for the failure of a taxpayer to change its method of accounting (for example, the accuracy-related penalty under § 6662 or the fraud penalty under § 6663) may be imposed if the taxpayer does not timely file a request to change a method of accounting. See § 446(f). Additionally, the taxpayer's return preparer may also be subject to the preparer penalty under § 6694. However, penalties, additions to the tax, or additional amounts will not be imposed when a taxpayer changes from an impermissible method of accounting to a permissible one by complying with all applicable provisions of this revenue procedure.

.10 *Change made as part of an examination.* Section 446(b) and § 1.446-1(b)(1) provide that if a taxpayer does not regularly employ a method of accounting that clearly reflects its income, the computation of taxable income must be made in a manner that, in the opinion of the Commissioner, does clearly reflect income. If a taxpayer under examination is not eligible to change a method of accounting under this revenue procedure, the change may be made by the director. A change resulting in a positive § 481(a) adjustment will ordinarily be made in the earliest taxable year under examination with a one-year § 481(a) adjustment period. See Rev. Proc. 2002-18, 2002-1 C.B. 678.

SECTION 3. DEFINITIONS

.01 *Application.* The term "application" includes a Form 3115 or any statement that is authorized in the APPENDIX of this revenue procedure to be filed in lieu of a Form 3115, and any attachments.

.02 *Applicable provisions.* The term "applicable provisions" means all provisions of this revenue procedure pertinent to the taxpayer or its requested change, including but not limited to:

- (1) the scope requirements and limitations in section 4 of this revenue procedure;
- (2) the terms and conditions of change in section 5 of this revenue procedure;
- (3) the requirements regarding the form and content of an application in section 6 of this revenue procedure;
- (4) the filing requirements in section 6 of this revenue procedure, including (but

not limited to) the timely duplicate filing requirement of section 6.02(3)(a); and

(5) the APPENDIX of this revenue procedure, including:

- (a) the available changes in method of accounting;
- (b) any restrictions on the availability of a requested change that is applicable to the taxpayer (including provisions that render the change inapplicable to the taxpayer); and
- (c) any special terms and conditions applicable to a change, such as the use of a cut-off basis or a § 481(a) adjustment, the spread period for any § 481(a) adjustment, and the year of change.

.03 *Taxpayer.*

(1) *In general.* The term "taxpayer" has the same meaning as the term "person" defined in § 7701(a)(1) (rather than the meaning of the term "taxpayer" defined in § 7701(a)(14)).

(2) *Consolidated group.* For purposes of (a) sections 3.08(1), 3.09(1), and 4.02(1) of this revenue procedure (taxpayer under examination), (b) section 3.09(2) of this revenue procedure (taxpayer before an appeals office), or (c) section 3.09(3) of this revenue procedure (taxpayer before a federal court), the term "taxpayer" includes a consolidated group.

.04 *Timely mailing as timely filing.* Under the provisions of § 7502, any application, statement, or other document required to be filed under this revenue procedure is considered timely filed if it is timely postmarked and mailed, postage prepaid, to the proper address (or an address similar enough to complete delivery). If these requirements are met, the date of filing is the date of the U.S. postmark or the applicable date recorded or marked by a designated private delivery service. See Notice 2004-83, 2004-2 C.B. 1030. If the requirements of § 7502 are not met, the application, statement, or other document is considered filed on the date it is delivered to the Service.

.05 *Timely performance of acts.* The rules of § 7503 apply when the last day for the taxpayer's timely performance of any act (for example, filing an application or submitting additional information) falls on a Saturday, Sunday, or legal holiday. The performance of any act is timely if the act is performed on the next succeeding

day that is not a Saturday, Sunday, or legal holiday.

.06 *Year of change.* The year of change is the taxable year for which a change in method of accounting is effective, that is, the first taxable year the new method is to be used, even if no affected items are taken into account for that year.

.07 *Section 481(a) adjustment period.* The § 481(a) adjustment period is the applicable number of taxable years for taking into account the § 481(a) adjustment required as a result of the change in method of accounting. The year of change is the first taxable year in the adjustment period and the § 481(a) adjustment is taken into account ratably over the number of taxable years in the adjustment period. The applicable adjustment periods are set forth in section 5.04 of this revenue procedure.

.08 *Under examination.*

(1) *In general.*

(a) Except as provided in sections 3.08(2) and (3) of this revenue procedure, an examination of a taxpayer with respect to a federal income tax return begins on the date the taxpayer is contacted in any manner by a representative of the Internal Revenue Service (Service) for the purpose of scheduling any type of examination of the return. An examination ends:

(i) in a case in which the Service accepts the return as filed, on the date the "no change" letter is sent to the taxpayer;

(ii) in a fully agreed case, on the earliest of the date the taxpayer executes a waiver of restrictions on assessment or acceptance of overassessment (for example, Form 870, *Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment*, Form 4549, *Income Tax Examination Changes*, or Form 4605, *Examination Changes — Partnerships, Fiduciaries, S Corporations, and Interest Charge Domestic International Sales Corporations*), the date the taxpayer makes a payment of tax that equals or exceeds the proposed deficiency, or the date of the "closing" letter (for example, Letter 987 — *Agreed Income Tax Change*) sent to the taxpayer; or

(iii) in an unagreed or a partially agreed case, on the earliest of the date the taxpayer (or its representative) is notified by Appeals that the case has been referred by the examining agent(s) to Appeals, the date the taxpayer files a petition in the Tax Court,

the date on which the period for filing a petition with the Tax Court expires, or the date of the notice of claim disallowance.

(b) An examination does not end as a result of the early referral of an issue to Appeals under the provisions of Rev. Proc. 99-28, 1999-2 C.B. 109.

(c) An examination resumes on the date the taxpayer (or its representative) is notified by Appeals (or otherwise) that the case has been referred to the examining agent(s) for reconsideration.

(2) *Partnerships subject to TEFRA.* For an entity (including a limited liability company) treated as a partnership for federal income tax purposes that is subject to the TEFRA unified audit and litigation provisions for partnerships, an examination begins on the date of the notice of the beginning of an administrative proceeding sent to the Tax Matters Partner (TMP). An examination ends:

(a) in a case in which the Service accepts the partnership return as filed, on the date of the “no adjustments” letter or the “no change” notice of final administrative adjustment sent to the TMP;

(b) in a fully agreed case, when all the partners or members execute a Form 870-P, *Agreement to Assessment and Collection of Deficiency in Tax for Partnership Adjustments*, 870-L, *Agreement to Assessment and Collection of Deficiencies in Tax for Partnership Adjustments, Additions to Tax, and Affected Items*; or

(c) in an unagreed or a partially agreed case, on the earliest of the date the TMP (or its representative) is notified by Appeals that the case has been referred by the examining agent(s) to Appeals, the date the TMP (or a partner or member) requests judicial review, or the date on which the period for requesting judicial review expires. But see section 4.02(3) of this revenue procedure for certain rules that preclude an entity from requesting a change in accounting method.

(3) S corporations subject to TEFRA. The rules of section 3.08(2) of this revenue procedure apply to an S corporation that is subject to the TEFRA unified audit and litigation provisions for S corporations for any taxable year ending on or before December 31, 1996, except in section 3.08(2)(b) of this revenue procedure, a fully agreed case is when all shareholders execute a Form 870-S, *Agreement to As-*

essment and Collection of Deficiency in Tax for S Corporation Adjustments.

.09 *Issue under consideration.*

(1) *Under examination.* A taxpayer’s method of accounting for an item is an issue under consideration for the taxable years under examination if the taxpayer receives written notification (for example, by examination plan, information document request (IDR), or notification of proposed adjustments or income tax examination changes) from the examining agent(s) specifically citing the treatment of the item as an issue under consideration. For example, a taxpayer’s method of pooling under the dollar-value, last-in, first-out (LIFO) inventory method is an issue under consideration as a result of an examination plan that identifies LIFO pooling as a matter to be examined, but it is not an issue under consideration as a result of an examination plan that merely identifies LIFO inventories as a matter to be examined. Similarly, a taxpayer’s method of determining inventoriable costs under § 263A is an issue under consideration as a result of an IDR that requests documentation supporting the costs included in inventoriable costs, but it is not an issue under consideration as a result of an IDR that requests documentation supporting the amount of costs of goods sold reported on the return. The question of whether a method of accounting is an issue under consideration may be referred to the national office as a request for technical advice under the provisions of Rev. Proc. 2008-2, 2008-1 I.R.B. 90 (or any successor).

(2) *Before an appeals office.* A taxpayer’s method of accounting for an item is an issue under consideration for the taxable years before an appeals office if the treatment of the item is included as an item of adjustment in the examination report referred to Appeals or is specifically identified in writing to the taxpayer by Appeals.

(3) *Before a federal court.* A taxpayer’s method of accounting for an item is an issue under consideration for the taxable years before a federal court if the treatment of the item is included in the statutory notice of deficiency, the notice of claim disallowance, the notice of final administrative adjustment, the pleadings (for example, the petition, complaint, or answer) or amendments thereto, or is specifically

identified in writing to the taxpayer by the counsel for the government.

.10 *Change within the LIFO inventory method.* A change within the LIFO inventory method is a change from one LIFO inventory method or sub-method to another LIFO inventory method or sub-method. A change within the LIFO inventory method does not include a change in method of accounting that could be made by a taxpayer that does not use the LIFO inventory method (for example, a method governed by § 471 or § 263A).

.11 *Director.* The term “director” has the same meaning as this term has in Rev. Proc. 2008-1, 2008-1 I.R.B. 1 (or any successor).

SECTION 4. SCOPE

.01 *Applicability.* This revenue procedure applies to a taxpayer requesting the Commissioner’s consent to change to a method of accounting described in the APPENDIX of this revenue procedure. This revenue procedure is the exclusive procedure for a taxpayer within its scope to obtain the Commissioner’s consent.

.02 *Inapplicability.* Except as otherwise provided in the APPENDIX of this revenue procedure (see, for example, section 2.01 of the APPENDIX of this revenue procedure), this revenue procedure does not apply in the following situations:

(1) *Under examination.* If, on the date the taxpayer would otherwise file a copy of the application with the national office, the taxpayer is under examination (as provided in section 3.08 of this revenue procedure), except as provided in sections 6.03(2) (90-day window), 6.03(3) (120-day window), 6.03(4) (consent of director), 6.03(5) (changes lacking audit protection), and 6.03(6) (issue pending) of this revenue procedure;

(2) *Consolidated group member.* A corporation that is (or was formerly) a member of a consolidated group is under examination (for purposes of section 4.02(1) of this revenue procedure) if the consolidated group is under examination for a taxable year(s) that the corporation was a member of the group;

(3) *Partnerships and S corporations.* For an entity (including a limited liability company) treated as a partnership or an S corporation for federal income tax pur-

poses, if, on the date the entity would otherwise file a copy of the application with the national office, the entity's accounting method to be changed is an issue under consideration in an examination of a partner, member, or shareholder's federal income tax return;

(4) *Section 381(a) transaction.* Except as otherwise provided in this section 4.02(4), if the taxpayer engages in a transaction to which § 381(a) applies within the proposed taxable year of change (determined without regard to any potential closing of the year under § 381(b)(1)):

(a) *No differences in methods.* An acquiring corporation may change its method of accounting pursuant to this revenue procedure if the acquiring corporation would be permitted to continue to use its prior method of accounting under the rules of §§ 1.381(c)(4)–1(b)(1) and (3)(i) (taking into account the third sentence of § 1.381(c)(4)–1(b)(4) relating to no prior method established by a party to the transaction) or §§ 1.381(c)(5)–1(b)(1) and (3)(i) (taking into account the second sentence of § 1.381(c)(5)–1(b)(4)(i) relating to no prior inventory method established by a party to the transaction) because all of the parties to the transaction used the same method of accounting on the date of distribution or transfer. The change pursuant to this revenue procedure is ignored for purposes of determining whether on the date of distribution or transfer the parties to the transaction used the same methods of accounting under § 1.381(c)(4)–1(b) or § 1.381(c)(5)–1(b), and thus §§ 1.381(c)(4)–1(b)(3)(ii) and (c) and §§ 1.381(c)(5)–1(b)(3)(ii) and (c) will not apply.

(b) *Separate trades or businesses.* An acquiring corporation may change pursuant to this revenue procedure a method of accounting used by a trade or business operated by such corporation if the trade or business would be permitted to continue to use its prior method of accounting under the rules of § 1.381(c)(4)–1(b)(2) or § 1.381(c)(5)–1(b)(2). The change pursuant to this revenue procedure is ignored for purposes of determining whether on the date of distribution or transfer the parties to the transaction used the same methods of accounting under § 1.381(c)(4)–1(b) or § 1.381(c)(5)–1(b), and thus §§ 1.381(c)(4)–1(b)(3) and (c)

and §§ 1.381(c)(5)–1(b)(3) and (c) will not apply.

(5) *Final year of trade or business.* If, in the year of change, a taxpayer requesting a change in method of accounting ceases to engage in the trade or business to which the change in accounting method relates or terminates its existence, as described in section 5.04(3)(c) of this revenue procedure. For purposes of this section 4.02(5), a taxpayer is treated as ceasing to engage in the trade or business or terminating its existence without regard to whether the taxpayer's change in method of accounting request would result in either a positive or negative § 481(a) adjustment or be made on a cut-off basis.

(6) *Prior five-year overall method change.* Except as provided in the APPENDIX of this revenue procedure, if a taxpayer changed its overall method of accounting, or applied for consent to change its overall method of accounting, regardless of whether it implemented that change, during any of the five taxable years ending with the year of change, the taxpayer may not obtain automatic consent to change its overall method of accounting under this revenue procedure. However, a taxpayer that changed its overall method of accounting during the five taxable years ending with the year of change may obtain automatic consent to change a method of accounting for an item when that change may otherwise be implemented under the provisions of this revenue procedure. For purposes of this section 4.02(6), a change in overall method of accounting does not include the use of an overall method of accounting when computing taxable income for the taxable year that the taxpayer first files a federal income tax return ("adopts an overall method of accounting") or a change in method of accounting imposed by the Service pursuant to Rev. Proc. 2002–18 (or any successor). The five-year change prohibition in this section 4.02(6) applies regardless of whether the taxpayer's current or prior method is a permissible method or clearly reflects the taxpayer's income and regardless of the administrative guidance used to request consent or to change the prior method of accounting.

Example. A, an attorney, began business in 2000 and adopted the overall cash method of accounting. In 2005, A changed to an overall accrual method of accounting using the then appropriate administrative

guidance. A may not use the provisions of this revenue procedure for 2007 to change to the overall cash method because of the five-year change prohibition contained in this section 4.02(6). However, A may still be able to use the provisions of this revenue procedure to change the method of accounting the taxpayer will use to treat advances made on behalf of clients in 2007. See section 3.01 of the APPENDIX of this revenue procedure.

(7) *Prior five-year item change.*

(a) *In general.* Except as provided in section 4.02(7)(b) or the APPENDIX of this revenue procedure, if a taxpayer changed its method of accounting for a specific item, or applied for consent to change a method of accounting for a specific item regardless of whether it implemented that change, during any of the five taxable years ending with the year of change, the taxpayer may not obtain automatic consent to change its method of accounting for that same item. For purposes of this section 4.02(7)(a), a change in method of accounting for an item does not include the use of a method of accounting for the first taxable year that the taxpayer accounts for the item (for example, include in income, deduct, or capitalize) to which the method of accounting relates, or a change in method of accounting imposed by the Service pursuant to Rev. Proc. 2002–18 (or any successor). The five-year change prohibition in this section 4.02(7) applies regardless of whether the taxpayer's current or prior method is a permissible method or clearly reflects the taxpayer's income and regardless of the administrative guidance used to request consent or to change the prior method of accounting.

(b) *Exceptions.* Notwithstanding section 4.02(7)(a) of this revenue procedure, a taxpayer may obtain automatic consent to change its method of accounting for an item when that change is required as part of another change in method of accounting that the taxpayer may otherwise implement under the provisions of this revenue procedure. In addition, a taxpayer is not prohibited from changing a last-in, first-out (LIFO) inventory sub-method (for example, the method of determining current-year cost or the method of computing a dollar-value pool index) within five years of adopting or changing to the LIFO inventory method or another LIFO inventory sub-method. However, a taxpayer that changes a LIFO inventory sub-method

within five years of adopting or changing to the LIFO inventory method does not receive audit protection under section 7 of this revenue procedure.

(c) *Examples.*

Example 1. A uses the LIFO inventory method. In 2004, A changed a LIFO inventory sub-method. Specifically, A changed from the average-cost method of determining the current-year cost of inventories to the earliest-acquisitions cost method. In 2007, A seeks to change to the IPIC method of computing the index and value of its dollar-value pools, a method that A has never used. As part of this change, A seeks to change its method of determining the current-year cost of inventories from the earliest-acquisitions cost method to the most-recent acquisitions cost method. A is eligible to change its method of computing the index and value of its dollar-value pools to the IPIC method under this revenue procedure. However, A is not eligible to change its method of determining the current-year costs of inventories under this revenue procedure because A changed this LIFO inventory sub-method within the proscribed five-year period.

Example 2. B uses the dollar-value LIFO inventory method and maintains separate dollar-value pools for its inventory of (1) new cars; (2) new trucks; (3) used cars; and (4) used trucks. In 2004, B terminated its use of the LIFO inventory method for its used cars and used trucks under Rev. Proc. 2002-9. In 2007, B seeks to terminate its use of the LIFO inventory method for its new cars and new trucks. B is eligible to change its method of accounting for new cars and new trucks under this revenue procedure because it has not changed the inventory-identification method for those pools within the proscribed five-year period.

Example 3. C, a driving instruction school, uses an overall accrual method of accounting. C obtains payment in full from its students at the beginning of each session of classes. In 2006, C properly elected the deferral method for advance payments as described in Rev. Proc. 2004-34, 2004-1 C.B. 991. In 2007, C seeks to change its overall method of accounting to the cash method as described in Rev. Proc. 2001-10, 2001-1 C.B. 272, which it qualifies to use. C is eligible to change its method of accounting for advance payments even though it made a prior change in its method of accounting for advance payments within the previous 5 taxable years ending with 2007 because C is required to change its treatment of advance payments as part of its change to the overall cash method of accounting.

.03 *Nonautomatic changes.* If a taxpayer is precluded other than by sections 4.02(1) through 4.02(3) of this revenue procedure from using this revenue procedure to make a change in method of accounting, the taxpayer requesting such a change must file a Form 3115 with the Commissioner in accordance with the requirements of § 1.446-1(e)(3)(i) and Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clar-

ified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and modified by Rev. Proc. 2007-67, 2007-48 I.R.B. 1072 (or any other applicable Code, regulation, or guidance published in the Internal Revenue Bulletin (IRB)).

SECTION 5. TERMS AND CONDITIONS OF CHANGE

.01 *In general.* An accounting method change filed under this revenue procedure must be made pursuant to the terms and conditions provided in this revenue procedure.

.02 *Year of change.* The year of change is the taxable year designated on the application and for which the application is timely filed under section 6.02(3) of this revenue procedure.

.03 *Section 481(a) adjustment.* Unless otherwise provided in this revenue procedure, a taxpayer making a change in method of accounting under this revenue procedure must apply § 481(a) and take into account a § 481(a) adjustment in the manner provided in section 5.04 of this revenue procedure.

.04 *Section 481(a) adjustment period.*

(1) *In general.* Except as otherwise provided in section 5.04(3), the APPENDIX of this revenue procedure, or in other guidance published in the IRB, the § 481(a) adjustment period is four taxable years for a net positive § 481(a) adjustment for an accounting method change, and one taxable year for a net negative § 481(a) adjustment for an accounting method change.

(2) *Short period as a separate taxable year.* If the year of change or any other taxable year during the § 481(a) adjustment period is a short taxable year, the § 481(a) adjustment must be included in income as if that short taxable year were a full 12-month taxable year. See Rev. Rul. 78-165, 1978-1 C.B. 276.

Example 1. A calendar year taxpayer changed its method of accounting under this revenue procedure beginning with the 2007 calendar year. The net § 481(a) adjustment for this method change is a positive adjustment of \$30,000 and the adjustment period is four taxable years. The taxpayer subsequently receives permission to change its annual accounting period to September 30, effective for the taxable year ending September 30, 2008. The taxpayer must include \$7,500 of the § 481(a) adjustment in gross income for the short period from January 1, 2008, through September 30, 2008.

Example 2. Corporation X, a calendar year taxpayer, changed its method of accounting under this revenue procedure beginning with the 2007 calendar year. The net § 481(a) adjustment for this method change is a positive adjustment of \$30,000 and the adjustment period is four taxable years. On July 1, 2009, Corporation Z acquires Corporation X in a transaction to which § 381(a) applies. Corporation Z is a calendar year taxpayer that uses the same method of accounting to which Corporation X changed in 2007. Corporation X must include \$7,500 of the § 481(a) adjustment in gross income for its short period income tax return for January 1, 2009, through June 30, 2009. In addition, Corporation Z must include \$7,500 of the § 481(a) adjustment in gross income in its income tax return for calendar year 2009.

(3) *Shortened or accelerated § 481(a) adjustment periods.* The § 481(a) adjustment period provided in section 5.04(1) or the APPENDIX of this revenue procedure will be shortened or accelerated in the following situations.

(a) *De minimis rule.* A taxpayer may elect to use a one-year § 481(a) adjustment period in lieu of the § 481(a) adjustment period otherwise provided by this revenue procedure for a positive § 481(a) adjustment if the net § 481(a) adjustment for the change is less than \$25,000. The taxpayer must complete the appropriate line on Form 3115 to elect this *de minimis* rule.

(b) *Cooperatives.* A cooperative within the meaning of § 1381(a) generally must take the entire amount of a § 481(a) adjustment into account in computing taxable income for the year of change. See Rev. Rul. 79-45, 1979-1 C.B. 284.

(c) *Ceasing to engage in the trade or business or terminating existence.*

(i) *In general.* A taxpayer that ceases to engage in a trade or business or terminates its existence must take the remaining balance of any § 481(a) adjustment relating to the trade or business into account in computing taxable income in the taxable year of the cessation or termination. Except as provided in sections 5.04(3)(c)(iv) and (v) of this revenue procedure, a taxpayer is treated as ceasing to engage in a trade or business if the operations of the trade or business cease or substantially all the assets of the trade or business are transferred to another taxpayer. For this purpose, “substantially all” has the same meaning as in section 3.01 of Rev. Proc. 77-37, 1977-2 C.B. 568.

(ii) *Examples of transactions that are treated as the cessation of a trade or busi-*

ness. The following is a nonexclusive list of transactions that are treated as the cessation of a trade or business for purposes of accelerating the § 481(a) adjustment under section 5.04(3)(c) of this revenue procedure:

(A) the trade or business to which the § 481(a) adjustment relates is incorporated;

(B) the trade or business to which the § 481(a) adjustment relates is purchased by another taxpayer in a transaction to which § 1060 applies;

(C) the trade or business to which the § 481(a) adjustment relates is terminated or transferred pursuant to a taxable liquidation;

(D) a division of a corporation ceases to operate the trade or business to which the § 481(a) adjustment relates; or

(E) the assets of a trade or business to which the § 481(a) adjustment relates are contributed to a partnership.

(iii) *Conversion to or from S corporation status.* Except as provided in section 22.01 of the APPENDIX of this revenue procedure, no acceleration of a § 481(a) adjustment is required under section 5.04(3)(c) of this revenue procedure when a C corporation elects to be treated as an S corporation or an S corporation terminates its S election and is then treated as a C corporation.

(iv) *Certain transfers to which § 381(a) applies.* No acceleration of the § 481(a) adjustment is required under section 5.04(3)(c) of this revenue procedure when a taxpayer transfers substantially all the assets of the trade or business that gave rise to the § 481(a) adjustment to another taxpayer in a transfer to which § 381(a) applies and the accounting method (the change to which gave rise to the § 481(a) adjustment) is a tax attribute that is carried over and used by the acquiring corporation immediately after the transfer pursuant to § 381(c). The acquiring corporation is subject to any terms and conditions imposed on the transferor (or any predecessor of the transferor) as a result of its change in method of accounting.

(v) *Certain transfers pursuant to § 351 within a consolidated group.*

(A) *In general.* No acceleration of the § 481(a) adjustment is required under section 5.04(3)(c) of this revenue procedure when one member of an affiliated

group filing a consolidated return transfers substantially all the assets of the trade or business that gave rise to the § 481(a) adjustment to another member of the same consolidated group in an exchange qualifying under § 351 and the transferee member adopts and uses the same method of accounting (the change to which gave rise to the § 481(a) adjustment) used by the transferor member. The transferor member must continue to take the § 481(a) adjustment into account pursuant to the terms and conditions set forth in this revenue procedure. The transferor member must take into account activities of the transferee member (or any successor) in determining whether acceleration of the § 481(a) adjustment is required. For example, except as provided in the following sentence, the transferor member must take any remaining § 481(a) adjustment into account in computing taxable income in the taxable year in which the transferee member ceases to engage in the trade or business to which the § 481(a) adjustment relates. The § 481(a) adjustment is not accelerated when the transferee member engages in a transaction described in section 5.04(3)(c)(iv) or this section 5.04(3)(c)(v)(A).

(B) *Exception.* The provisions of section 5.04(3)(c)(v)(A) of this revenue procedure cease to apply and the transferor member must take any remaining balance of the § 481(a) adjustment into account in the taxable year immediately preceding any of the following: (1) the taxable year the transferor member ceases to be a member of the group; (2) the taxable year any transferee member owning substantially all the assets of the trade or business that gave rise to the § 481(a) adjustment ceases to be a member of the group; or (3) a separate return year of the common parent of the group. In applying the preceding sentence, the rules of §§ 1.1502-13(j)(2), (j)(5) and (j)(6) apply, but only if the method of accounting to which the transferor member changed and to which the § 481(a) adjustment relates is adopted, carried over, or used by any transferee member acquiring the assets of the trade or business that gave rise to the § 481(a) adjustment immediately after acquisition of such assets. For example, the transferor member is not required to accelerate the § 481(a) adjustment if a transferee

member ceases to be a member of a consolidated group by reason of an acquisition to which § 381(a) applies and the acquiring corporation (1) is a member of the same group as the transferor member, and (2) continues, under § 381(c)(4) and the regulations thereunder, to use the same method of accounting as that used by the transferor member with respect to the assets of the trade or business to which the § 481(a) adjustment relates.

.05 *NOL carryback limitation for taxpayer subject to criminal investigation.* No portion of any net operating loss that is attributable to a negative § 481(a) adjustment may be carried back to a taxable year prior to the year of change that is the subject of any pending or future criminal investigation or proceeding concerning (1) directly or indirectly, any issue relating to the taxpayer's federal tax liability, or (2) the possibility of false or fraudulent statements made by the taxpayer with respect to any issue relating to its federal tax liability.

.06 *Certain foreign corporations.* If the change in method of accounting is on behalf of a controlled foreign corporation (CFC) as defined in § 953(c)(1)(B) or § 957 or a noncontrolled section 902 corporation as defined in § 904(d)(2)(E), the following additional terms and conditions apply:

(1) If the functional currency of the foreign corporation is not the U.S. dollar, the § 481(a) adjustment must be stated in the functional currency of the foreign corporation and not in U.S. dollars;

(2) A positive § 481(a) adjustment necessary to prevent the duplication of amounts of an expense item will have the same source, separate limitation classification, character, and treatment for purposes of subpart F as the foreign corporation's gross income that was offset by the expense in the prior year or years. A positive § 481(a) adjustment necessary to prevent the omission of amounts of an income item will have the same source, separate limitation classification, character, and treatment for purposes of subpart F as the foreign corporation's income would have had in the prior year or years. A negative § 481(a) adjustment necessary to prevent the omission of amounts of an expense item will be allocated to the class of gross income that has the same source, separate limitation classification, character, and

treatment for purposes of subpart F as the foreign corporation's income that would have been offset by the expense in the prior year or years. A negative § 481(a) adjustment necessary to prevent the duplication of amounts of an income item will be treated as an offset to gross income that has the same source, separate limitation classification, character, and treatment for purposes of subpart F as the foreign corporation's income in the prior year or years;

(3) For each taxable year of the adjustment period beginning with the year of change, the appropriate amount of the § 481(a) adjustment must be taken into account in computing the foreign corporation's subpart F income under § 951 and its earnings and profits under §§ 964 and 986(b) for all federal income tax purposes;

(4) The written statement required by § 1.964-1T(c)(3)(i) and (ii) must be filed by each controlling domestic shareholder (or its common parent) with its tax return for its taxable year with or within which ends the foreign corporation's year of change;

(5) The shareholders of the foreign corporation must maintain records and accounts with respect to the foreign corporation, for the year of change and for subsequent taxable years, in conformity with the requirements of § 905(b) and § 964(c);

(6) If a foreign corporation loses its status as a CFC or noncontrolled section 902 corporation at any time prior to the expiration of the adjustment period, the foreign corporation must take into account in computing its subpart F income and earnings and profits, on the final day on which it is a CFC or noncontrolled section 902 corporation, the balance of the § 481(a) adjustment not previously taken into account;

(7) Each U.S. shareholder of a CFC must comply with its obligations to report changes in the shareholder's ownership of the CFC on Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, during the adjustment period; and

(8) In the case of any disposition of stock of the foreign corporation that is owned directly or indirectly by a United States person if the disposition (i) represents ten percent or more of the total value of the stock of the corporation, or (ii) results in the person no longer meeting the stock ownership requirements of § 6046(a)(2) with respect to the foreign

corporation, then the foreign corporation must include, prior to the disposition, in its income and earnings and profits the balance of the § 481(a) adjustment not previously taken into account. This condition does not apply to any change in ownership of the foreign corporation if the stock disposed of continues to be owned, directly or indirectly, by a member of the U.S. consolidated group of which the former shareholder is a member.

.07 *Change treated as initiated by the taxpayer.* For purposes of § 481, a change in method of accounting made under this revenue procedure is a change in method of accounting initiated by the taxpayer.

SECTION 6. GENERAL APPLICATION PROCEDURES

.01 *Consent.* Pursuant to § 1.446-1(e)(2)(i), the consent of the Commissioner is hereby granted to any taxpayer within the scope of this revenue procedure to change its method(s) of accounting as described in the APPENDIX to this revenue procedure. Such consent is granted only for the change(s) of accounting method and the affected item(s) that are clearly and expressly identified in the taxpayer's application. See section 6.02(1)(c) of this revenue procedure. Such consent is granted only to the extent that the taxpayer complies with all the applicable provisions of this revenue procedure and implements the change in method of accounting for the requested year of change.

.02 *Filing requirements.*

(1) *Applications.*

(a) *Form.* Ordinarily, a taxpayer applies for consent to change a method of accounting pursuant to this revenue procedure or other guidance published in the IRB by completing and filing a current Form 3115. In some cases, however, the provisions of this revenue procedure applicable to a particular change may require or allow a taxpayer to file a statement in lieu of a Form 3115 as an application for consent to make such change. See, for example, section 14.10 of the APPENDIX of this revenue procedure.

(b) *Separate applications.* Ordinarily, a taxpayer must submit a separate application for each change in method of accounting. In some cases, however, the provi-

sions of this revenue procedure applicable to particular changes may require or allow a taxpayer to file a single application with respect to two or more changes. See, for example, section 14.03 of the APPENDIX of this revenue procedure.

(c) *Contents.* The taxpayer must submit an application that is accurate and complete as to all information required by this revenue procedure. Further, unless this revenue procedure provides that a Form 3115 is not required for the requested change in method of accounting, the taxpayer must submit a current Form 3115 that contains all information required by the applicable portions of the Form 3115 and its instructions.

For example, an application must identify the taxpayer making the change; the year of change (both the beginning and ending dates); the designated automatic accounting method change number(s) for the requested change(s) in method of accounting; and the amount of the adjustment under § 481(a), unless the change is required to be made using a cut-off basis. Also, the application must fully describe the item(s) being changed; the present method(s) of accounting from which the taxpayer is changing and the proposed method(s) of accounting to which the taxpayer is changing. Further, unless a Form 3115 is not required for the requested change in method of accounting, the taxpayer must provide all other information required by Parts I, II, and IV, and any applicable schedule(s) on the Form 3115.

(2) *Waiver of taxable year filing requirement.* The requirement under § 1.446-1(e)(3)(i) to file a Form 3115 within the taxable year for which the change is requested is waived for any application for a change in method of accounting filed pursuant to this revenue procedure. See § 1.446-1(e)(3)(ii).

(3) *Timely duplicate filing requirement.*

(a) *In general.* A taxpayer changing a method of accounting pursuant to this revenue procedure must complete and file an application in duplicate. The original must be attached to the taxpayer's timely filed (including any extension) original federal income tax return for the year of change, and a copy (with signature) of the application must be filed with the national office (see section 6.02(7) of this revenue procedure for the address) no earlier than

the first day of the year of change and no later than when the original is filed with the federal income tax return for the year of change. For the national office copy of Form 3115, the taxpayer need only include the pages containing Parts I through IV, any applicable schedule(s), and required attachments.

(b) *Certain foreign corporations.* In the case of a controlled foreign corporation as defined in section 953(c)(1)(B) or 957(a) (“CFC”) or a noncontrolled section 902 corporation as defined in section 904(d)(2)(E) that is not required to file a federal income tax return, the controlling domestic shareholders (as defined in § 1.964-1T(c)(5)) that want to change the foreign corporation’s method of accounting pursuant to the provisions of this revenue procedure must satisfy the requirements set forth in § 1.964-1T(c)(3). The designated shareholder who retains the jointly executed consent described in § 1.964-1T(c)(3)(ii) must complete and file an application in duplicate on behalf of the foreign corporation. An original application must be attached to the designated shareholder’s (or its common parent’s) timely filed (including any extension) original federal income tax return for its taxable year with or within which ends the year of change of the foreign corporation, and a copy (with signature) of the application must be filed with the national office (see section 6.02(7) of this revenue procedure for the address) no earlier than the first day of the year of change and no later than when the original is filed with the designated shareholder’s (or its common parent’s) federal income tax return for its taxable year with or within which ends the year of change of the foreign corporation. Each other controlling domestic shareholder (or its common parent) must also attach a copy of the application to its federal income tax return filed for its taxable year with or within which ends such year of change.

(c) *Limited relief for late application.*

(i) *Automatic extension.* An automatic extension of 6 months from the due date of the return for the year of change (excluding any extension) is granted to file an application, provided the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) (A) timely filed (including any extension)

its federal income tax return for the year of change, (B) files an amended return within the 6-month extension period in a manner that is consistent with the new method of accounting, (C) attaches the original application to the amended return, (D) files a copy of the application with the national office no later than when the original is filed with the amended return, and (E) attaches a statement to the application that the application is being filed pursuant to § 301.9100-2 of the Procedure and Administration Regulations.

(ii) *Other extensions.* A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) that fails to file the application for the year of change as provided in section 6.02(3)(a), (b), or (c)(i) of this revenue procedure will not be granted an extension of time to file under § 301.9100, except in unusual and compelling circumstances. See § 301.9100-3(c)(2) and Rev. Proc. 2008-1 (or successor).

(4) *Designated automatic accounting method change number.* The taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must type or clearly print the designated automatic accounting method change number for the requested change in method of accounting on the application. When the requested change in method of accounting is made using Form 3115, the taxpayer must enter the designated automatic accounting method change number for the requested change on the appropriate line on the Form 3115. For example, a taxpayer requesting the change in method of accounting identified in section 1.01 of the APPENDIX of this revenue procedure for the year ending December 31, 2008, must enter the number “91” on Line 1(a) of Form 3115. When the requested change in method of accounting is made using a statement in lieu of Form 3115 the taxpayer must enter the designated automatic accounting method change number for the requested change in method of accounting at the top of the first page of the statement, directly above the taxpayer’s name and employer identification number (or social security number in the case of an individual). For example, enter the number “125” for the change in method of accounting identified in section 14.10 of the APPENDIX of this revenue procedure at the top

of the first page of the statement, directly above the taxpayer’s name and employer identification number (or social security number in the case of an individual).

In general, a taxpayer may enter only one designated automatic accounting method change number on an application. However, where this revenue procedure or other guidance published in the IRB specifically permits two or more particular changes in method of accounting to be made on a single application, a taxpayer must enter the designated automatic change number for each such particular change being requested on the application.

The designated automatic accounting method change numbers are provided in the APPENDIX of this revenue procedure and in other guidance published in the IRB. See also Instructions for Form 3115.

(5) *Signature requirements.* The copy of the application filed with the national office must be signed by, or on behalf of, the taxpayer requesting the change by an individual with authority to bind the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) in such matters. For example, an officer must sign on behalf of a corporation, a general partner on behalf of a state law partnership, a member-manager on behalf of a limited liability company, a trustee on behalf of a trust, or an individual taxpayer on behalf of a sole proprietorship. If the taxpayer (or the designated shareholder) is a member of a consolidated group, an application submitted on behalf of the taxpayer must be signed by a duly authorized officer of the common parent. See the signature requirements set forth in the current Instructions for Form 3115 regarding those who are to sign.

(6) *Authorized representative.* If an agent is authorized to represent the taxpayer before the Service, receive a copy of the correspondence concerning the application, or perform any other act(s) regarding the application filed on behalf of the taxpayer, a power of attorney reflecting such authorization(s) must be attached to the copy of the application. It is preferred that Form 2848, *Power of Attorney and Declaration of Representative*, be used to provide the representative’s authority and qualification. A taxpayer’s representative without a power of attorney to represent the taxpayer as required in this

section 6.01(6) will not be given any information regarding the application.

(7) *Where to file copy.*

(a) For a taxpayer other than an exempt organization, the copy of the application must be addressed to the Internal Revenue Service, Attn: CC:ITA — Automatic Rulings Branch, P.O. Box 7604, Benjamin Franklin Station, Washington, D.C. 20044 (or, in the case of a designated private delivery service: Internal Revenue Service, Attn: CC:ITA — Automatic Rulings Branch, 1111 Constitution Avenue, NW, Room 5336, Washington, D.C. 20224).

(b) For an exempt organization, the copy of the application must be addressed to the Internal Revenue Service, Tax Exempt & Government Entities, Attn: TEGE:EO, P.O. Box 27720, McPherson Station, Washington, D.C. 20038 (or, in the case of a designated private delivery service: Internal Revenue Service, Tax Exempt & Government Entities, Attn: TEGE:EO, 1750 Pennsylvania Ave., NW, Washington, D.C. 20038).

(c) For a taxpayer other than an exempt organization, the copy of the application may also be hand delivered between the hours of 8:00 a.m. and 4:00 p.m. to the courier's desk at the loading dock (located behind the 12th Street security station) of 1111 Constitution Avenue, NW, Washington, D.C. A receipt will be given at the courier's desk. The copy of the application must be addressed to the Courier's Desk, Internal Revenue Service, Attn: CC:PA:LPD:DRU, Room 5336, 1111 Constitution Avenue, NW, Washington, D.C. 20224.

(8) *No acknowledgement of receipt.* Except as provided in section 6.02(7)(c) of this revenue procedure, the Service does not send an acknowledgement of the receipt of an application (original or copy) filed under this revenue procedure.

(9) *No user fee.* A user fee is not required for an application filed under this revenue procedure.

(10) *Single application for certain taxpayers.* Certain taxpayers (or if section 6.02(3)(b) of this revenue procedure applies, certain designated shareholders) may file a single application to change an identical method of accounting on behalf of two or more of its separate and distinct trades or businesses, two or more members of a consolidated group, or two

or more controlled foreign corporations (CFCs). See sections 9.02 and 15.07(4) of Rev. Proc. 2008–1 (or any successor).

(11) *Additional copies required.*

(a) *Scope restrictions waived for taxpayer under examination.* If (i) one or more of the scope limitation provisions of section 4.02 of this revenue procedure would otherwise preclude a taxpayer from making a change under this revenue procedure, but (ii) the scope limitation provisions of section 4.02 of this revenue procedure do not apply to the change sought by the taxpayer (see, for example section 2.01 of the APPENDIX of this revenue procedure), and (iii) the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) is under examination (as provided in section 3.08 of this revenue procedure) on the date it files the copy of its application with the national office, then the taxpayer (or designated shareholder) must provide a copy of the application to the examining agent(s) at the same time that it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(b) *Taxpayer before an appeals office or a federal court and issue not under consideration.* If a taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) that is otherwise within the scope of this revenue procedure is before an appeals office or a federal court and the present method to be changed is not an issue under consideration by the appeals office or the federal court on the date the taxpayer files the copy of its application with the national office, then the taxpayer (or designated shareholder) must provide a copy of the application to the appeals officer(s) or counsel(s) for the government, as applicable, at the same time that it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the appeals officer(s) or counsel(s) for the government, as applicable.

.03 *Taxpayer under examination.*

(1) *In general.* Except as otherwise provided in the APPENDIX of this revenue procedure (see, for example, section 2.01 of the APPENDIX of this revenue procedure), a taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) that is under examination may file an application to change a method of accounting under section 6 of this revenue procedure only if the taxpayer is within the provisions of section 6.03(2) (90-day window), 6.03(3) (120-day window), 6.03(4) (consent of director), 6.03(5) (changes lacking audit protection), or 6.03(6) (issue pending) of this revenue procedure. A taxpayer (or designated shareholder) that files an application beyond the time periods provided in the 90-day and 120-day windows is not eligible for the automatic extension of time and will not be granted an extension of time to file under § 301.9100, except in unusual and compelling circumstances.

(2) *90-day window period.*

(a) A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) may file a copy of the application with the national office to change a method of accounting under this revenue procedure during the first 90-days of any taxable year (the 90-day window) if the taxpayer has been under examination for at least 12 consecutive months as of the first day of the taxable year. This 90-day window is not available if the method of accounting the taxpayer is changing is an issue under consideration at the time the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) would otherwise file the copy of the application or an issue the examining agent(s) has placed in suspense at the time the taxpayer would otherwise file the copy of the application.

(b) *120-day window period.*

(a) A taxpayer changing a method of accounting under this 90-day window must provide a copy of the application to the examining agent(s) at the same time it (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) files the copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(b) A taxpayer changing a method of accounting under this 90-day window must provide a copy of the application to the examining agent(s) at the same time it (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) files the copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(3) *120-day window period.*

(a) A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) may file a copy of the application with the national office to change a method of accounting under this revenue procedure during the 120-day period following the date an examination

ends (the 120-day window), regardless of whether a subsequent examination has commenced. This 120-day window is not available if the method of accounting the taxpayer is changing is an issue under consideration at the time the taxpayer would otherwise file a copy of the application or an issue the examining agent(s) has placed in suspense at the time the taxpayer would otherwise file a copy of the application.

(b) A taxpayer changing a method of accounting under this 120-day window must provide a copy of the application to the examining agent(s) for any examination that is in process at the same time it (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) files the copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(4) *Consent of director.*

(a) A taxpayer under examination may change its method of accounting under this revenue procedure if the director consents to the filing of the application. The director will consent to the filing of the application unless, in the opinion of the director, the method of accounting to be changed would ordinarily be included as an item of adjustment in the year(s) for which the taxpayer is under examination. For example, the director will consent to the filing of an application to change from a clearly permissible method of accounting, or from an impermissible method of accounting where the impermissible method was adopted subsequent to the years under examination. The director's consent is limited to the director's consent to file the application and does not constitute the director's agreement to, or approval of, the requested change in method of accounting. The question of whether the method of accounting from which the taxpayer is changing is permissible or was adopted subsequent to the years under examination may be referred to the national office as a request for technical advice under the provisions of Rev. Proc. 2008-2 (or any successor).

(b) A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) changing a method of accounting under this revenue procedure with the consent of the director must attach to the copy of the application filed with the national office a statement from

the director consenting to the filing of the application. In addition, the taxpayer (or designated shareholder) must attach to its original application attached to its timely filed original federal income tax return a statement certifying that it has obtained the written consent of the director to the filing of the application and that the taxpayer will maintain a copy of such consent available for inspection. The taxpayer (or designated shareholder) must provide a copy of the application to the director at the same time it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(5) *Changes lacking audit protection.*

(a) A taxpayer under examination may change its method of accounting under this revenue procedure if the description of the change in the APPENDIX of this revenue procedure provides that the change is not subject to the audit protection provisions of section 7 of this revenue procedure.

(b) A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) changing a method of accounting under this section 6.03(5) must provide a copy of the application to the examining agent(s) for any examination that is in process at the same time it files the copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(6) *Issue Pending.*

(a) A taxpayer that is under examination with respect to any income tax issue may request to change a method of accounting if the method of accounting to be changed is an issue pending for any taxable year under examination. However, the audit protection provisions of section 7 of this revenue procedure do not apply to a taxpayer changing its method of accounting under this section 6.03(6). For purposes of this section 6.03(6), an issue is pending for a taxable year under examination if the Service has given the taxpayer written notification indicating an adjustment is being made or will be proposed with respect to the taxpayer's method of accounting. This notification normally will occur after the Service has gathered information sufficient to determine that an adjustment is appropriate and justified, although the exact amount of the adjustment may not yet be determined.

(b) A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) that requests to change a method of accounting under this section 6.03(6) must provide a copy of the application to the examining agent(s) at the same time it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

.04 *Taxpayer before an appeals office.* A taxpayer otherwise within the scope of this revenue procedure that is before an appeals office with respect to any income tax issue may request a change in accounting method. However, the audit protection provisions of section 7 of this revenue procedure do not apply if the accounting method to be changed is an issue under consideration by the appeals office. A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) that requests to change a method of accounting under this section 6.04 must provide a copy of the application to the appeals officer at the time it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the appeals officer(s).

.05 *Taxpayer before a federal court.* A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) otherwise within the scope of this revenue procedure that is before a federal court with respect to any income tax issue may request a change in accounting method. However, the audit protection provisions of section 7 of this revenue procedure do not apply if the accounting method to be changed is an issue under consideration by the federal court. A taxpayer (or designated shareholder) that requests to change a method of accounting under this section 6.05 must provide a copy of the application to the counsel(s) for the government at the time it files a copy of the original application with the national office. The application must contain the name(s) and telephone number(s) of the counsel(s) for the government.

.06 *Compliance with provisions.* If a taxpayer to which this revenue procedure applies changes to a method of accounting without complying with all the applicable provisions of this revenue procedure

(for example, the taxpayer changes to a method of accounting that varies from the applicable accounting method described in this revenue procedure or the taxpayer is outside the scope of this revenue procedure), the taxpayer has initiated a change in method of accounting without obtaining the consent of the Commissioner as required by § 446(e). See sections 9.02 and 10.03 of this revenue procedure.

SECTION 7. AUDIT PROTECTION FOR TAXABLE YEARS PRIOR TO YEAR OF CHANGE

.01 *In general.* Except as provided in sections 4.02(7)(b), 6.03(5), 6.03(6), 6.04, 6.05, 7.02 or the APPENDIX of this revenue procedure or in any other guidance published in the IRB, when a taxpayer timely files a copy of the application with the national office in compliance with all the applicable provisions of this revenue procedure, the Service will not require the taxpayer to change its method of accounting for the same item for a taxable year prior to the year of change.

.02 *Exceptions.*

(1) *Change not made or made improperly.* The Service may change a taxpayer's method of accounting for prior taxable years if (a) the taxpayer fails to implement the change, (b) the taxpayer implements the change but does not comply with all the applicable provisions of this revenue procedure, or (c) the method of accounting is changed or modified because there has been a misstatement or omission of material facts (see section 8.02 of this revenue procedure).

(2) *Change in sub-method.* The Service may change a taxpayer's method of accounting for prior taxable years if the taxpayer is changing a sub-method of accounting within the method. For example, an examining agent may propose to terminate the taxpayer's use of the LIFO inventory method during a prior taxable year even though the taxpayer changes its method of valuing increments in the current year.

(3) *Prior year Service-initiated change.* The Service may make adjustments to the taxpayer's returns for the same item for taxable years prior to the requested year of change to reflect a prior year Service-

initiated change reported as an issue pending or in a Revenue Agent's Report.

(4) *Criminal investigation.* The Service may change a taxpayer's method of accounting for the same item for taxable years prior to the year of change if there is any pending or future criminal investigation or proceeding concerning (a) directly or indirectly, any issue relating to the taxpayer's federal tax liability for any taxable year prior to the year of change, or (b) the possibility of false or fraudulent statements made by the taxpayer with respect to any issue relating to its federal tax liability for any taxable year prior to the year of change.

SECTION 8. EFFECT OF CONSENT

.01 *In general.* A taxpayer that changes to a method of accounting pursuant to this revenue procedure may be required to change or modify that method of accounting for the following reasons:

- (1) the enactment of legislation;
- (2) a decision of the United States Supreme Court;
- (3) the issuance of temporary or final regulations;
- (4) the issuance of a revenue ruling, revenue procedure, notice, or other statement published in the IRB;
- (5) the issuance of written notice to the taxpayer that the change in method of accounting is not in accord with the current views of the Service; or
- (6) a change in the material facts on which the consent was based.

.02 *Retroactive change or modification.* Except in rare or unusual circumstances, if a taxpayer that changes its method of accounting under this revenue procedure is subsequently required under section 8.01 of this revenue procedure to change or modify that method of accounting, the required change or modification will not be applied retroactively, provided that:

- (1) the taxpayer complied with all the applicable provisions of this revenue procedure;
- (2) there has been no misstatement or omission of material facts;
- (3) there has been no change in the material facts on which the consent was based;
- (4) there has been no change in the applicable law; and

(5) the taxpayer to whom consent was granted acted in good faith in relying on the consent, and applying the change or modification retroactively would be to the taxpayer's detriment.

SECTION 9. REVIEW BY DIRECTOR

.01 *In general.* The director must apply a change in method of accounting made in compliance with all the applicable provisions of this revenue procedure in determining the taxpayer's liability, unless the director recommends that the change in method of accounting should be modified or revoked. (See section 9.02 of this revenue procedure if a change in method of accounting is made without complying with all the applicable provisions of this revenue procedure.) The director will ascertain if the change in method of accounting was made in compliance with all the applicable provisions of this revenue procedure, including whether:

- (1) the representations on which the change was based reflect an accurate statement of the material facts;
- (2) the amount of the § 481(a) adjustment was properly determined; and
- (3) the change in method of accounting was implemented in compliance with all the applicable provisions of this revenue procedure.

The director will also ascertain whether:

- (4) there has been any change in the material facts on which the change was based during the period the method of accounting was used; and
- (5) there has been any change in the applicable law during the period the method of accounting was used.

.02 *Changes not made in compliance with all applicable provisions.* If the director determines that the taxpayer has not complied with all of the applicable provisions of this revenue procedure, the director may:

- (1) deny the change in method of accounting and require the taxpayer to continue to use the prior method of accounting;
- (2) deny the change in method of accounting and place the taxpayer on a proper method of accounting (see section 2.10 of this revenue procedure); or
- (3) make any adjustments (including the amount of any § 481(a) adjustment)

that are necessary to bring the change in method of accounting into compliance with all applicable provisions of this revenue procedure.

The director may impose any otherwise applicable penalty, addition to tax, or additional amount on the understatement of tax attributable to the change in method of accounting.

.03 National office consideration. If the director recommends that a change in method of accounting (other than the § 481(a) adjustment) made in compliance with all the applicable provisions of this revenue procedure should be modified or revoked, the director will forward the matter to the national office for consideration before any further action is taken. Such a referral to the national office will be treated as a request for technical advice, and the provisions of Rev. Proc. 2008-2 (or any successor) will be followed.

SECTION 10. REVIEW BY NATIONAL OFFICE

.01 In general. Any application filed under this revenue procedure may be reviewed by the national office. If the application is reviewed by the national office, the procedures in sections 10.02 and 10.03 of this revenue procedure apply.

.02 Incomplete application.

(1) *30-day rule.* If the national office reviews an application and determines that the application is not properly completed (see section 6.02(1)(c) of this revenue procedure), or if supplemental information is needed, the national office will notify the taxpayer. The notification will specify the information that the taxpayer needs to provide and permit the taxpayer 30 days from the date of the notification to furnish the information. The national office reserves the right to impose shorter reply periods if subsequent requests for additional information are made. An extension of the 30-day period to furnish information, not to exceed 30 days, may be granted to a taxpayer. A request for an extension of the 30-day period must be made in writing and submitted within the initial 30-day period. If the extension request is denied, there is no right of appeal.

(2) *Failure to provide additional information.* Ordinarily, if the taxpayer fails to provide the additional information on a

timely basis, the application does not qualify for the automatic consent procedures of this revenue procedure. If the national office determines that the application does not qualify for the automatic consent procedures of this revenue procedure because the taxpayer has failed to provide the additional information on a timely basis, the national office will notify the taxpayer that consent to make the change in method of accounting is not granted.

.03 National office determination.

(1) *Conference in the national office.* If the national office tentatively determines that the taxpayer has changed its method of accounting without complying with all the applicable provisions of this revenue procedure (for example, the taxpayer changed to a method of accounting that varies from the applicable accounting method described in this revenue procedure or the taxpayer is outside the scope of this revenue procedure), the national office will notify the taxpayer of its tentative adverse determination and will offer the taxpayer a conference of right, if the taxpayer has requested a conference. For conference procedures for taxpayers other than exempt organizations, see section 10 of Rev. Proc. 2008-1 (or any successor). For conference procedures for exempt organizations, see section 12 of Rev. Proc. 2008-4, 2008-1 I.R.B. 121 (or any successor).

(2) *Consent not granted.* Except as provided in section 10.03(3) of this revenue procedure, if the national office determines that a taxpayer has changed its method of accounting without complying with all the applicable provisions of this revenue procedure, the national office will notify the taxpayer that consent to make the change in method of accounting is not granted. In no event will an application under this revenue procedure be treated as an application under Rev. Proc. 97-27 (or any successor).

(3) *Application changed.* If the national office determines that a taxpayer has changed its method of accounting without complying with all the applicable provisions of this revenue procedure, the national office, in its discretion, may allow the taxpayer to (a) make appropriate adjustments to conform its change in method of accounting to the applicable provisions of this revenue procedure, and

(b) make conforming amendments to any federal income tax returns filed for the year of change and subsequent taxable years. Any application changed under this section 10.03(3) is subject to review by the director as provided in section 9 of this revenue procedure.

SECTION 11. APPLICABILITY OF REV. PROCS. 2008-1 AND 2008-4

Rev. Procs. 2008-1 and 2008-4 (or any successors) apply to applications filed under this revenue procedure, unless specifically excluded or overridden by other guidance published in the IRB (including any specific procedures in this document).

SECTION 12. EFFECTIVE DATE

.01 In general. Except as provided in section 12.02 of this revenue procedure, this revenue procedure is effective for applications filed on or after August 18, 2008, for a year of change ending on or after December 31, 2007. The Service will return any application that is filed with the national office after August 18, 2008, for a year of change ending on or after December 31, 2007, if the application is filed pursuant to the Code, regulations, or other guidance published in the IRB other than this revenue procedure and the change in method of accounting appears to be within the scope of this revenue procedure.

.02 Transition rules. The following transition rules apply.

(1) *Forms 3115 filed under Rev. Proc. 97-27.* If before August 18, 2008, a taxpayer within the scope of Rev. Proc. 97-27 timely filed a Form 3115 under Rev. Proc. 97-27 requesting consent for a change in method of accounting described in the APPENDIX of this revenue procedure for a year of change ending on or after December 31, 2007, and the Form 3115 is pending with the national office on August 18, 2008, the taxpayer may choose to make the change under this revenue procedure if the taxpayer is otherwise eligible under this revenue procedure. The taxpayer must notify the national office of its intent to make the change under this revenue procedure prior to the later of September 18, 2008, or the issuance of a letter ruling granting or denying consent for the change. If the taxpayer timely no-

tifies the national office that it will make the change under this revenue procedure, the national office ordinarily will return the Form 3115 to the taxpayer to make the necessary modifications to comply with the applicable provisions of this revenue procedure and will refund the user fee submitted with the Form 3115.

A Form 3115 that is returned to the taxpayer for necessary modifications will be converted to an application under this revenue procedure if the taxpayer resubmits the Form 3115 with the necessary modifications, along with a copy of the national office letter sent with the returned Form 3115, to the national office within 30 calendar days after the date of the Service's letter returning the Form 3115 to the taxpayer.

(2) *Application filed under Rev. Proc. 2002-9.*

(a) *General rule.* If a taxpayer properly files an application with the national office under Rev. Proc. 2002-9 to make a change in method of accounting described in the APPENDIX of Rev. Proc. 2002-9 and the application was either post-marked or received by the national office before August 18, 2008, the taxpayer makes the change under Rev. Proc. 2002-9.

(b) *Option to file an amended application.* If before August 18, 2008, a taxpayer properly filed an application under Rev. Proc. 2002-9 for a year of change that is the taxpayer's first taxable year ending on or after December 31, 2007, the taxpayer may choose to file an amended application for that year of change under this revenue procedure if, within 6 months from the due date of the federal income tax return for the year of change (excluding extension), the taxpayer (i) files an original or amended return using the new method of accounting pursuant to this revenue procedure, (ii) attaches the original amended application filed under this revenue procedure to its original or amended return for the year of change, (iii) writes on the top of page 1 of the national office copy of the amended application "FILED UNDER SECTION 12.02(2) OF REV. PROC. 2008-52"; and (iv) sends the national office copy of the amended application to the following address no later than the date the original amended application is filed with the original or amended return: Internal Revenue Service, P. O. Box 14095,

Benjamin Franklin Station, Washington, DC 20044, Attention: CC:ITA:8.

(3) *No application filed by August 18, 2008.*

(a) *General rule.* If, prior to August 18, 2008, a taxpayer has not filed an application requesting consent to change a particular method of accounting for its first taxable year ending on or before July 31, 2008, the taxpayer may elect to apply the provisions of Rev. Proc. 2002-9 with respect to such method of accounting for such taxable year. For taxpayers making such election, the timely duplicate filing requirement of section 6.02(3)(a) of Rev. Proc. 2002-9 is modified to require the copy of the application to be submitted to the National Office on or before September 15, 2008.

(b) *Exception for changes from a hybrid method.* As of August 18, 2008, a taxpayer may not apply the provisions of Rev. Proc. 2002-9 with respect to a change described in section 5.01 of the APPENDIX to Rev. Proc. 2002-9 if such change is not also described in either section 14.01 or 14.09 of the APPENDIX to this revenue procedure. Notwithstanding section 5.01(1)(a) of Rev. Proc. 97-27, the Service will treat as timely filed under Rev. Proc. 97-27 any Form 3115 requesting consent to a change in method of accounting that is described in section 5.01 of the APPENDIX to Rev. Proc. 2002-9 but is not described in either section 14.01 or 14.09 of the APPENDIX to this revenue procedure for a taxpayer's first taxable year ending on or before July 31, 2008 if it is filed on or before September 15, 2008.

SECTION 13. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-9 is clarified, modified, amplified, and superseded.

Section 6.02(1)(a) of Rev. Proc. 2001-10, 2001-1 C.B. 272, as modified by Announcement 2004-16, 2004-1 C.B. 668, and section 7.02(1)(a) of Rev. Proc. 2002-28, 2002-1 C.B. 815, as modified by Announcement 2004-16, are modified and amplified to provide that the scope limitations of section 4.02 of this revenue procedure apply to a change to the cash method.

Rev. Proc. 2007-14, 2007-4 I.R.B. 357, is superseded.

Rev. Proc. 2008-43, 2008-30 I.R.B. 186, is modified to require a taxpayer to use a cut-off basis when changing to a rolling-average method of determining the current-year cost of LIFO inventory pursuant to section 22.02(1)(a)(v) of the APPENDIX of this revenue procedure.

SECTION 14. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1551. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 6, 10, and 12 and sections 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 20, 21, 22, 23, 24, 31, and 32 of the APPENDIX. This information is necessary and will be used to determine whether the taxpayer properly changed to a permitted method of accounting. The collections of information are required for the taxpayer to obtain consent to change its method of accounting. The likely respondents are the following: individuals, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting and/or recordkeeping burden is 13,976 hours.

The estimated annual burden per respondent/recordkeeper varies from 1/6 hour to 8½ hours, depending on individual circumstances, with an estimated average of 1½ hours. The estimated number of respondents is 13,250. The estimated annual frequency of responses is on occasion.

SECTION 15. SIGNIFICANT CHANGES

Significant changes to Rev. Proc. 2002-9 include:

(1) Section 4.02(5) of this revenue procedure clarifies that, for purposes of the final year of a trade or business scope limitation, a cessation or termination of a trade

or business is determined without regard to whether the § 481(a) adjustment is positive or negative or whether the change is made on a cut-off method;

(2) Sections 4.02(6) and 4.02(7) of this revenue procedure provide separate prior five-year change scope limitations for an overall method change and for a change relating to a specific item;

(3) Section 5.06 of this revenue procedure provides additional terms and conditions applicable to certain foreign corporations;

(4) Section 6.02(1)(c) of this revenue procedure amplifies the requirements for a complete application (*e.g.*, Form 3115);

(5) Section 6.02(3)(b) provides timely duplicate filing requirements for certain foreign corporations;

(6) The requirements regarding designated automatic accounting method change numbers are incorporated. *See* section 6.02(4) of this revenue procedure. A designated automatic accounting method change number is assigned to each change in the APPENDIX of this revenue procedure;

(7) Explanations of how to implement a change on a cut-off basis are added to various sections of the APPENDIX that require the use of the cut-off basis. *See, e.g.*, sections 2.01, 6.03, and 22.06 of the APPENDIX of this revenue procedure;

(8) Section 6.03 of the APPENDIX of this revenue procedure, relating to sale or lease transactions, is modified to include financing arrangements;

(9) The following sections of the APPENDIX of this revenue procedure are modified to include taxpayers not complying with the capitalization requirements of § 263A for the costs to which the change applies if the change is made in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of the APPENDIX of this revenue procedure:

(a) Section 6.01, relating to changes from impermissible to permissible methods of accounting for depreciation or amortization;

(b) Section 6.02, relating to changes from permissible to permissible methods of accounting for depreciation;

(c) Section 13.02, relating to changes for certain deferred compensation (bonuses and vacation pay);

(d) Section 19.01(1), relating to changes for self-insured employee medical benefits;

(e) Section 19.02, relating to changes involving the timing of incurring liabilities for real property taxes, personal property taxes, state income taxes, and state franchise taxes;

(f) Section 19.03, relating to changes involving the timing of incurring liabilities under a workers' compensation act, tort, breach of contract, or violation of law; and

(g) Section 19.04, relating to changes involving the timing of incurring certain liabilities for payroll taxes;

(10) Section 11.01(1)(b)(ii) of the APPENDIX of this revenue procedure, relating to changes to certain UNICAP methods used by resellers and reseller-producers, is clarified to state that the change applies to a small reseller changing from the historic absorption ratio with the simplified resale method to a permissible non-UNICAP inventory capitalization method under section 11.01(1)(a)(i) of the APPENDIX of this revenue procedure;

(11) Section 11.02 of the APPENDIX of this revenue procedure, relating to certain UNICAP methods used by producers and reseller-producers, is clarified to state that the change does not apply to a producer or reseller-producer that wants to change its method of accounting for interest capitalization;

(12) Sections 14.01 and 14.09 of the APPENDIX of this revenue procedure provide separate changes for changes from the overall cash method to an overall accrual method and for changes from the cash method to an accrual method for one or more specific items. Sections 14.01 of the APPENDIX of this revenue procedure is modified to (a) eliminate changes from a hybrid method, (b) include changes for a taxpayer's first § 448 year; and (c) permit changes for farmers;

(13) Section 14.01(1)(b)(v)(A) of the APPENDIX of this revenue procedure clarifies that a taxpayer may change, as well as adopt or continue to use, certain inventory methods in conjunction with the change to an overall accrual method;

(14) Section 14.03 of the APPENDIX of this revenue procedure is modified to state that the scope limitations in section 4.02 of this revenue procedure apply to changes to the overall cash method provided in Rev. Proc. 2001-10 and Rev.

Proc. 2002-28, as modified by Announcement 2004-16;

(15) Section 14.05 of the APPENDIX of this revenue procedure, regarding interest accruals on short-term consumer loans-Rule of 78's method, is modified by removing the date limitations for the loans to which the change relates;

(16) Section 18.01 of the APPENDIX of this revenue procedure clarifies that the change to the percentage-of-completion method must be from an exempt-contract method properly applied;

(17) Section 19.01(1) of the APPENDIX of this revenue procedure, relating to changes involving timing of incurring liabilities for self-insured employee medical benefits, is modified to include method changes involving liabilities to pay a third party service provider;

(18) Section 19.02 of the APPENDIX of this revenue procedure, relating to changes involving timing of incurring liabilities for real property and personal property taxes is modified to include method changes for state franchise taxes;

(19) Section 19.03 of the APPENDIX of this revenue procedure, relating to changes involving timing of incurring liabilities under a workers' compensation act, tort, breach of contract, or violation of law, is modified to include method changes involving payments made by a third party;

(20) Section 19.04 of the APPENDIX of this revenue procedure, relating to changes involving timing of incurring certain liabilities for payroll taxes imposed with respect to year-end wages, is modified to include method changes for payroll taxes imposed with respect to other forms of compensation (including bonuses and vacation pay) to the safe harbor method provided in Rev. Proc. 2008-25, 2008-13 I.R.B. 686;

(21) Section 21.05 of the APPENDIX of this revenue procedure is modified to expand the types of impermissible inventory methods from which a taxpayer may change;

(22) Section 22.01 of the APPENDIX of this revenue procedure, regarding changes from the LIFO inventory method, is modified to expand the permitted methods to which a taxpayer may change;

(23) Section 22.02 of the APPENDIX of this revenue procedure, regarding determining current-year cost under the

LIFO inventory method, is modified to include changes to the specific identification method;

(24) Section 22.05 of the APPENDIX of this revenue procedure, relating to determining the cost of used vehicles purchased or taken as a trade-in for a taxpayer using the LIFO inventory method, is modified to include changes to a different official used vehicle guide;

(25) Section 22.06 of the APPENDIX of this revenue procedure, relating to changes to the IPIC method, is modified to include additional types of method changes;

(26) Section 22.07 of the APPENDIX of this revenue procedure, relating to changes within the IPIC method, is modified to include additional types of method changes;

(27) Section 23.01 of the APPENDIX of this revenue procedure, relating to commodities dealers, securities traders, and commodities traders electing to use the mark-to-market method of accounting under § 475(e) or (f), is modified by requiring a taxpayer to include on the Form 3115 for the year of change a statement that the taxpayer has complied with the election requirements under Rev. Proc. 99-17, 1999-1 C.B. 503, for purposes of section 475(e) or (f);

(28) Section 24.01 of the APPENDIX of this revenue procedure, relating to banks changing from the § 585 reserve method for bad debts to the § 166 specific charge-off method, is modified to allow a bank for which a QSub election is filed to make a § 1361(g) election for the resulting § 481(a) adjustment, as provided in section 24.01(4)(b) of the APPENDIX of this revenue procedure;

(29) Section 29.01 of the APPENDIX of this revenue procedure, relating to changes for functional currency, is modified to state that the change does not apply to a QBU of a taxpayer described in § 1.985-1(b)(1)(iii); and

(30) The following sections are added to the APPENDIX of this revenue procedure to provide additional changes in method of accounting;

(a) Section 6.19 of the APPENDIX, relating to changes for lessor improvements abandoned at termination of lease;

(b) Section 6.20 of the APPENDIX, relating to changes for accounting for,

or identifying disposed, depreciable repairable and reusable spare parts;

(c) Section 6.21 of the APPENDIX, relating to changes from depreciating land (or nondepreciable land improvement) to not depreciating land (or nondepreciable land improvement);

(d) Section 10.07 of the APPENDIX, relating to changes to capitalize and depreciate repairable and reusable spare parts;

(e) Section 14.09 of the APPENDIX, relating to changes from the cash method to an accrual method for specific items;

(f) Section 14.11 of the APPENDIX, relating to changes to the overall cash method for specified transportation industry taxpayers;

(g) Section 14.12 of the APPENDIX, relating to changes to overall cash/hybrid method for certain banks;

(h) Section 14.13 of the APPENDIX, relating to changes to overall cash method for farmers;

(i) Section 14.14 of the APPENDIX, relating to changes for nonshareholder contributions to capital under section 118;

(j) Section 15.10 of the APPENDIX, relating to changes for retainages under § 451;

(k) Sections 19.01(2) and (3) of the APPENDIX, relating to timing of incurring liabilities for employee bonuses and vacation pay under § 461;

(l) Section 19.07 of the APPENDIX, relating to changes for rebates and allowances under § 461;

(m) Section 20.01 of the APPENDIX, relating to changes from a ratable inclusion of rental income or expense to inclusion in accordance with the rent allocation;

(n) Section 21.11 of the APPENDIX, relating to changes from permissible methods of identifying and valuing inventories;

(o) Section 21.12 of the APPENDIX, relating to changes in the official used vehicle guide utilized in valuing used vehicles;

(p) Section 21.13 of the APPENDIX, relating to invoiced advertising association costs for new vehicle retail dealerships;

(q) Section 22.10 of the APPENDIX, relating to changes to dollar-value pools of manufacturers; and

(r) Section 30.01 of the APPENDIX, relating to changes to comply with § 1.1012-1(c)(1)-(4).

DRAFTING INFORMATION

The principal authors of this revenue procedure are Kari Fisher, Karla Meola, and Cheryl Oseekey of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Fisher, Ms. Meola, or Ms. Oseekey at (202) 622-4970 or (202) 622-4930 (not a toll-free call).

For further information regarding a specific change in method of accounting in the APPENDIX of this revenue procedure, contact the appropriate individual listed in the "Contact Person(s)" section located at the end of each section of the APPENDIX (calls are not toll-free) or see the APPENDIX CONTACT LIST immediately following the APPENDIX. The contact person is with one of the following Offices of Associate Chief Counsel: Corporate (CORP), Financial Institutions and Products (FI&P), Income Tax & Accounting (IT&A), International (INTL), Passthroughs and Special Industries (P&SI), or Tax Exempt and Government Entities (TEGE).

APPENDIX

CHANGES IN METHODS OF ACCOUNTING TO WHICH THIS REVENUE PROCEDURE APPLIES

SECTION 1. GROSS INCOME (§ 61)

.01 Up-front Payments for Network Upgrades received by Utilities.

(1) *Description of change.* This change applies to a Utility that wants to change its method of accounting for Up-front Payments to the "safe harbor method" described in Rev. Proc. 2005-35, 2005-2 C.B. 76. In general, this change applies to a Utility that receives an Up-front Payment from a Generator to finance Network Upgrades to the Utility's Transmission System. For federal income tax purposes, if an Up-front Payment is made pursuant to an Interconnection Agreement that satisfies all of the conditions of section 5.02 of Rev. Proc. 2005-35, a Utility may treat that Up-front Payment as not being taxable income under § 61 when received (the "safe harbor method"). In addition, a Utility that uses the safe harbor method

is not entitled to any deduction for its reimbursements of the Up-front Payment. To the extent that Federal Energy Regulatory Commission (FERC) interest is deductible, it must be properly allocated to the periods in which it accrues. A Utility using the safe harbor method must comply with all other applicable provisions of Rev. Proc. 2005-35. See Rev. Proc. 2005-35 for the definitions of certain terms for purposes of this change.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 1.01 of this APPENDIX is "91." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact David Silber at 202-622-3930 (not a toll-free call).

.02 *Reserved.*

SECTION 2. COMMODITY CREDIT LOANS (§ 77)

.01 *Treating amounts received as loans.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for loans received from the Commodity Credit Corporation from including the loan amount in gross income for the taxable year in which the loan is received to treating the loan amount as a loan.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Manner of making change.* This change is made on a cut-off basis and applies only to loans received from the Commodity Credit Corporation on or after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 2.01 of this APPENDIX is "1." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under

this section, contact William Ruane at 202-622-4920 (not a toll-free call).

.02 *Reserved.*

SECTION 3. TRADE OR BUSINESS EXPENSES (§ 162)

.01 *Advances made by a lawyer on behalf of clients.*

(1) *Description of change.* This change applies to a lawyer handling cases on a contingent fee basis that advances money to pay for costs of litigation or for other expenses on behalf of clients and that wants to change the method of accounting for such advances from treating them as deductible business expenses to treating them as loans. See *Boccardo v. United States*, 12 Cl. Ct. 184 (1987); *Canelo v. Commissioner*, 53 T.C. 217 (1969), *aff'd per curiam*, 447 F.2d 484 (9th Cir. 1971).

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 3.01 of this APPENDIX is "2." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Martin Osborne at 202-622-7900 (not a toll-free call).

.02 *ISO 9000 costs.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for costs incurred to obtain, maintain and renew ISO 9000 certification to conform with Rev. Rul. 2000-4, 2000-1 C.B. 331.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 3.02 of this APPENDIX is "3." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Martin Osborne at 202-622-7900 (not a toll-free call).

.03 *Restaurant or tavern smallwares packages.*

(1) *Description of change.* This change applies to a taxpayer engaged in the trade or business of operating a restaurant or tavern (within the meaning of section 4.01 of Rev. Proc. 2002-12, 2002-1 C.B. 374) that wants to change its method of accounting for the costs of smallwares to the smallwares method described in Rev. Proc. 2002-12.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Section 481(a) adjustment period.* A taxpayer changing its method of accounting for restaurant smallwares under this section 3.03 of the APPENDIX must take the entire § 481(a) adjustment into account in computing taxable income in the year of change.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 3.03 of this APPENDIX is "4." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Martin Osborne at 202-622-7900 (not a toll-free call).

.04 *Timber grower fertilization costs.*

(1) *Description of change.* This change applies to a timber grower that wants to change its method of accounting to treat post-establishment fertilization costs of an established timber stand as ordinary and necessary business expenses deductible under § 162. See Rev. Rul. 2004-62, 2004-1 C.B. 1072.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 3.04 of this APPENDIX is "86." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Martin Osborne at 202-622-7900 (not a toll-free call).

SECTION 4. BAD DEBTS (§ 166)

.01 Change from reserve method to specific charge-off method.

(1) *Description of change.* This change applies to a taxpayer (other than a bank as defined in § 585(a)(2)) that wants to change its method of accounting for bad debts from a reserve method (or other improper method) to a specific charge-off method that complies with § 166. For procedures applicable to banks, see § 585(c) and the regulations thereunder and section 24 of this APPENDIX.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 4.01 of this APPENDIX is “5.” See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Sean Dwyer at 202-622-5020 (not a toll-free call).

.02 Reserved.

SECTION 5. AMORTIZABLE BOND PREMIUM (§ 171)

.01 Revocation of § 171(c) election.

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for amortizable bond premium by revoking its § 171(c) election. Under § 171(c), a taxpayer that holds certain taxable bonds may elect to amortize any bond premium on the bonds in accordance with regulations prescribed by the Secretary. Sections 1.171-1 through 1.171-5 provide rules relating to the amortization of bond premium by a taxpayer. Section 1.171-4 provides the procedures to make a § 171(c) election to amortize bond premium.

(2) *Revocation of election.* The revocation of a § 171(c) election applies to all taxable bonds that are held by the taxpayer on the first day of the first taxable year for which the revocation is effective (year of change), and to all taxable bonds that are subsequently acquired by the taxpayer.

(3) *Manner of making change.* This change is made using a cut-off basis and applies only to taxable bonds held on or after the beginning of the year of change. See section 2.06 of this revenue procedure

for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

Under the cut-off basis, for taxable bonds held at the beginning of the year of change, the taxpayer may not amortize any remaining bond premium on the bonds. Because the cut-off basis is prescribed for this change, the basis of any bond, adjusted for amounts previously amortized during the period of the election, is not affected by the revocation.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 5.01 of this APPENDIX is “16.” See section 6.02(4) of this revenue procedure.

(5) *Additional requirements.* On a statement attached to the Form 3115, the taxpayer must provide:

(a) the reason(s) for revoking the election; and

(b) a description of the method by which, and the date on which, the taxpayer made the § 171(c) election that is proposed to be revoked.

(6) *Audit protection.* A taxpayer receives audit protection under section 7 of this revenue procedure in connection with this change. However, the audit protection applicable to this change does not preclude the Commissioner from examining the method used by the taxpayer to determine the amount of amortizable bond premium under § 171(b) for a taxable year prior to the year of change.

(7) *Contact information.* For further information regarding a change under this section, contact William E. Blanchard at 202-622-3950 (not a toll-free call).

.02 Reserved.

SECTION 6. DEPRECIATION OR AMORTIZATION (§ 56(a)(1), 56(g)(4)(A), 167, 168, 197, 280F(a), 1400I, 1400L, or 1400N(d), OR FORMER § 168)

.01 Impermissible to permissible method of accounting for depreciation or amortization.

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change from an impermissible to a permissible method

of accounting for depreciation or amortization (depreciation) for any item of depreciable or amortizable property:

(i) for which the taxpayer used the impermissible method of accounting in at least two taxable years immediately preceding the year of change (but see section 6.01(1)(b) of this APPENDIX for property placed in service in the taxable year immediately preceding the year of change);

(ii) for which the taxpayer is making a change in method of accounting under § 1.446-1(e)(2)(ii)(d);

(iii) for which depreciation is determined under § 56(a)(1), § 56(g)(4)(A), § 167, § 168, § 197, § 1400I, or § 1400L(c), under § 168 prior to its amendment in 1986 (former § 168), or under any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)); and

(iv) that is owned by the taxpayer at the beginning of the year of change (but see section 6.17 of this APPENDIX for property disposed of before the year of change).

(b) *Taxpayer has not adopted a method of accounting for the item of property.* If a taxpayer does not satisfy section 6.01(1)(a)(i) of this APPENDIX for an item of depreciable or amortizable property because this item of property is placed in service by the taxpayer in the taxable year immediately preceding the year of change (“1-year depreciable property”), the taxpayer may change from the impermissible method of determining depreciation to the permissible method of determining depreciation for the 1-year depreciable property by filing a Form 3115 for this change, provided the § 481(a) adjustment reported on the Form 3115 includes the amount of any adjustment that is attributable to all property (including the 1-year depreciable property) subject to the Form 3115. Alternatively, the taxpayer may change from the impermissible method of determining depreciation to the permissible method of determining depreciation for a 1-year depreciable property by filing an amended federal tax return for the property’s placed-in-service year prior to the date the taxpayer files its federal tax return for the taxable year succeeding the placed-in-service year.

(c) *Inapplicability.* This change does not apply to:

(i) any property to which § 1016(a)(3) (regarding property held by a tax-exempt organization) applies;

(ii) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 6.01 of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable);

(iii) any property for which a taxpayer is making a change in depreciation under § 1.446-1(e)(2)(ii)(d)(2)(vi) or (vii);

(iv) any property subject to § 167(g) regarding property depreciated under the income forecast method;

(v) any § 1250 property that a taxpayer is reclassifying to an asset class of Rev. Proc. 87-56, 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785), or Rev. Proc. 83-35, 1983-1 C.B. 745, as appropriate, that does not explicitly include § 1250 property (for example, asset class 57.0, Distributive Trades and Services);

(vi) any property for which a taxpayer is revoking a timely valid election, or making a late election, under § 167, § 168, § 179, § 1400I, § 1400L(c), former § 168, § 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993 (1993 Act), 1993-3 C.B. 1, 128 (relating to amortizable § 197 intangibles), or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)). A taxpayer may request consent to revoke or make the election by submitting a request for a letter ruling under Rev. Proc. 2008-1, 2008-1 I.R.B. 1 (or any successor). However, if a taxpayer is revoking or making an election under § 179, see § 179(c) and § 1.179-5. See § 1.446-1(e)(2)(ii)(d)(3)(iii);

(vii) any property for which depreciation is determined under § 56(g)(4)(A) or § 167 (other than under § 168, § 1400I, § 1400L(c), former § 168, or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d))) and a taxpayer is changing the useful life of the property. A change in the useful life of property

is corrected by adjustments in the applicable taxable year provided under § 1.446-1(e)(2)(ii)(d)(5)(iv). However, this section 6.01(1)(c)(vii) of the APPENDIX does not apply if the taxpayer is changing to or from a useful life, recovery period, or amortization period that is specifically assigned by the Code (for example, § 167(f)(1), § 168(c)), the regulations thereunder, or other guidance published in the IRB and, therefore, this change is a change in method of accounting (unless section 6.01(1)(c)(xv) of this APPENDIX applies). See § 1.446-1(e)(2)(ii)(d)(3)(i);

(viii) any depreciable property for which the use changes in the hands of the same taxpayer. See § 1.446-1(e)(2)(ii)(d)(3)(ii);

(ix) any property for which depreciation is determined in accordance with § 1.167(a)-11 (regarding the Class Life Asset Depreciation Range System (ADR));

(x) any change in method of accounting involving a change from deducting the cost or other basis of any property as an expense to capitalizing and depreciating the cost or other basis, or *vice versa*;

(xi) any change in method of accounting involving a change from one permissible method of accounting for the property to another permissible method of accounting for the property. For example:

(A) a change from the straight-line method of depreciation to the income forecast method of depreciating for videocassettes. See Rev. Rul. 89-62, 1989-1 C.B. 78; or

(B) a change from charging the depreciation reserve with costs of removal and crediting the depreciation reserve with salvage proceeds to deducting costs of removal as an expense (provided the costs of removal are not required to be capitalized under any provision of the Code, such as § 263(a) and including salvage proceeds in taxable income (see section 6.02 of this APPENDIX for making this change for property for which depreciation is determined under § 167);

(xii) any change in method of accounting involving both a change from treating the cost or other basis of the property as nondepreciable or nonamortizable property to treating the cost or other basis of the property as depreciable or amortizable property and the adoption of a method

of accounting for depreciation requiring an election under § 167, § 168, § 1400I, § 1400L(c), former § 168, § 13261(g)(2) or (3) of the 1993 Act, or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)) (for example, a change in the treatment of the space consumed in landfills placed in service in 2006 from nondepreciable to depreciable property (assuming section 6.01(1)(c)(xiii) of the APPENDIX does not apply) and the making of an election under § 168(f)(1) to depreciate this property under the unit of production method of depreciation under § 167);

(xiii) any change in method of accounting for any item of income or deduction other than depreciation, even if the change results in a change in computing depreciation under § 1.446-1(e)(2)(ii)(d)(2)(i), (ii), (iii), (iv), (v), (vi), (vii), or (viii). For example, a change in method of accounting involving:

(A) a change in inventory costs (for example, when property is reclassified from inventory property to depreciable property, or *vice versa*) (but see section 10.02 of this APPENDIX for making a change in method of accounting from inventory property to depreciable property for unrecoverable line pack gas or unrecoverable cushion gas, and section 10.06 of this APPENDIX for making a change in method of accounting from inventory property to depreciable property for rotatable spare parts); or

(B) a change in the character of a transaction from sale to lease, or *vice versa* (but see section 6.03 of this APPENDIX for making this change);

(xiv) a change from determining depreciation under § 168 to determining depreciation under former § 168 for any property subject to the transition rules in § 203(b) or § 204(a) of the Tax Reform Act of 1986, 1986-3 (Vol. 1) C.B. 1, 60-80;

(xv) any change in the placed-in-service date of a depreciable or amortizable property. This change is corrected by adjustments in the applicable taxable year provided under § 1.446-1(e)(2)(ii)(d)(5)(v); or

(xvi) any property for which the rehabilitation credit under § 47 was claimed and that a taxpayer is reclassifying to 3-year property, 5-year property, 7-year property, 10-year property, 15-year prop-

erty, 20-year property, or water utility property (other than real property with a class life of more than 12.5 years).

(2) *Certain scope limitations inapplicable.* The scope limitations in sections 4.02(4) and 4.02(5) of this revenue procedure are not applicable to this change.

(3) *Additional requirements.* A taxpayer also must comply with the following:

(a) *Permissible method of accounting for depreciation.* A taxpayer must change to a permissible method of accounting for depreciation for the item of depreciable or amortizable property. The permissible method of accounting is the same method that determines the depreciation allowable for the item of property (as provided in section 6.01(6) of this APPENDIX).

(b) *Statements required.* A taxpayer must provide the following statements, if applicable, and attach them to the completed application:

(i) a detailed description of the former and new methods of accounting. A general description of these methods of accounting is unacceptable (for example, MACRS to MACRS, erroneous method to proper method, claiming less than the depreciation allowable to claiming the depreciation allowable);

(ii) to the extent not provided elsewhere on the application, a statement describing the taxpayer's business or income-producing activities. Also, if the taxpayer has more than one business or income-producing activity, a statement describing the taxpayer's business or income-producing activity in which the item of property at issue is primarily used by the taxpayer;

(iii) to the extent not provided elsewhere on the application, a statement of the facts and law supporting the new method of accounting, new classification of the item of property, and new asset class in, as appropriate, Rev. Proc. 87-56 or Rev. Proc. 83-35. If the taxpayer is the owner and lessor of the item of property at issue, the statement of the facts and law supporting the new asset class also must describe the business or income-producing activity in which that item of property is primarily used by the lessee;

(iv) to the extent not provided elsewhere on the application, a statement identifying the year in which the item of

property was placed in service by the taxpayer;

(v) if any item of property is public utility property within the meaning of § 168(i)(10) or former § 167(I)(3)(A), as applicable, a statement providing that the taxpayer agrees to the following additional terms and conditions:

(A) a normalization method of accounting (within the meaning of former § 167(I)(3)(G), former § 168(e)(3)(B), or § 168(i)(9), as applicable) will be used for the public utility property subject to the application;

(B) as of the beginning of the year of change, the taxpayer will adjust its deferred tax reserve account or similar reserve account in the taxpayer's regulatory books of account by the amount of the deferral of federal income tax liability associated with the § 481(a) adjustment applicable to the public utility property subject to the application; and

(C) within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed application to any regulatory body having jurisdiction over the public utility property subject to the application;

(vi) if the taxpayer is changing the classification of an item of § 1250 property placed in service after August 19, 1996, to a retail motor fuels outlet under § 168(e)(3)(E)(iii), a statement containing the following representation: "For purposes of § 168(e)(3)(E)(iii) of the Internal Revenue Code, the taxpayer represents that (A) 50 percent or more of the gross revenue generated from the item of § 1250 property is from the sale of petroleum products (not including gross revenue from related services, such as the labor cost of oil changes and gross revenue from the sale of nonpetroleum products such as tires and oil filters), (B) 50 percent or more of the floor space in the item of property is devoted to the sale of petroleum products (not including floor space devoted to related services, such as oil changes and floor space devoted to nonpetroleum products such as tires and oil filters), or (C) the item of § 1250 property is 1,400 square feet or less."; and

(vii) if the taxpayer is changing the classification of an item of property from § 1250 property to § 1245 property under § 168 or former § 168, a statement of the

facts and law supporting the new § 1245 property classification, and a statement containing the following representation: "Each item of depreciable property that is the subject of the application filed under section 6.01 of the APPENDIX of Rev. Proc. 2008-52 for the year of change beginning [Insert the date], and that is reclassified from [Insert, as appropriate: *nonresidential real property, residential rental property, qualified leasehold improvement property, qualified restaurant property, 19-year real property, 18-year real property, or 15-year real property*] to an asset class of [Insert, as appropriate, either: *Rev. Proc. 87-56, 1987-2 C.B. 674, or Rev. Proc. 83-35, 1983-1 C.B. 745*] that does not explicitly include § 1250 property, is § 1245 property for depreciation purposes."

(4) *Section 481(a) adjustment.* Because the adjusted basis of the property is changed as a result of a method change made under section 6.01 of the APPENDIX (see section 6.01(5) of this APPENDIX), items are duplicated or omitted. Accordingly, this change is made with a § 481(a) adjustment. This adjustment may result in either a negative § 481(a) adjustment (a decrease in taxable income) or a positive § 481(a) adjustment (an increase in taxable income) and may be a different amount for regular tax, alternative minimum tax, and adjusted current earnings purposes. This § 481(a) adjustment equals the difference between the total amount of depreciation taken into account in computing taxable income for the property under the taxpayer's former method of accounting (including the amount attributable to any property described in section 6.01(1)(b) of this APPENDIX that is included in the taxpayer's Form 3115), and the total amount of depreciation allowable for the property under the taxpayer's new method of accounting (as determined under section 6.01(6) of this APPENDIX, and including the amount attributable to any property described in section 6.01(1)(b) of this APPENDIX that is included in the taxpayer's Form 3115), for open and closed years prior to the year of change. However, the amount of the § 481(a) adjustment must be adjusted to account for the proper amount of the depreciation allowable that is required to be capitalized under any provision of the

Code (for example, § 263A) at the beginning of the year of change.

(5) *Basis adjustment.* As of the beginning of the year of change, the basis of depreciable property to which section 6.01 of this APPENDIX applies must reflect the reductions required by § 1016(a)(2) for the depreciation allowable for the property (as determined under section 6.01(6) of this APPENDIX).

(6) *Meaning of depreciation allowable.*

(a) *In general.* Section 6.01(6) of this APPENDIX provides the amount of the depreciation allowable determined under § 56(a)(1), § 56(g)(4)(A), § 167, § 168, § 197, § 1400I, or § 1400L(c), or former § 168. This amount, however, may be limited by other provisions of the Code (for example, § 280F).

(b) *Section 56(a)(1) property.* The depreciation allowable for any taxable year for property for which depreciation is determined under § 56(a)(1) is determined by using the depreciation method, recovery period, and convention provided for under § 56(a)(1) that applies for the property's placed-in-service date.

(c) *Section 56(g)(4)(A) property.* The depreciation allowable for any taxable year for property for which depreciation is determined under § 56(g)(4)(A) is determined by using the depreciation method, recovery period or useful life, as applicable, and convention provided for under § 56(g)(4)(A) that applies for the property's placed-in-service date.

(d) *Section 167 property.* Generally, for any taxable year, the depreciation allowable for property for which depreciation is determined under § 167, is determined either:

(i) under the depreciation method adopted by the taxpayer for the property; or

(ii) if that depreciation method does not result in a reasonable allowance for depreciation or the taxpayer has not adopted a depreciation method for the property, under the straight-line depreciation method.

For determining the estimated useful life and salvage value of the property, see § 1.167(a)-1(b) and (c) respectively.

The depreciation allowable for any taxable year for property subject to § 167(f) (regarding certain property excluded from § 197) is determined by using the de-

preciation method and useful life prescribed in § 167(f). If computer software is depreciated under § 167(f)(1) and is qualified property (as defined in § 168(k)(2) and § 1.168(k)-1), 50-percent bonus depreciation property (as defined in § 168(k)(4) and § 1.168(k)-1), qualified New York Liberty Zone (Liberty Zone) property (as defined in § 1400L(b)(2) and § 1.1400L(b)-1), qualified Gulf Opportunity Zone (GO Zone) property (as defined in § 1400N(d)(2) and sections 2.02 and 2.03 of Notice 2006-77, 2006-2 C.B. 590, as clarified, modified, and amplified by Notice 2007-36, 2007-17 I.R.B. 1000), or specified Gulf Opportunity Zone extension property (GO Zone extension property) (as defined in § 1400N(d)(6) and section 4 of Notice 2007-36), the depreciation allowable for that computer software under § 167(f)(1) is also determined by taking into account the additional first year depreciation deduction provided by § 168(k), § 1400L(b), or § 1400N(d), as applicable, unless the taxpayer made a timely valid election not to deduct any additional first year depreciation for the computer software.

(e) *Section 168 property.* The depreciation allowable for any taxable year for property for which depreciation is determined under § 168, is determined as follows:

(i) by using either:

(A) the general depreciation system in § 168(a); or

(B) the alternative depreciation system in § 168(g) if the property is required to be depreciated under the alternative depreciation system pursuant to § 168(g)(1) or other provisions of the Code (for example, property described in § 263A(e)(2)(A) or § 280F(b)(1)). Property required to be depreciated under the alternative depreciation system pursuant to § 168(g)(1) includes property in a class (as set out in § 168(e)) for which the taxpayer made a timely valid election under § 168(g)(7);

(ii) if the property is qualified property, 50-percent bonus depreciation property, Liberty Zone property, GO Zone property, or GO Zone extension property, by also taking into account the additional first year depreciation deduction provided by § 168(k), § 1400L(b), or § 1400N(d), as applicable, unless the taxpayer made a timely valid election not to deduct the

additional first year depreciation (or made a deemed election not to deduct the additional first year depreciation; for further guidance, see Rev. Proc. 2002-33, 2002-1 C.B. 963, Rev. Proc. 2003-50, 2003-2 C.B. 119, or Notice 2006-77) for the class of property (as defined in § 1.168(k)-1(e)(2), § 1.1400L(b)-1(e)(2), or section 4.02 of Notice 2006-77, as applicable) in which that property is included; and

(iii) if the property is qualified cellulosic biomass ethanol property (as defined in § 168(l)(2)), by also taking into account the additional first year depreciation deduction provided by § 168(l)(1), unless the taxpayer made a timely valid election not to deduct the additional first year depreciation for the property.

(f) *Section 197 property.* The depreciation allowable for any taxable year for an amortizable § 197 intangible (including any property for which a timely election under § 13261(g)(2) of the 1993 Act was made) is determined in accordance with § 1.197-2(f).

(g) *Former § 168 property.* The depreciation allowable for any taxable year for property subject to former § 168 is determined by using either:

(i) the accelerated method of cost recovery applicable to the property (for example, for 5-year property, the recovery method under former § 168(b)(1)); or

(ii) the straight-line method applicable to the property if the property is required to be depreciated under the straight-line method (for example, property described in former § 168(f)(2) or former § 280F(b)(2)) or if the taxpayer elected to determine the depreciation allowance under the optional straight-line percentage (for example, the straight-line method in former § 168(b)(3)).

(h) *Qualified revitalization building.* The depreciation allowable for any taxable year for any qualified revitalization building (as defined in § 1400I(b)(1)) for which the taxpayer has made a timely valid election under § 1400I(a) is determined as follows:

(i) if the taxpayer elected to deduct one-half of any qualified revitalization expenditures (as defined in § 1400I(b)(2) and as limited by § 1400I(c)) chargeable to a capital account with respect to the qualified revitalization building for the taxable year

in which the building is placed in service by the taxpayer, the depreciation allowable for the qualified revitalization building's placed-in-service year is equal to one-half of the qualified revitalization expenditures for the building and the depreciation allowable for the remaining depreciable basis of the qualified revitalization building for its placed-in-service year and subsequent taxable years is determined using the general depreciation system of § 168(a) or the alternative depreciation system of § 168(g), as applicable; or

(ii) if the taxpayer elected to amortize all of the qualified revitalization expenditures chargeable to a capital account with respect to the qualified revitalization building ratably over the 120-month period beginning with the month in which the building is placed in service, the depreciation allowable for the qualified revitalization expenditures is determined in accordance with this election and the depreciation allowable for the remaining depreciable basis of the qualified revitalization building is determined using the general depreciation system of § 168(a) or the alternative depreciation system of § 168(g), as applicable.

(i) *Qualified New York Liberty Zone leasehold improvement property.* The depreciation allowable for any taxable year for qualified New York Liberty Zone leasehold improvement property (as defined in § 1400L(c)(2)) is determined by using the depreciation method and recovery period prescribed in § 1400L(c) unless the taxpayer made a timely valid election under § 1400L(c)(5) not to use that recovery period.

(7) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(8) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.01 of this APPENDIX is "7." See section 6.02(4) of this revenue procedure.

(9) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.02 *Permissible to permissible method of accounting for depreciation.*

(1) *Description of change.* This change applies to a taxpayer that wants to change from a permissible method of accounting for depreciation under § 56(g)(4)(A)(iv) or § 167 to another permissible method of accounting for depreciation under § 56(g)(4)(A)(iv) or § 167. Pursuant to § 1.167(a)-7(a) and (c), a taxpayer may account for depreciable property either by treating each individual asset as an account or by combining two or more assets in a single account and, for each account, depreciation allowances are computed separately.

(2) *Scope.*

(a) *Applicability.* This change applies to any taxpayer wanting to make a change in method of accounting for depreciation specified in section 6.02(4) of this APPENDIX for the property in an account:

(i) for which the present and proposed methods of accounting for depreciation specified in section 6.02(4) of this APPENDIX are permissible methods for the property under § 56(g)(4)(A)(iv) or § 167; and

(ii) that is owned by the taxpayer at the beginning of the year of change.

(b) *Inapplicability.* This change does not apply to:

(i) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 6.02 of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable);

(ii) any property to which § 1016(a)(3) (regarding property held by a tax-exempt organization) applies;

(iii) any property described in § 167(f) (regarding certain property excluded from § 197);

(iv) any property subject to § 167(g) (regarding property depreciated under the income forecast method);

(v) any property for which depreciation is determined under § 56(a)(1), § 56(g)(4)(A)(i), (ii), (iii), or (v), § 168, § 1400I, § 1400L(c), § 168 prior to its amendment in 1986 (former § 168), or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d));

(vi) any property that the taxpayer elected under § 168(f)(1) or former § 168(e)(2) to exclude from the application of, respectively, § 168 or former § 168;

(vii) any property for which depreciation is determined in accordance with § 1.167(a)-11 (ADR);

(viii) any depreciable property for which the taxpayer is changing the depreciation method pursuant to § 1.167(e)-1(b) (change from declining-balance method to straight-line method), § 1.167(e)-1(c) (certain changes for § 1245 property), or § 1.167(e)-1(d) (certain changes for § 1250 property). These changes must be made prospectively and are not permitted under the cited regulations for property for which the depreciation is determined under § 168, § 1400I, § 1400L(c), former § 168, or any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)); or

(ix) any distributor commissions (as defined by section 2 of Rev. Proc. 2000-38, 2000-2 C.B. 310, as modified by Rev. Proc. 2007-16, 2007-4 I.R.B. 358) for which the taxpayer is changing the useful life under the distribution fee period method or the useful life method (both described in Rev. Proc. 2000-38). A change in this useful life is corrected by adjustments in the applicable taxable year provided under § 1.446-1(e)(2)(ii)(d)(5)(iv).

(3) *Certain scope limitations inapplicable.* The scope limitations in sections 4.02(4) and 4.02(5) of this revenue procedure are not applicable to this change.

(4) *Changes covered.* Section 6.02 of this APPENDIX only applies to the following changes in methods of accounting for depreciation:

(a) a change from the straight-line method to the sum-of-the-year-digits method, the sinking fund method, the

unit-of-production method, or the declining-balance method using any proper percentage of the straight-line rate;

(b) a change from the declining-balance method using any percentage of the straight-line rate to the sum-of-the-years-digits method, the sinking fund method, or the declining-balance method using a different proper percentage of the straight-line rate;

(c) a change from the sum-of-the-years-digits method to the sinking fund method, the declining-balance method using any proper percentage of the straight-line rate, or the straight-line method;

(d) a change from the unit-of-production method to the straight-line method;

(e) a change from the sinking fund method to the straight-line method, the unit-of-production method, the sum-of-the-years-digits method, or the declining-balance method using any proper percentage of the straight-line rate;

(f) a change in the interest factor used in connection with a compound interest method or sinking fund method;

(g) a change in averaging convention as set forth in § 1.167(a)–10(b). However, as specifically provided in § 1.167(a)–10(b), in any taxable year in which an averaging convention substantially distorts the depreciation allowance for the taxable year, it may not be used (*see* Rev. Rul. 73–202, 1973–1 C.B. 81);

(h) a change from charging the depreciation reserve with costs of removal and crediting the depreciation reserve with salvage proceeds to deducting costs of removal as an expense and including salvage proceeds in taxable income as set forth in § 1.167(a)–8(e)(2). *See* Rev. Rul. 74–455, 1974–2 C.B. 63. This change, however, may be made under this revenue procedure only if:

(i) the change is applied to all items in the account for which the change is being made; and

(ii) the removal costs are not required to be capitalized under any provision of the Code (for example, § 263(a), 263A, or 280B);

(i) a change from crediting the depreciation reserve with the salvage proceeds realized on normal retirement sales to computing and recognizing gains and losses on the sales (*see* Rev. Rul. 70–165, 1970–1 C.B. 43);

(j) a change from crediting ordinary income (including the combination method of crediting the lesser of estimated salvage value or actual salvage proceeds to the depreciation reserve, with any excess of salvage proceeds over estimated salvage value credited to ordinary income) with the salvage proceeds realized on normal retirement sales, to computing and recognizing gains and losses on the sales (*see* Rev. Rul. 70–166, 1970–1 C.B. 44);

(k) a change from item accounting for specific assets to multiple asset accounting (pooling) for the same assets, or *vice versa*;

(l) a change from one type of multiple asset accounting (pooling) for specific assets to a different type of multiple asset accounting (pooling) for the same assets;

(m) a change from one method described in Rev. Proc. 2000–38 for amortizing distributor commissions (as defined by section 2 of Rev. Proc. 2000–38) to another method described in Rev. Proc. 2000–38 for amortizing distributor commissions; or

(n) a change from pooling to a single asset, or *vice versa*, for distributor commissions (as defined by section 2 of Rev. Proc. 2000–38) for which the taxpayer is using the distribution fee period method or the useful life method (both described in Rev. Proc. 2000–38).

(5) *Additional requirements.* A taxpayer also must comply with the following:

(a) *Basis for depreciation.* At the beginning of the year of change, the basis for depreciation of property to which this change applies is the adjusted basis of the property as provided in § 1011 at the end of the taxable year immediately preceding the year of change (determined under taxpayer's present method of accounting for depreciation). If applicable under the taxpayer's proposed method of accounting for depreciation, this adjusted basis is reduced by the estimated salvage value of the property (for example, a change to the straight-line method).

(b) *Rate of depreciation.* The rate of depreciation for property changed to:

(i) the straight-line or the sum-of-the-years-digits method of depreciation must be based on the remaining useful life of the property as of the beginning of the year of change; or

(ii) the declining-balance method of depreciation must be based on the useful life of the property measured from the placed-in-service date, and not the expected remaining life from the date the change becomes effective.

(c) *Regulatory requirements.* For changes in method of depreciation to the sum-of-the-year-digits or declining-balance method, the property must meet the requirements of § 1.167(b)–0 or 1.167(c)–1, as appropriate.

(d) *Public utility property.* If any item of property is public utility property within the meaning of former § 167(l)(3)(A), the taxpayer must attach to the application a statement providing that the taxpayer agrees to the following additional terms and conditions:

(i) a normalization method of accounting within the meaning of former § 167(l)(3)(G) will be used for the public utility property subject to the application; and

(ii) within 30 calendar days of filing the federal income tax return for the year of change, the taxpayer will provide a copy of the completed application to any regulatory body having jurisdiction over the public utility property subject to the application.

(6) *Section 481(a) adjustment.* Because the adjusted basis of the property is not changed as a result of a method change made under section 6.02 of this APPENDIX, no items are being duplicated or omitted. Accordingly, a § 481(a) adjustment is neither required nor necessary.

(7) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(8) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.02 of this APPENDIX is “8.” *See* section 6.02(4) of this revenue procedure.

(9) *Contact information.* For further information regarding a change under

this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.03 *Sale, lease, or financing transactions.*

(1) *Description of change and scope.*

(a) *Applicability.* This change applies to a taxpayer that wants to change its method of accounting from:

(i) improperly treating property as sold by the taxpayer to properly treating property as leased or financed by the taxpayer;

(ii) improperly treating property as leased by the taxpayer to properly treating property as sold or financed by the taxpayer;

(iii) improperly treating property as financed by the taxpayer to properly treating property as sold or leased by the taxpayer;

(iv) improperly treating property as purchased by the taxpayer to properly treating property as leased by the taxpayer; and

(v) improperly treating property as leased by the taxpayer to properly treating property as purchased by the taxpayer.

(b) *Inapplicability.* This change does not apply to:

(i) a rent-to-own dealer that wants to change its method of accounting for rent-to-own contracts described in section 3 of Rev. Proc. 95-38, 1995-2 C.B. 397; or

(ii) a taxpayer that holds assets for sale or lease, if any asset so held is not the subject of a sale or lease transaction as of the beginning of the year of change.

(2) *Manner of making change.*

(a) The change in method of accounting under section 6.03 of this APPENDIX is made using a cut-off method and applies to transactions entered into on or after the beginning of the year of change. See section 2.06 of this revenue procedure.

(b) If a taxpayer wants to change its method of accounting for existing sale, lease or financing transactions, the taxpayer must file an application with the Commissioner in accordance with the requirements of § 1.446-1(e)(3)(i) and Rev. Proc. 97-27. A change involving existing sale, lease, or financing transactions will require a § 481(a) adjustment. Consent to change a method of accounting for an existing sale, lease, or financing transaction is granted only in unusual and compelling circumstances.

(3) *No audit protection.* A taxpayer does not receive audit protection under

section 7 of this revenue procedure in connection with this change.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.03 of this APPENDIX is "10." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Edward Schwartz at 202-622-4960 (not a toll-free call).

.04 *Modern golf course greens.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for the cost of modern golf course greens owned by the taxpayer at the beginning of the year of change to conform with the holding in Rev. Rul. 2001-60, 2001-2 C.B. 587. Rev. Rul. 2001-60 holds that the costs of land preparation undertaken by a taxpayer in the original construction or reconstruction of modern greens (as described in Rev. Rul. 2001-60) that is so closely associated with depreciable assets, such as a network of underground drainage tiles or pipes, that the land preparation will be retired, abandoned, or replaced contemporaneously with those depreciable assets are to be capitalized and depreciated over the recovery period of the depreciable assets with which the land preparation is associated. However, the general earthmoving, grading, and initial shaping of the area surrounding and underneath the modern green that occur before the construction are inextricably associated with the land and, therefore, the costs attributable to this land preparation are added to the taxpayer's cost basis in the land and are not depreciable.

(2) *Additional requirements.* A taxpayer that changes its method of accounting for the cost of modern golf course greens under section 6.04 of this APPENDIX must change to a permissible method of accounting for depreciation of modern greens. For purposes of § 168, the modern green is includible in asset class 00.3, Land Improvements, of Rev. Proc. 87-56, 1987-2 C.B. 674, as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change

number for a change under section 6.04 of this APPENDIX is "11." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.05 *Original and replacement tire costs.*

(1) *Description of change.* This change applies to a taxpayer that wants to change the method of accounting for the cost of original and replacement tires for all of the taxpayer's qualifying vehicles in which the taxpayer has a depreciable interest at the beginning of the year of change to the original tire capitalization method provided by section 5 of Rev. Proc. 2002-27, 2002-1 C.B. 802. The terms "qualifying vehicle," "original tires," and "replacement tires" are defined in section 3 of Rev. Proc. 2002-27. For further details, see Rev. Proc. 2002-27.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.05 of this APPENDIX is "12." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.06 *Depreciation of gas pump canopies.*

(1) *Description of change.* This change applies to a taxpayer that wants to change the method of accounting for the cost of stand-alone gasoline pump canopies or their supporting concrete footings owned by the taxpayer at the beginning of the year of change to conform with the holding in Rev. Rul. 2003-54, 2003-1 C.B. 982. Rev. Rul. 2003-54 holds that the stand-alone gasoline pump canopies (as described in Rev. Rul. 2003-54) are not inherently permanent structures and are classified as tangible personal property for depreciation purposes, while the supporting concrete footings (as described in Rev. Rul. 2003-54) are inherently permanent structures classified as land improvements for depreciation purposes.

(2) *Additional requirements.* A taxpayer that changes its method of accounting for the cost of stand-alone gasoline pump canopies or their supporting concrete footings under section 6.06 of this

APPENDIX must change to a permissible method of accounting for depreciation of the cost of the gasoline pump canopies or the supporting concrete footings. For purposes of § 168, the stand-alone gasoline pump canopies are includible in asset class 57.0, Distributive Trades and Services, of Rev. Proc. 87-56, 1987-2 C.B. 674, as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785, and their supporting concrete footings are includible in asset class 57.1, Distributive Trades and Services-Billboard, Service Station Buildings and Petroleum Marketing Land Improvements, of Rev. Proc. 87-56.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.06 of this APPENDIX is "13." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.07 Depreciation of utility assets.

(1) *Description of change.* This change applies to a taxpayer that wants to change the method of accounting for depreciable assets that are owned by a utility at the beginning of the year of change and used in the general business operations of the utility to conform with Rev. Rul. 2003-81, 2003-2 C.B. 126.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.07 of this APPENDIX is "14." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.08 Depreciation of cable TV fiber optics.

(1) *Description of change.* This change applies to a taxpayer that wants to change the method of accounting for depreciation of fiber optic node and trunk line consisting of fiber optic cable used in a cable television distribution system owned by the taxpayer at the beginning of the year of change to the safe harbor method of accounting provided by section 4 of Rev. Proc. 2003-63, 2003-2 C.B. 304.

The taxpayer must operate a cable television distribution system designed to provide one-way and two-way communication services to subscribers (as described in section 3.02 of Rev. Proc. 2003-63). The safe harbor method of accounting provided by section 4 of Rev. Proc. 2003-63 determines the unit of property for calculating depreciation under §§ 167 and 168, and the primary use and placed-in-service date of that unit of property.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.08 of this APPENDIX is "15." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.09 Change in general asset account treatment due to a change in the use of MACRS property.

(1) *Description of change.* This change applies to a taxpayer that wants to change the method of accounting for general asset account treatment of MACRS property (as defined in § 1.168(b)-1(a)(2)) to the method of accounting provided in §§ 1.168(i)-1(c)(2)(ii)(E) and 1.168(i)-1(h)(2), which applies when there is a change in the use of MACRS property pursuant to § 1.168(i)-4(d). See § 1.168(i)-1(l)(2)(ii).

(2) *Manner of making change.* The change is made on a modified cut-off basis (as defined in § 1.446-1(e)(2)(ii)(d)(5)(iii)) and, thus, the adjusted depreciable basis of the MACRS property as of the beginning of the year of change is recovered using the new method of accounting for general asset account treatment. Accordingly, a § 481(a) adjustment is neither permitted nor required. See § 1.168(i)-1(h)(2)(ii) and (iii) for more information regarding how to establish the general asset account when a change in the use of MACRS property occurs pursuant to § 1.168(i)-4(d).

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.09 of this APPENDIX is "87." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.10 Change in method of accounting for depreciation due to a change in the use of MACRS property.

(1) *Description of change.* This change applies to a taxpayer that wants to (a) change the method of accounting for depreciation of MACRS property (as defined in § 1.168(b)-1(a)(2)) to the method of accounting for depreciation provided in § 1.168(i)-4, which applies when there is a change in the use of MACRS property, or (b) revoke the election provided in § 1.168(i)-4(d)(3)(ii) to disregard a change in the use of MACRS property. See § 1.168(i)-4(g)(2).

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.10 of this APPENDIX is "88." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.11 Depreciation of qualified non-personal use vans and light trucks.

(1) *Description of change.* This change applies to a taxpayer that wants to change the method of accounting for depreciation for certain vehicles in accordance with § 1.280F-6(f)(2)(iv). Section 1.280F-6(f)(2)(iv) applies to a truck or van that is a qualified nonpersonal use vehicle as defined under § 1.274-5T(k), was placed in service by the taxpayer before July 7, 2003, and was treated by the taxpayer as a passenger automobile under § 1.280F-6T as in effect prior to July 7, 2003. If the taxpayer files Form 3115, in accordance with § 1.280F-6(f)(2)(iv), the treatment of the truck or van will be changed from property to which § 280F(a) applies to property to which § 280F(a) does not apply.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.11 of this APPENDIX is "89." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Bernard Harvey at 202-622-4930 (not a toll-free call).

.12 *Depreciation of qualified revitalization building in the expanded area of a renewal community.*

(1) *Description of change.* This change applies to a taxpayer that wants to elect the commercial revitalization deduction under § 1400I(a) for a qualified revitalization building (as defined in § 1400I(b)(1)) that is placed in service by the taxpayer after December 31, 2001, in the area of a renewal community that was expanded by the U.S. Department of Housing and Urban Development and for which the taxpayer receives a retroactive commercial revitalization expenditure allocation made in accordance with section 3 of Rev. Proc. 2006-16, 2006-1 C.B. 539. This change applies only if the taxpayer filed the federal tax return for the placed-in-service year of that building on or before the date the taxpayer received the retroactive commercial revitalization expenditure allocation. For further details, see Rev. Proc. 2006-16.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Time for making change.* The change in method of accounting under section 6.12 of this APPENDIX must be timely filed with the taxpayer's federal tax return for the taxable year that includes the date on which the commercial revitalization agency makes the retroactive commercial revitalization expenditure allocation, or with the taxpayer's federal tax return for the first taxable year succeeding the taxable year that included the date on which the commercial revitalization agency made the retroactive commercial revitalization expenditure allocation.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.12 of this APPENDIX is "97." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.13 *Loss disallowance rule upon a disposition of an insurance contract acquired in an assumption re-insurance transaction.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that chooses, on a transaction-by-transaction basis, to change their treatment of certain insurance contracts acquired in an assumption reinsurance transaction under § 1.197-2(g)(5) for the first taxable year ending after April 10, 2006.

(b) *Inapplicability.* This change does not apply when the taxpayer's treatment of its property is an issue under consideration for a taxable year under examination, before an Appeals office, or before a federal court. See section 3.09 of this revenue procedure for the definition of these terms.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Additional requirements.* The change in accounting method results in items being omitted or duplicated and thus, an adjustment under § 481(a) must be computed.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.13 of this APPENDIX is "98." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Mark Weiss at 202-622-7750 (not a toll-free call).

.14 *Income forecast method of depreciation.*

(1) *Description of change.* This change applies to a taxpayer that under § 167(g)(7) wants to either:

(a) include participations and residuals expected to be paid before the end of the tenth taxable year following the taxable year in which the property is placed in service in the adjusted basis of property for which the income forecast method of depreciation is used; or

(b) exclude participations and residuals from the adjusted basis of property for which the income forecast method of depreciation is used and deduct the participations and residuals in the taxable year that the participations and residuals are paid.

(2) *Scope.*

(a) *Applicability.* This change in accounting method applies to a taxpayer that, before June 15, 2006, filed its federal tax return for a taxable year ending after October 22, 2004, and that wants to make a § 167(g)(7) election for income forecast property placed in service during that taxable year.

(b) *Inapplicability.* This change does not apply to:

(i) Property placed in service on or before October 22, 2004; or

(ii) A taxpayer that made the § 167(g)(7) election for income forecast property placed in service during a taxable year ending after October 22, 2004, by filing an amended federal tax return for the taxable year in which the income forecast property was placed in service, and all subsequent affected taxable year(s), on or before November 15, 2006.

(3) *Time for making the change.* The change in method of accounting under section 6.14 of this APPENDIX must be made for the taxpayer's first or second taxable year ending on or after December 31, 2005.

(4) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(5) *Additional requirements.*

(a) This change in accounting method results in items being omitted or duplicated and, thus, an adjustment under § 481(a) must be computed.

(b) The statement required under *Interim Rules* in section B.1. of Notice 2006-47, 2006-1 C.B. 892, 894, must be attached to the Form 3115.

(c) The method elected under section 6.14(1) of this APPENDIX for a given property must be applied consistently.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.14 of this APPENDIX is "99." See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Bernard Harvey at 202-622-4930 (not a toll-free call).

.15 *GO Zone additional first year depreciation deduction.*

(1) *Description of change.* This change applies to a taxpayer that wants to make the change in method of accounting for depreciation for qualified GO Zone property placed in service by the taxpayer on or after August 28, 2005, during the taxable year beginning in 2004 or 2005 (2004 or 2005 taxable year), to claim the GO Zone additional first year depreciation deduction for a class of property for which the taxpayer did not claim the GO Zone additional first year depreciation deduction on the taxpayer's 2004 or 2005 federal tax return. This change applies only if the taxpayer filed its 2004 or 2005 federal tax return before September 13, 2006, and if the taxpayer did not make the election not to deduct the GO Zone additional first year depreciation for the class of property within the time prescribed in section 4.03(1) of Notice 2006-77, 2006-2 C.B. 590, and in the manner prescribed in instructions for Form 4562, *Depreciation and Amortization*. For further details, see section 4.03(2) of Notice 2006-77.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Time for making the change.* The change in method of accounting under section 6.15 of this APPENDIX must be timely filed with the taxpayer's federal tax return for the first taxable year succeeding the 2004 or 2005 taxable year, as applicable.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.15 of this APPENDIX is "104." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.16 *Additional first year depreciation deduction.*

(1) *Description of change.* This change applies to a taxpayer that wants to make a change in method of accounting for depreciation under § 168(k) or § 1400L(b) to comply with § 1.168(k)-1 or § 1.1400L(b)-1 (the "final regulations") because of revisions made to § 1.168(k)-1T or § 1.1400L(b)-1T by the

final regulations. See section 3 of Rev. Proc. 2006-43, 2006-2 C.B. 849, 850, for the applicability and inapplicability of this change.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change for the taxpayer's first taxable year ending on or after October 18, 2006, or, if applicable, for the taxpayer's last taxable year ending before October 1, 2006, if the taxpayer timely files (including extensions) its federal income tax return after October 18, 2006, for that last taxable year.

(3) *Time for making the change.* The change in method of accounting under section 6.16 of this APPENDIX must be made for either: (i) the taxpayer's last taxable year ending before October 1, 2006, if the taxpayer timely files (including extensions) its federal income tax return after October 18, 2006, for that last taxable year; or (ii) the taxpayer's first taxable year ending on or after October 18, 2006.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.16 of this APPENDIX is "105." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.17 *Impermissible to permissible method of accounting for depreciation or amortization for disposed depreciable or amortizable property.*

(1) *Description of change.* This change applies to a taxpayer that wants to make the change in method of accounting for depreciation or amortization (depreciation) provided under section 3 of Rev. Proc. 2007-16, 2007-4 I.R.B. 358, for an item of depreciable or amortizable property that has been disposed of by the taxpayer. Section 3 of Rev. Proc. 2007-16 allows a taxpayer to make a change in method of accounting for depreciation for the disposed property if the taxpayer used an impermissible method of accounting for depreciation for the property under which the taxpayer did not take into account any depreciation allowance, or did take into account some depreciation but less than the depre-

ciation allowable, in the year of change (as defined in section 6.17(4) of this APPENDIX) or any prior taxable year.

(2) *Scope.*

(a) *Applicability.* Except as provided in section 6.17(2)(b) of this APPENDIX, section 6.17 of this APPENDIX applies to a taxpayer that is changing from an impermissible method of accounting for depreciation to a permissible method of accounting for depreciation for any item of depreciable or amortizable property subject to §§ 167, 168, 197, 1400I, or 1400L(c), to former § 168, or to any additional first year depreciation deduction provision of the Code (for example, § 168(k), § 168(l), § 1400L(b), or § 1400N(d)):

(i) that has been disposed of by the taxpayer during the year of change (as defined in section 6.17(4) of this APPENDIX); and

(ii) for which the taxpayer did not take into account any depreciation allowance, or did take into account some depreciation but less than the depreciation allowable (hereinafter, both are referred to as "claimed less than the depreciation allowable"), in the year of change (as defined in section 6.17(4) of this APPENDIX) or any prior taxable year.

(b) *Inapplicability.* Section 6.17 of this APPENDIX does not apply to:

(i) any property to which § 1016(a)(3) (regarding property held by a tax-exempt organization) applies;

(ii) any property for which a taxpayer is revoking a timely valid depreciation election, or making a late depreciation election, under the Code or regulations thereunder, or under other guidance published in the IRB (including under § 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993 (1993 Act), 1993-3 C.B. 1, 128 (relating to amortizable § 197 intangibles));

(iii) any property for which the taxpayer deducted the cost or other basis of the property as an expense; or

(iv) any property disposed of by the taxpayer in a transaction to which a non-recognition section of the Code applies (for example, § 1031, transactions subject to § 168(i)(7)(B)). However, this section 6.17(2)(b)(iv) of the APPENDIX does not apply to property disposed of by the taxpayer in a § 1031 or § 1033 transaction if the taxpayer elects under § 1.168(i)-6(i) and (j) to treat the entire basis (that is, both the exchanged and excess basis (as

defined in § 1.168(i)–6(b)(7) and (8), respectively) of the replacement MACRS property (as defined in § 1.168(i)–6(b)(1)) as property placed in service by the taxpayer at the time of replacement and treat the adjusted depreciable basis of the relinquished MACRS property (as defined in § 1.168(i)–6(b)(2)) as being disposed of by the taxpayer at the time of disposition.

(3) *Manner of making the change.*

(a) *Change made on an original return for the year of change.* This change may be made on a taxpayer's timely filed (including extensions) original federal tax return for the year of change (as defined in section 6.17(4) of this APPENDIX), provided the taxpayer files the original Form 3115 in accordance with section 6.02(3) of this revenue procedure.

(b) *Change made on an amended return for the year of change.* This change may also be made on an amended federal tax return for the year of change (as defined in section 6.17(4) of this APPENDIX), provided:

(i) the taxpayer files the original Form 3115 with the taxpayer's amended federal tax return for the year of change (as defined in section 6.17(4) of this APPENDIX) prior to the expiration of the period of limitation for assessment under § 6501(a) for the taxable year in which the item of depreciable or amortizable property was disposed of by the taxpayer; and

(ii) the taxpayer's amended federal tax return for the year of change (as defined in section 6.17(4) of this APPENDIX) includes the adjustments to taxable income and any collateral adjustments to taxable income or tax liability (for example, adjustments to the amount or character of the gain or loss of the disposed depreciable or amortizable property) resulting from the change in method of accounting for depreciation made by the taxpayer under section 6.17 of this APPENDIX.

(4) *Year of change.* The year of change for this change is the taxable year in which the item of depreciable or amortizable property was disposed of by the taxpayer.

(5) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(6) *Filing requirements.* Notwithstanding section 6.02(3)(a) of this revenue

procedure, a taxpayer making this change in accordance with section 6.17(3)(b) of this APPENDIX must attach the original Form 3115 to the taxpayer's timely filed amended federal tax return for the year of change and must file the required copy (with signature) of the Form 3115 with the national office no later than when the original Form 3115 is filed with the amended federal tax return for the year of change. If a taxpayer is making this change in accordance with section 6.17(3)(a) of this APPENDIX, the filing requirements in section 6.02(3)(a) of this revenue procedure apply.

(7) *Section 481(a) adjustment period.* A taxpayer must take the § 481(a) adjustment into account in the year of change.

(8) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.17 of this APPENDIX is "107." See section 6.02(4) of this revenue procedure.

(9) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202–622–4930 (not a toll-free call).

.18 *Depreciation of MACRS property acquired in a like-kind exchange or as a result of an involuntary conversion.*

(1) *Description of change.* This change applies to a taxpayer that wants to make a change in method of accounting for depreciation under § 168 to either:

(a) Apply the provisions of § 1.168(i)–6, or rely on prior guidance by the Service for determining the depreciation deductions of replacement MACRS property and relinquished MACRS property, for a like-kind exchange or an involuntary conversion of MACRS property for which the time of disposition, the time of replacement, or both occur on or before February 27, 2004; or

(b) Apply § 1.168(i)–6(i)(2) to the relinquished property and the replacement property for which the time of disposition, the time of replacement, or both occur on or before February 26, 2007, if the replacement property replaces relinquished property for which the taxpayer made a valid election under § 168(f)(1) to exclude it from the application of § 168.

(2) *Applicability.* The change in section 6.18(1)(a) of this APPENDIX applies only

if the taxpayer's applicable federal tax return has been filed on or before February 27, 2004. The change in section 6.18(1)(b) of this APPENDIX applies only if the taxpayer wants to apply § 1.168(i)–6(i)(2) and the taxpayer's applicable federal tax return has been filed on or before February 26, 2007. For further details, see § 1.168(i)–6(k)(2) and (3).

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.18 of this APPENDIX is "116." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202–622–4930 (not a toll-free call).

.19 *Lessor improvements abandoned at termination of lease.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a lessor that continued to depreciate under § 168 an improvement described in § 168(i)(8)(B)(i) and (ii) after the improvement was irrevocably disposed of or abandoned by the lessor at the termination of the applicable lease by the lessee and now wants to comply with § 168(i)(8)(B) by recognizing gain or loss upon the disposition or abandonment of the improvement. To qualify for recognizing gain or loss under § 168(i)(8)(B), the intent of the lessor must be irrevocably to discard the improvement so that it will neither be used again by the lessor nor retrieved by the lessor for resale, exchange, or other disposition. See § 1.167(a)–8(a)(4).

(b) *Inapplicability.* This change does not apply to:

(i) improvements disposed of or abandoned before June 13, 1996;

(ii) the extent § 280B applies to the demolition of a structure, a portion of which may include leasehold improvements; or

(iii) improvements disposed of or abandoned before the termination of the applicable lease.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.19 of this APPENDIX is "117." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.20 *Repairable and reusable spare parts.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change from item accounting to multiple asset accounting (pooling) for its repairable and reusable spare parts in accordance with section 6.20(2) of this APPENDIX or that wants to change its method of identifying disposed repairable and reusable spare parts to a method described in section 6.20(3) of this APPENDIX. These changes apply to repairable and reusable spare parts that: are owned by the taxpayer at the beginning of the year of change; are used to repair equipment owned by the taxpayer; are acquired by the taxpayer for a specific type of equipment at the time that the related equipment is acquired; usually have the same useful life as the related equipment; and have been placed in service by the taxpayer after 1986.

(b) *Inapplicability.* This change does not apply to:

(i) a taxpayer that is currently capitalizing and depreciating the cost of its repairable and reusable spare parts and that elected to establish general asset accounts for the repairable and reusable spare parts;

(ii) a taxpayer that is not currently capitalizing and depreciating the cost of its repairable and reusable spare parts under § 168 in accordance with the holdings in Rev. Rul. 69-200, 1969-1 C.B. 60, and Rev. Rul. 69-201, 1969-1 C.B. 60, unless the taxpayer concurrently changes its method to properly capitalize and depreciate these costs in conjunction with a change under section 10.07 of this APPENDIX. Rev. Rul. 69-200 and Rev. Rul. 69-201 hold that repairable and reusable spare parts are tangible property for which depreciation is allowable at the time that the related equipment is placed in service by the taxpayer and the method of computing depreciation for the repairable and reusable spare parts is the same method of computing depreciation for the related equipment;

(iii) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which

the taxpayer wants to change its method of accounting under this section 6.20 of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable);

or

(iv) a taxpayer that is using an impermissible method of accounting for depreciation for repairable and reusable spare parts or for the related equipment for which the repairable and reusable spare parts are acquired, unless the taxpayer concurrently changes its method to use a permissible method of accounting for depreciation under section 6.01 of this APPENDIX.

(2) *Establishment of pools.* A taxpayer may change from item accounting to pooling for repairable and reusable spare parts by establishing one or more pools for repairable and reusable spare parts beginning in the year of change. Each pool must include only the repairable and reusable spare parts that are placed in service by the taxpayer in the same taxable year and have the same: (a) asset class under Rev. Proc. 87-56, 1987-2 C.B. 674, as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785, (b) applicable depreciation method, (c) applicable recovery period, and (d) applicable convention. Additionally, repairable and reusable spare parts subject to the mid-quarter convention may only be grouped into a pool with repairable and reusable spare parts that are placed in service in the same quarter of the taxable year.

Further, each pool for repairable and reusable spare parts placed in service by the taxpayer after 1986 and before the year of change must include a beginning balance for both the unadjusted depreciable basis and the depreciation reserve. The beginning balance for the unadjusted depreciable basis of each pool is equal to the sum of the unadjusted depreciable bases as of the beginning of the year of change for all repairable and reusable spare parts included in that pool. The beginning balance of the depreciation reserve of each pool is equal to the sum of the greater of the depreciation allowed or allowable as of the beginning of the year of change for all re-

pairable and reusable spare parts included in that pool.

(3) *Permissible methods of identifying disposed repairable and reusable spare parts.* Beginning in the year of change, a taxpayer may change to one of the following methods of accounting to identify its disposed repairable and reusable spare parts:

(a) Specific identification of each disposed repairable and reusable spare part; or

(b) A first-in, first-out method of accounting if: (i) the taxpayer establishes pools for repairable and reusable spare parts in accordance with section 6.20(2) of this APPENDIX, (ii) the repairable and reusable spare parts are mass assets, and (iii) the total repairable and reusable spare parts dispositions during a particular taxable year are readily determined from the taxpayer's records but it is impracticable for the taxpayer to maintain records from which the taxpayer can determine the particular taxable year in which the disposed repairable and reusable spare parts were placed in service by the taxpayer. A taxpayer using the first-in, first-out method of accounting under this section 6.20(3) must identify the repairable and reusable spare parts disposed of in a taxable year from the pool with the earliest placed in-service year existing at the beginning of the taxable year of the disposition. For purposes of this section 6.20(3), mass assets are a mass or group of individual items of depreciable property:

(i) that are not necessarily homogeneous;

(ii) each of which is minor in value relative to the total value of the mass or group;

(iii) numerous in quantity;

(iv) usually accounted for only on a total dollar or quantity basis;

(v) with respect to which separate identification is impracticable; and

(vi) are placed in service by the taxpayer in the same taxable year.

(4) *Manner of making change.*

(a) *Establishment of pools.* Because the adjusted basis of the property is not changed as a result of changing from item accounting to pooling under section 6.20(2) of this APPENDIX, no items are being duplicated or omitted. Accordingly, a § 481(a) adjustment is neither required nor necessary.

(b) *Identifying disposed repairable and reusable spare parts.* The change to a method described in section 6.20(3) of this APPENDIX for identifying disposed repairable and reusable spare parts is made on a cut-off basis and applies only to repairable and reusable spare parts disposed of by the taxpayer beginning in the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(5) *Concurrent automatic change.*

(a) A taxpayer that wants to make both this change and a change to a capitalization and depreciation method under section 10.07 of this APPENDIX for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(b) A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(c) A taxpayer that wants to make both this change and a change to a permissible method of accounting for depreciation for repairable and reusable spare parts, or for the related equipment for which the repairable and reusable spare parts are acquired, under section 6.01 of this APPENDIX for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.20 of this APPENDIX is "118." See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.21 *Land.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change from depreciating land to not depreciating land or wants to change from depreciating a nondepreciable land improvement to not depreciating a nondepreciable land improvement. This change applies to any land or nondepreciable land improvement that is owned by the taxpayer at the beginning of the year of change.

(b) *Inapplicability.* This change does not apply to:

(i) any depreciable land improvement; or

(ii) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 6.21 of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

(2) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change in method of accounting under section 6.21 of this APPENDIX is "119." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.22 *Kansas additional first year depreciation.*

(1) *Description of change.*

(a) *In general.* This change applies to a taxpayer that wants to make a change in method of accounting for depreciation for qualified Recovery Assistance (RA) property placed in service by the taxpayer on or after May 5, 2007, during the taxable year that includes May 5, 2007, to claim the

Kansas additional first year depreciation deduction for a class of property for which the taxpayer did not claim the Kansas additional first year depreciation deduction on the taxpayer's timely filed federal tax return for the taxable year that includes May 5, 2007, provided the taxpayer did not make an election not to deduct the Kansas additional first year depreciation for the class of property pursuant to section 4.03 of Notice 2008-67, 2008-32 I.R.B. 307. For further details, see section 3.03 of Notice 2008-67

(b) *Return for the first taxable year succeeding the taxable year that includes May 5, 2007, not filed on or before August 11, 2008.* If, on or before August 11, 2008, the taxpayer did not file its federal tax return for the first taxable year succeeding the taxable year that includes May 5, 2007, and the taxpayer owns the property as of the first day of this taxable year, the taxpayer may file Form 3115 to make the change in method of accounting under section 6.22 of this APPENDIX with the taxpayer's timely filed federal tax return for the first taxable year succeeding the taxable year that includes May 5, 2007.

(c) *Return for the first taxable year succeeding the taxable year that includes May 5, 2007, filed on or before August 11, 2008.* If on or before August 11, 2008, the taxpayer filed its federal tax return for the first taxable year succeeding the taxable year that includes May 5, 2007, the taxpayer may make the change in method of accounting under section 6.22 of this APPENDIX either by:

(i) Filing an amended federal tax return (or a qualified amended return) on or before December 31, 2009, for the first taxable year succeeding the taxable year that includes May 5, 2007, attaching a Form 3115 to the amended federal tax return, and including the statement "Filed Pursuant to Notice 2008-67" at the top of any amended return (or qualified amended return); or

(ii) Filing a Form 3115 with the taxpayer's timely filed federal tax return for the second taxable year succeeding the taxable year that includes May 5, 2007, if the taxpayer owns the property as of the first day of this taxable year.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this

revenue procedure do not apply to this change.

(3) *Designated automatic accounting method change.* The designated automatic accounting method change number for a change under section 6.22 of this APPENDIX is "115." See section 6.02(4) of this revenue procedure.

(4) *Contact Information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

SECTION 7. RESEARCH AND EXPERIMENTAL EXPENDITURES (§ 174)

.01 *Changes to a different method or different amortization period.*

(1) *Description of change.*

(a) This change applies to a taxpayer that wants to change the treatment of expenditures that qualify as research and experimental expenditures under § 174.

(b) Section 174 and the regulations thereunder provide the specific rules for changing a method of accounting under § 174 for research and experimental expenditures. Under § 174, a taxpayer may treat research and experimental expenditures that are paid or incurred by the taxpayer during the taxable year in connection with the taxpayer's trade or business as expenses under § 174(a) or as deferred expenses amortizable ratably over a period of not less than 60 months under § 174(b). Pursuant to § 1.174-1, research and experimental expenditures that are not treated as expenses or deferred expenses under § 174 must be treated as capital expenditures. Further, § 1.174-1 provides that the expenditures to which § 174 applies may relate either to a general research program or to a particular project.

(c) If a taxpayer has not treated research and experimental expenditures as expenses under § 174(a), § 174(a)(2)(B) and § 1.174-3(b)(2) provide that the taxpayer may, with consent, adopt the expense method at any time.

(d) If a taxpayer has treated research and experimental expenditures as expenses under § 174(a), § 174(a)(3) and § 1.174-3(b)(3) provide that the taxpayer may, with consent, change to a different method of treating research and experimental expenditures.

(e) If a taxpayer has treated research and experimental expenditures as deferred expenses under § 174(b), § 174(b)(2) and § 1.174-4(b)(2) provide that the taxpayer may, with consent, change to a different method of treating research or experimental expenditures or to a different period of amortization for deferred expenses.

(2) *Scope.*

(a) *Applicability.* This change applies to any taxpayer that is changing:

(i) from treating research and experimental expenditures for a particular project or projects as expenses under § 174(a) to treating such expenditures as deferred expenses under § 174(b), or *vice versa*;

(ii) to a different period of amortization for research and experimental expenditures for a particular project or projects that are being treated as deferred expenses under § 174(b); or

(iii) from treating research and experimental expenditures for a particular project or projects as expenses under § 174(a) or deferred expenses under § 174(b) to treating such expenditures as a capital expenditure under § 263(a), or *vice versa*.

(b) *Inapplicability.* This change does not apply to:

(i) a portion of the research and experimental expenditures paid or incurred for a particular project during the year of change or in subsequent taxable years (that is, the change must apply to all of such expenditures; see §§1.174-3(a) and 1.174-4(a)(5));

(ii) a change in the treatment of computer software costs under Rev. Proc. 2000-50, 2000-2 C.B. 601, as modified by Rev. Proc. 2007-16, 2007-4 I.R.B. 358 (but see section 9 of this APPENDIX for making that change); or

(iii) a change in the treatment of Year 2000 costs under Rev. Proc. 97-50, 1997-2 C.B. 525 (but see section 9.02 of this APPENDIX for making that change).

(3) *Scope limitations clarified.* The scope limitation under section 4.02(7) of this revenue procedure is applied on a project by project basis.

(4) *Manner of making change.*

(a) This change is made on a cut-off basis and applies to all research and experimental expenditures paid or incurred for a particular project or projects on or af-

ter the beginning of the year of change. See section 2.06 of this revenue procedure and § 174(b)(2), and §§ 1.174-3(a), 1.174-3(b)(2), and 1.174-4(a)(5) for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) The requirement under §§ 1.174-3(b)(2), 1.174-3(b)(3), and 1.174-4(b)(2) to file an application no later than the end of the first taxable year in which the different method or different amortization period is to be used is waived for this change. However, see section 6 of this revenue procedure for filing requirements applicable under this revenue procedure.

(c) The consent granted under this revenue procedure satisfies the consent required under §§ 174(a)(2)(B), 174(a)(3), and 174(b)(2), and §§ 1.174-3(b)(2), 1.174-3(b)(3), and 1.174-4(b)(2).

(5) *Additional requirement.* A taxpayer must attach to its Form 3115 a written statement providing:

(a) the information required in § 1.174-3(b)(2) if the taxpayer is changing to treating research and experimental expenditures as expenses under § 174(a);

(b) the information required in § 1.174-3(b)(3) if the taxpayer is changing from treating research and experimental expenditures as expenses under § 174(a); or

(c) the information required in § 1.174-4(b)(2) if the taxpayer is changing from treating research and experimental expenditures as deferred expenses under § 174(b) or is changing to a different period of amortization for research and experimental expenditures being treated as deferred expenses under § 174(b).

(6) *No audit protection.* A taxpayer does not receive audit protection under section 7 of this revenue procedure in connection with this change.

(7) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 7.01 of this APPENDIX is "17." See section 6.02(4) of this revenue procedure.

(8) *Contact information.* For further information regarding a change under this section, contact Grant Anderson at 202-622-4930 (not a toll-free call).

.02 *Reserved.*

SECTION 8. ELECTIVE EXPENSING PROVISIONS (§§ 179B(a), 181, and 194(b))

.01 *Treatment of qualified film and television productions.*

(1) *Description of change.* This change applies to a taxpayer that wants to elect under § 181 to treat the production costs (as defined in § 1.181-1T(a)(3)) of any qualified film or television production (as defined in § 181(d) and § 1.181-3T) as an expense that is not chargeable to a capital account and to deduct the cost.

(2) *Scope.*

(a) *Applicability.* This change in method of accounting applies to:

(i) A qualified film or television production commencing after October 22, 2004, and before January 1, 2009. A production commences when principal photography begins with respect to the production; and

(ii) A taxpayer that, before June 15, 2006, filed its federal tax return for the taxable year in which production costs were first paid or incurred, and that wants to make a § 181 election for that taxable year.

(b) *Inapplicability.* This change does not apply to:

(i) Any qualified film or television production, the production cost of which exceeds \$15,000,000 (or \$20,000,000 for the areas specified in § 181(a)(2)(B)). See § 1.181-1T(b) for further guidance; or

(ii) A taxpayer that made the § 181 election for the taxable year in which the production costs were first paid or incurred by filing an amended federal tax return for that taxable year, and all subsequent affected taxable year(s), on or before November 15, 2006.

(3) *Time for making the change.* The change in method of accounting under section 8.01 of this APPENDIX must be made for the taxpayer's first or second taxable year ending on or after December 31, 2005.

(4) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure are not applicable to this change.

(5) *Additional requirements.*

(a) The change in accounting method results in items being omitted or duplicated and thus, an adjustment under § 481(a) must be computed; and

(b) The statement and information referenced in § 1.181-2T(e)(3) must be attached to the Form 3115.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 8.01 of this APPENDIX is "100." See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Bernard Harvey at 202-622-4930 (not a toll-free call).

.02 *Expensing of certain reforestation expenditures.*

(1) *Description of change.* This change applies to a taxpayer that wants to elect, under § 194(b), to treat up to \$10,000 of reforestation expenditures with respect to any qualified timber property as an expense that is not chargeable to a capital account and to deduct those expenditures in the year paid or incurred under § 194(b). The remainder of the reforestation expenditures for the year may be amortized over 84 months under § 194(a).

(2) *Scope.*

(a) *Applicability.* This change in accounting method applies to:

(i) Reforestation expenditures paid or incurred after October 22, 2004, with respect to qualified timber property; and

(ii) A taxpayer that, before June 15, 2006, filed its federal tax return for a taxable year ending after October 22, 2004, in which reforestation expenditures were paid or incurred after October 22, 2004, with respect to qualified timber property, and that wants to make a § 194(b) election for the reforestation expenditures paid or incurred during that taxable year.

(b) *Inapplicability.* This change does not apply to:

(i) Reforestation expenditures paid or incurred on or before October 22, 2004; or

(ii) A taxpayer that made the § 194(b) election for the taxable year in which reforestation expenditures were paid or incurred after October 22, 2004, with respect to qualified timber property, by filing an amended federal tax return for that taxable

year, and all subsequent affected taxable year(s), on or before November 15, 2006.

(3) *Time for making the change.* The change in method of accounting under section 8.02 of this APPENDIX must be made for the taxpayer's first or second taxable year ending on or after December 31, 2005.

(4) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(5) *Additional requirements.*

(a) The guidance about creating and maintaining separate timber accounts for each qualified timber property referenced in section C.2. of Notice 2006-47, 2006-1 C.B. 892, 895, must be followed.

(b) The statement required under *Interim Rules* in section C.2. of Notice 2006-47, 2006-1 C.B. 892, 896, must be attached to the Form 3115.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 8.02 of this APPENDIX is "101." See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Jennifer Bernardini at 202-622-3110 (not a toll-free call).

.03 *Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.*

(1) *Description of change.* This change applies to a small business refiner (as defined in § 45H(c)(1)) that wants to elect under § 179B(a) to deduct 75 percent of the qualified capital costs (as defined in § 45H(c)(2)) that are paid or incurred by the taxpayer during the taxable year.

(2) *Scope.*

(a) *Applicability.* This change in accounting method applies to a small business refiner that, before June 15, 2006, filed its federal tax return for a taxable year ending after December 31, 2002, in which qualified capital costs were paid or incurred after December 31, 2002, and that wants to make a § 179B(a) election for all qualified capital costs paid or incurred during that taxable year.

(b) *Inapplicability.* This change does not apply to:

(i) Qualified capital costs paid or incurred on or before December 31, 2002;

(ii) A taxpayer that made the § 179B(a) election for a taxable year ending after December 31, 2002, in which qualified capital costs were paid or incurred after December 31, 2002, by filing an amended federal tax return for that taxable year, and all subsequent affected taxable year(s), on or before November 15, 2006; or

(iii) The election under § 179B(e).

(3) *Time for making the change.* The change in method of accounting under section 8.03 of this APPENDIX must be made for the taxpayer's first or second taxable year ending on or after December 31, 2005.

(4) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(5) *Additional requirements.*

(a) The change in accounting method results in items being omitted or duplicated and thus, an adjustment under § 481(a) must be computed;

(b) The statement required under the *Interim Rules* in section C.3. of Notice 2006-47, 2006-1 C.B. 892, 897, must be attached to the Form 3115; and

(c) The basis of any property must be reduced by the portion of the cost of the property taken into account under the § 179B(a) election.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 8.03 of this APPENDIX is "102." See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Nicole Cimino at 202-622-3110 (not a toll-free call).

SECTION 9. COMPUTER SOFTWARE EXPENDITURES (§§ 162, 167, and 197)

.01 *Computer software expenditures.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for the costs of computer software to a method described in Rev. Proc. 2000-50, 2000-2 C.B. 601, as modified by Rev. Proc. 2007-16, 2007-4 I.R.B. 358. Section 5 of Rev. Proc. 2000-50 describes the methods applicable

to the costs of developing computer software. Section 6 of Rev. Proc. 2000-50 describes the method applicable to the costs of acquired computer software. Section 7 of Rev. Proc. 2000-50 describes the method applicable to leased or licensed computer software. If a taxpayer treats the costs of computer software in accordance with the applicable method described in Rev. Proc. 2000-50, the Service will not disturb the taxpayer's treatment of its costs of computer software.

(2) *Scope.* This change applies to all costs of computer software as defined in section 2 of Rev. Proc. 2000-50. However, this change does not apply to any computer software that is subject to amortization as an "amortizable section 197 intangible" as defined in § 197(c) and the regulations thereunder, or to costs that a taxpayer has treated as research and experimentation expenditures under § 174.

(3) *Statement required.* If a taxpayer is changing to the method described in section 5.01(2) of Rev. Proc. 2000-50, the taxpayer must attach to its Form 3115 a statement providing the information required in section 8.02(2) of Rev. Proc. 2000-50.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 9.01 of this APPENDIX is "18." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

.02 *Year 2000 costs.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for Year 2000 costs (as defined in Rev. Proc. 97-50, 1997-2 C.B. 525, as modified by Rev. Proc. 2000-50, 2000-2 C.B. 601, as modified by Rev. Proc. 2007-16, 2007-4 I.R.B. 358) to conform to the method described in section 3 of Rev. Proc. 97-50. Section 3 of Rev. Proc. 97-50 provides that Year 2000 costs fall within the purview of Rev. Proc. 69-21, 1969-2 C.B. 303, superseded by Rev. Proc. 2000-50, as modified by Rev. Proc. 2007-16, and that the Service will not disturb a taxpayer's treatment of its Year 2000 costs

as deductible expenses or capital expenditures if the taxpayer treats these costs in accordance with Rev. Proc. 2000-50.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 9.02 of this APPENDIX is "120." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Douglas Kim at 202-622-4930 (not a toll-free call).

SECTION 10. CAPITAL EXPENDITURES (§ 263)

.01 *Package design costs.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change its method of accounting for package design costs that are within the scope of Rev. Proc. 97-35, 1997-2 C.B. 448, as modified by Rev. Proc. 98-39, 1998-1 C.B. 1320, to one of the three alternative methods of accounting for package design costs described in section 5 of Rev. Proc. 97-35. The three alternative methods of accounting for package design costs described are: (i) the capitalization method, (ii) the design-by-design capitalization and 60-month amortization method, and (iii) the pool-of-cost capitalization and 48-month amortization method.

(b) *Inapplicability.* This change does not apply to a taxpayer that wants to change to the capitalization method for costs of developing (or modifying) any package design that has an ascertainable useful life.

(2) *Additional requirements.* If a taxpayer is changing its method of accounting for package design costs to the capitalization method or the design-by-design capitalization and 60-month amortization method, the taxpayer must attach a statement to its timely filed Form 3115. The statement must provide a description of each package design, the date on which each was placed in service, and the cost basis of each (as determined under sections 5.01(2) or 5.02(2) of Rev. Proc. 97-35).

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change

number for a change under section 10.01 of this APPENDIX is “19.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Gwen Turner at 202-622-5020 (not a toll-free call).

.02 *Line pack gas or cushion gas.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for line pack gas or cushion gas to a method consistent with the holding in Rev. Rul. 97-54, 1997-2 C.B. 23. Rev. Rul. 97-54 holds that the cost of line pack gas or cushion gas is a capital expenditure under § 263, the cost of recoverable line pack gas or recoverable cushion gas is not depreciable, and the cost of unrecoverable line pack gas or unrecoverable cushion gas is depreciable under §§ 167 and 168.

(2) *Additional requirements.* A taxpayer that changes its method of accounting for unrecoverable line pack gas or unrecoverable cushion gas under section 10.02 of this APPENDIX must change to a permissible method of accounting for depreciation for the cost of that gas.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 10.02 of this APPENDIX is “20.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Gwen Turner at 202-622-5020 (not a toll-free call).

.03 *Removal costs.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for certain costs incurred in the retirement and removal of depreciable assets to conform with Rev. Rul. 2000-7, 2000-1 C.B. 712.

(2) *Additional requirements.*

(a) Except for assets for which depreciation is determined in accordance with § 1.167(a)-11 (ADR), the taxpayer’s new method of treating removal costs for assets accounted for in a multiple asset account must be consistent with the taxpayer’s method of treating salvage proceeds. See Rev. Rul. 74-455, 1974-2 C.B. 63. (See section 6.02 of the APPENDIX of this revenue procedure for changing a tax-

payer’s present method of treating salvage proceeds.)

(b) If this change involves assets that are public utility property within the meaning of § 168(i)(10) or former § 167(l)(3)(A), the taxpayer must comply with the terms and conditions in section 6.01(3)(b)(v) of this APPENDIX.

(3) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 10.03 of this APPENDIX is “21.” See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Gwen Turner at 202-622-5020 (not a toll-free call).

.04 *Distributor commissions.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change from currently deducting distributor commissions (as defined by section 2 of Rev. Proc. 2000-38, 2000-2 C.B. 310, as modified by Rev. Proc. 2007-16, 2007-4 I.R.B. 358) to a method of capitalizing and amortizing distributor commissions using the distribution fee period method, the 5-year method, or the useful life method (all described in Rev. Proc. 2000-38).

(b) *Inapplicability.* This change does not apply to an amortizable section 197 intangible (including any property for which a timely election under § 13261(g)(2) of the Revenue Reconciliation Act of 1993, 1993-3 C.B. 1, 128, was made).

(2) *Manner of making change.* This change is made on a cut-off basis and applies only to distributor commissions paid or incurred on or after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 10.04

of this APPENDIX is “47.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Gwen Turner at 202-622-5020 (not a toll-free call).

.05 *Intangibles.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its treatment of an item to a method of accounting permitted by §§ 1.263(a)-4, 1.263(a)-5, and 1.167(a)-3(b). See Rev. Proc. 2006-12, 2006-1 C.B. 310, as modified by Rev. Proc. 2006-37, 2006-2 C.B. 499, for the specific requirements, information, and documentation required for this change.

(2) *Prior unauthorized change in method of accounting.* In certain circumstances, a taxpayer that made an unauthorized change in method of accounting for an item the treatment of which is provided for in §§ 1.263(a)-4, 1.263(a)-5, and 1.167(a)-3(b) is eligible for this change only if the taxpayer amends prior federal income tax returns to correct the unauthorized change in method of accounting. See section 4.03 of Rev. Proc. 2006-12 for details.

(3) *Scope limitations.* The 5-year prior change scope limitation in section 4.02(7) of this revenue procedure is modified for this change in that the taxpayer does not take into account a change in method of accounting provided in §§ 1.263(a)-4, 1.263(a)-5, and 1.167(a)-3(b) requested or made for a tax year ending on or before December 31, 2005.

(4) *Section 481(a) adjustment.* In computing the § 481(a) adjustment for this change, the taxpayer takes into account only amounts paid or incurred in taxable years ending on or after January 24, 2002. See section 5 of Rev. Proc. 2006-12 for detailed rules for computing the § 481(a) adjustment and reporting it on Form 3115.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 10.05 of this APPENDIX is “78.” See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Gwen Turner at 202-622-5020 (not a toll-free call).

.06 Rotable spare parts.

(1) *Description of change.* This change applies to a taxpayer that maintains a pool or pools of rotatable spare parts that are primarily used to repair customer-owned (or customer-leased) equipment under warranty or maintenance agreements, and wants to change its method of accounting for the rotatable spare parts to the safe harbor method of accounting provided in Rev. Proc. 2007-48, 2007-29 I.R.B. 110. The taxpayer must meet the requirements in section 4.01 of Rev. Proc. 2007-48 to use this safe harbor method of accounting.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to a taxpayer that wants to make the change in method of accounting for its first or second taxable year ending on or after December 31, 2006, provided the taxpayer's method of accounting for rotatable spare parts is not an issue under consideration for taxable years under examination, within the meaning of section 3.09 of this revenue procedure, at the time the Form 3115 is filed with the national office.

(3) *Change from safe harbor method.* A taxpayer that is required to change its method of accounting from the safe harbor method under section 5.06 of Rev. Proc. 2007-48, must make the change under section 21.09 of this APPENDIX.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 10.06 of this APPENDIX is "109." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Gwen Turner at 202-622-5020 (not a toll-free call).

.07 Repairable and reusable spare parts.

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change its method of accounting to treat repairable and reusable spare parts as depreciable property to conform with the holdings in Rev. Rul. 69-200, 1969-1 C.B. 60, and Rev. Rul. 69-201, 1969-1 C.B. 60. This change applies to repairable and reusable spare parts that: are owned by the taxpayer at the beginning of the year of change; are

used to repair equipment owned by the taxpayer; are acquired by the taxpayer for a specific type of equipment at the time that the related equipment is acquired; usually have the same useful life as the related equipment; and have been placed in service by the taxpayer after 1986. A taxpayer making a change in method of accounting under this section 10.07 of the APPENDIX may treat its repairable and reusable spare parts as tangible property for which depreciation is allowable at the time that the related equipment is placed in service by the taxpayer. The method of computing depreciation for the repairable and reusable spare parts is the same method of computing depreciation for the related equipment.

(b) *Inapplicability.* This change does not apply to:

(i) a taxpayer that is currently capitalizing and depreciating the cost of its repairable and reusable spare parts, or that is currently capitalizing the cost of its repairable and reusable spare parts and treating these parts as nondepreciable property (but see section 6.01 of this APPENDIX for making a change from an impermissible to a permissible method of accounting for depreciation);

(ii) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 10.07 of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable); or

(iii) a taxpayer that is using an impermissible method of accounting for depreciation for the related equipment for which the repairable and reusable spare parts are acquired, unless the taxpayer concurrently changes its method to use a permissible method of accounting for depreciation under section 6 of this APPENDIX.

(2) *Additional requirements.* In addition to the other filing requirements of this revenue procedure, to change a method of accounting under this section 10.07 of the APPENDIX, a taxpayer must complete Schedule E of Form 3115 for the repairable and reusable spare parts and also provide

and attach the following to the completed application:

(a) A description of the repairable and reusable spare parts;

(b) A list of related equipment for which the repairable and reusable spare parts are acquired; and

(c) A complete description of the method of computing depreciation (*e.g.*, depreciation method, recovery period, convention, and applicable asset class under Rev. Proc. 87-56, 1987-2 C.B. 674, as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785) that the taxpayer uses for the related equipment for which the repairable and reusable spare parts are acquired.

(3) *Concurrent automatic change.*

(a) A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(b) A taxpayer that wants to make both this change and a change to a permissible method of accounting for depreciation for repairable and reusable spare parts, or for the related equipment for which the repairable and reusable spare parts are acquired, under section 6 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(c) A taxpayer that makes this change also may establish pools for the repairable and reusable spare parts or may identify disposed repairable and reusable spare parts in accordance with section 6.20 of this APPENDIX. A taxpayer that wants to make both this change and the change under section 6.20 of this APPENDIX for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 10.07

of this APPENDIX is “121”. See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Gwen Turner at 202-622-5020 (not a toll-free call).

SECTION 11. UNIFORM CAPITALIZATION (UNICAP) METHODS (§ 263A)

.01 *Certain uniform capitalization (UNICAP) methods used by resellers and reseller-producers.*

(1) *Description of change.*

(a) *Applicability.* This change applies to:

(i) a small reseller of personal property that wants to change from a permissible UNICAP method to a permissible non-UNICAP inventory capitalization method in any taxable year that it qualifies as a small reseller;

(ii) a formerly small reseller that wants to change from a permissible non-UNICAP inventory capitalization method to a permissible UNICAP method in the first taxable year that it does not qualify as a small reseller;

(iii) a reseller-producer that wants to change from a permissible UNICAP method for both its production and resale activities to a permissible simplified resale method described in § 1.263A-3(d)(3) in any taxable year that it qualifies to use a simplified resale method for both its production and resale activities under § 1.263A-3(a)(4) (resellers with *de minimis* production activities);

(iv) a reseller-producer that wants to change from a permissible simplified resale method described in § 1.263A-3(d)(3) for both its production and resale activities to a permissible UNICAP method for both its production and resale activities in the first taxable year that it does not qualify to use a simplified resale method for both its production and resale activities under § 1.263A-3(a)(4);

(v) a reseller that wants to change its permissible UNICAP method to include a special reseller cost allocation rule; or

(vi) a reseller that wants to change to a UNICAP method (or methods) specifically described in the regulations (and make any attendant changes in the identification of costs subject to § 263A and

including any special reseller cost allocation rules) in any taxable year, other than the first taxable year, that it does not qualify as a small reseller. However, this does not include a change for purposes of recharacterizing “section 471 costs” as “additional § 263A costs” (or *vice versa*) under the simplified resale method.

(b) *Inapplicability.*

(i) *Self-constructed assets.* This change does not apply to a taxpayer that wants to use either the simplified service cost method or the simplified production method for self-constructed assets under §§ 1.263A-1(h)(2)(i)(D) and 1.263A-2(b)(2)(i)(D).

(ii) *Historic absorption ratio.* This change does not apply to a taxpayer that wants to make an historic absorption ratio election under §§ 1.263A-2(b)(4) or 1.263A-3(d)(4), or to a taxpayer that wants to revoke an election to use the historic absorption ratio with the simplified resale method (see § 1.263A-3(d)(4)(iii)(B)), including a taxpayer using the simplified resale method with an historic absorption ratio that wants to change to a UNICAP method specifically described in the regulations that does not include the historic absorption ratio. However, this change applies to a small reseller that wants to change from the historic absorption ratio with the simplified resale method to a permissible non-UNICAP inventory capitalization method under section 11.01(1)(a)(i) of this APPENDIX.

(c) *Scope limitations inapplicable.* The scope limitations of section 4.02 of this revenue procedure do not apply to this change.

(2) *Definitions.*

(a) “Reseller” means a taxpayer that acquires real or personal property described in § 1221(a)(1) for resale.

(b) “Small reseller” means a reseller whose average annual gross receipts for the three immediately preceding taxable years (or fewer, if the taxpayer has not been in existence for the three preceding taxable years) do not exceed \$10,000,000. See § 263A(b)(2)(B).

(c) “Formerly small reseller” means a reseller that no longer qualifies as a small reseller.

(d) “Producer” means a taxpayer that produces real or tangible personal property.

(e) “Reseller-producer” means a taxpayer that is both a producer and a reseller.

(f) “Permissible UNICAP method” means a method of capitalizing costs that is permissible under § 263A.

(g) “A UNICAP method specifically described in the regulations” includes the simplified service cost method using a labor-based allocation ratio (§ 1.263A-1(h)) and the simplified resale method without an historic absorption ratio election (§ 1.263A-3(d)), but does not include any other reasonable allocation method within the meaning of § 1.263A-1(f)(4).

(h) “Special reseller cost allocation rule” means the 90-10 *de minimis* rule to allocate a mixed service department’s costs to property acquired for resale (§ 1.263A-1(g)(4)(ii)), the 1/3 — 2/3 rule to allocate labor costs of personnel to purchasing activities (§ 1.263A-3(c)(3)(ii)(A)), and the 90-10 *de minimis* rule to allocate a dual-function storage facility’s costs to property acquired for resale (§ 1.263A-3(c)(5)(iii)(C)).

(i) “Permissible non-UNICAP inventory capitalization method” means a method of capitalizing inventory costs that is permissible under § 471.

(3) *Section 481(a) adjustment period.* Beginning with the year of change, a taxpayer changing its method of accounting for costs pursuant to sections 11.01(1)(a)(i), 11.01(1)(a)(iii), or 11.01(1)(a)(iv) of this APPENDIX generally must take any applicable net positive § 481(a) adjustment for such change into account ratably over the same number of taxable years, not to exceed four, that the taxpayer used its former method of accounting. A taxpayer changing its method of accounting for costs pursuant to sections 11.01(1)(a)(ii), 11.01(1)(a)(v) or 11.01(1)(a)(vi) of this APPENDIX generally must take any applicable net positive § 481(a) adjustment for such change into account ratably over four taxable years. See section 5.04(3) of this revenue procedure for exceptions to this general rule.

(4) *Multiple changes.* A taxpayer that wants to make both this change and another change in method of accounting for the same year of change must comply with the ordering rules of § 1.263A-7(b)(2).

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 11.01 of this APPENDIX is “22.” See section 6.02(4) of this revenue procedure.

(6) *Example.* The following example illustrates the principles of section 11.01 of this APPENDIX for small resellers and formerly small resellers.

Assume X, a corporate reseller of personal property, incorporated January 2, 2001, adopted a taxable

year ending December 31. X determines that its average annual gross receipts for the three taxable years (or fewer, if applicable) immediately preceding taxable years 2001 through 2010 are as shown in the table below:

Current Taxable Year	AVERAGE Annual Gross Receipts for the Three Taxable Years Immediately Preceding the Current Taxable Year
2001	\$ 0
2002	5,000,000
2003	6,000,000
2004	7,000,000
2005	11,000,000
2006	11,000,000
2007	9,000,000
2008	8,000,000
2009	11,000,000
2010	12,000,000

Furthermore, X which adopted the dollar-value LIFO inventory method, has the following LIFO in-

ventory balances determined without considering the effects of the UNICAP method:

	<u>Beginning</u>	<u>Ending</u>
2005	\$1,000,000	\$1,100,000
2006	1,100,000	1,200,000
2007	1,200,000	1,300,000
2008	1,300,000	1,400,000
2009	1,400,000	1,500,000
2010	1,500,000	1,600,000

X was required by § 263A to change to the UNICAP method for 2005 because its average annual gross receipts for the three taxable years immediately preceding 2005 were \$11,000,000, which exceeded the \$10,000,000 ceiling permitted by the small reseller exception. Assume that X was required to capitalize \$80,000 of “additional § 263A costs” to the cost of its 2005 beginning inventory because

of this change in inventory method. In addition, X was required to include one-fourth of the § 481(a) adjustment when computing taxable income for each of the four taxable years beginning with 2005. Thus, X was required to include a \$20,000 positive § 481(a) adjustment in its 2005 taxable income.

X elected to use the simplified resale method without an historic absorption ratio election under

§ 1.263A-3(d)(3) for determining the amount of additional § 263A costs to be capitalized to each LIFO layer. Assume that X was required to add \$10,000 of additional § 263A costs to the cost of its 2005 ending inventory because of the \$100,000 increment for 2005.

X’s 2005 Ending Inventory:

Beginning Inventory (Without UNICAP costs)	\$1,000,000
2005 Increment	100,000
Additional § 263A Costs in Beginning Inventory	80,000
Additional § 263A Costs in 2005 Increment	<u>10,000</u>
Total 2005 Ending Inventory	<u>\$1,190,000</u>

X’s Unamortized 2005 § 481(a) Adjustment:

2005 § 481(a) Adjustment	\$80,000
Amount included in 2005 Taxable Income	<u><20,000></u>
Unamortized 2005 § 481(a) Adjustment–12/31/05	<u>\$60,000</u>

Because X failed to satisfy the small reseller exception for 2006, X was required to continue using the UNICAP method for its inventory costs. Further-

more, X was required to include \$20,000 of the unamortized 2005 positive § 481(a) adjustment in 2006 taxable income. Assume that X was required to add

\$10,000 of additional § 263A costs to the cost of its 2006 ending inventory because of the \$100,000 increment for 2006.

X's 2006 Ending Inventory:	
Beginning Inventory (With UNICAP costs)	\$1,190,000
2006 Increment	100,000
Additional § 263A Costs in 2006 Increment	<u>10,000</u>
Total 2006 Ending Inventory	<u>\$1,300,000</u>
X's Unamortized 2005 § 481(a) Adjustment:	
Unamortized 2005 § 481(a) Adjustment–12/31/05	\$60,000
Amount Included in 2006 Taxable Income	<u><20,000></u>
Unamortized 2005 § 481(a) Adjustment–12/31/06	<u>\$40,000</u>

Because *X* satisfies the small reseller exception for 2007, *X* may change voluntarily from the UNICAP method to a permissible non-UNICAP inventory capitalization method under section 11.01 of this APPENDIX. To reflect the removal of the

additional § 263A costs from the cost of its 2007 beginning inventory, *X* must compute a corresponding § 481(a) adjustment, which is a negative \$100,000 (\$1,200,000 - \$1,300,000). The entire amount of this negative § 481(a) adjustment is included in the

computation of *X*'s taxable income for 2007. In addition, *X* must include \$20,000 of the unamortized 2005 § 481(a) adjustment in 2007 taxable income.

X's 2007 Ending Inventory:	
Beginning Inventory (With UNICAP costs)	\$1,300,000
2007 Increment	100,000
2007 § 481(a) Adjustment <Negative>	<u><100,000></u>
Total 2007 Ending Inventory	<u>\$1,300,000</u>
X's Unamortized 2005 § 481(a) Adjustment:	
Unamortized 2005 § 481(a) Adjustment–2/31/06	\$40,000
Amount included in 2007 Taxable Income	<u><20,000></u>
Unamortized 2005 § 481(a) Adjustment–12/21/07	<u>\$20,000</u>
X's Unamortized 2007 § 481(a) Adjustment:	
2007 § 481(a) Adjustment <Negative>	\$<100,000>
Amount included in 2007 Taxable Income	<u>100,000</u>
Unamortized 2007 § 481(a) Adjustment–12/31/07	<u>\$ 0</u>

X also satisfies the small reseller exception for 2008 and, therefore, is not required to return to the

UNICAP method for 2008. *X*, however, must include

\$20,000 of the unamortized 2005 positive § 481(a) adjustment in its 2008 taxable income.

X's 2008 Ending Inventory:	
Beginning Inventory (Without UNICAP costs)	\$1,300,000
2008 Increment	100,000
Total 2008 Ending Inventory	<u>\$1,400,000</u>
X's Unamortized 2005 § 481(a) Adjustment:	
Unamortized 2005 § 481(a) Adjustment–12/31/07	\$20,000
Amount in 2008 Taxable Income	<u><20,000></u>
Unamortized 2005 § 481(a) Adjustment–12/31/08	<u>\$ 0</u>
X's Unamortized 2009 § 481(a) Adjustment:	

In 2009, *X* fails to satisfy the small reseller exception and, therefore, must return to the UNICAP method as provided under section 11.01 of this APPENDIX. *X* changes to the simplified resale method without a historic absorption ratio election under § 1.263A–3(d)(3). Assume that *X* must capitalize

\$120,000 of additional § 263A costs to the cost of its 2009 beginning inventory because of this change in inventory method. Because *X* used a non-UNICAP method for two taxable years prior to 2009, the § 481 spread period for the positive § 481(a) adjustment is two years. Therefore, *X* must include one-half of

the § 481(a) adjustment (\$60,000) when computing taxable income for 2009 and 2010. Assume that *X* must add \$10,000 of additional § 263A costs to the cost of its 2009 ending inventory because of the \$100,000 increment for 2009.

X's 2009 Ending Inventory:	
Beginning Inventory (Without UNICAP costs)	\$1,400,000
2009 Increment	100,000
Additional § 263A costs in Beginning Inventory	120,000
Additional § 263A costs in 2009 Increment	<u>10,000</u>
Total 2009 Ending Inventory	<u><u>\$1,630,000</u></u>
X's Unamortized 2009 § 481(a) Adjustment:	
2009 § 481 Adjustment	\$120,000
Amount included in 2009 Taxable Income	<u><60,000></u>
Unamortized 2009 § 481(a) Adjustment—12/31/09	<u><u>\$60,000</u></u>

Because X fails to satisfy the small reseller exception for 2010, X must continue using the UNICAP method for its inventory costs. Furthermore, X is re-

quired to include \$60,000 of the unamortized 2009 positive § 481(a) adjustment in 2010 taxable income. Assume that X is required to add \$10,000 of addi-

tional § 263A costs to the cost of its 2010 ending inventory because of the \$100,000 increment for 2010.

X's 2010 Ending Inventory:	
Beginning Inventory (With UNICAP costs)	\$1,630,000
2010 Increment	100,000
Additional § 263A Costs in 2010 Increment	<u>10,000</u>
Total 2010 Ending Inventory	<u><u>\$1,740,000</u></u>
X's Unamortized 2009 § 481(a) Adjustment:	
Unamortized 2009 § 481(a) Adjustment—12/31/09	\$60,000
Amount included in 2010 Taxable Income	<u><60,000></u>
Unamortized 2009 § 481(a) Adjustment—12/31/10	<u><u>\$ 0</u></u>

(7) *Contact information.* For further information regarding a change under this section, contact Donna Crawford or Kari Fisher at 202-622-4970 (not a toll-free call).

.02 *Certain uniform capitalization (UNICAP) methods used by producers and reseller-producers.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a producer (as defined in section 11.01(2)(d) of this APPENDIX) or a reseller-producer (as defined in section 11.01(2)(e) of this APPENDIX) that wants to change to a UNICAP method (or methods) specifically described in the regulations and includes any changes in the identification of costs subject to § 263A made in connection therewith. However, this does not include a change for purposes of recharacterizing “section 471 costs” as “additional § 263A costs” (or *vice versa*) under the simplified production method.

(b) *Inapplicability.* $\frac{1}{3}$ This change does not apply to a producer or reseller-producer that wants to revoke an election to use the historic absorption ratio with the simplified production method (*see*

§ 1.263A-2(b)(4)(iii)(B)), including a taxpayer using the simplified production method with an historic absorption ratio changing to a UNICAP method specifically described in the regulations that does not include the historic absorption ratio. This change also does not apply to a taxpayer that wants to use either the simplified service cost method of the simplified production method for self-constructed assets under §§ 1.263A-1(h)(2)(i)(D) and 1.263A-2(b)(2)(i)(D). Also, this change does not apply to a producer or reseller-producer that wants to change its method of accounting for interest capitalization.

(2) *Definition.* A “UNICAP method specifically described in the regulations” includes the 90-10 *de minimis* rule to allocate a mixed service department’s costs to production or resale activities (§ 1.263A-1(g)(4)(ii)), the $\frac{1}{3}$ — $\frac{2}{3}$ rule to allocate labor costs of personnel to purchasing activities (§ 1.263A-3(c)(3)(ii)(A)), the 90-10 *de minimis* rule to allocate a dual-function storage facility’s costs to property acquired for resale (§ 1.263A-3(c)(5)(iii)(C)), the specific identification method

(§ 1.263A-1(f)(2)), the burden rate method (§ 1.263A-1(f)(3)), the standard cost method (§ 1.263A-1(f)(3)), the direct reallocation method (§ 1.263A-1(g)(4)(iii)(A)), the step-allocation method (§ 1.263A-1(g)(4)(iii)(B)), the simplified service cost method (§ 1.263-1(h)) (with either a labor-based allocation ratio or a production cost allocation ratio), and the simplified production method without the historic absorption ratio election (§ 1.263A-2(b)), but does not include any other reasonable allocation method within the meaning of § 1.263A-1(f)(4).

(3) *Multiple changes.* A taxpayer that wants to make both this change and another change in method of accounting in the same year of change must comply with the ordering rules of § 1.263A-7(b)(2).

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 11.02 of this APPENDIX is “23.” *See* section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Donna Crawford

or Kari Fisher at 202-622-4970 (not a toll-free call).

.03 Change to no longer capitalize research and experimental expenditures under § 263A.

(1) *Description of change.* The change applies to a taxpayer who no longer wants to capitalize research and experimental expenditures to inventory under § 263A and the regulations thereunder. A taxpayer making this change must be in compliance with all other aspects of § 263A and the regulations thereunder and must have an effective election under either § 174(a) or (b).

(2) *Manner of making change.* A taxpayer must attach to its Form 3115 the following representations:

(a) "The § 174 costs that are the subject of this Form 3115 filed under section 11.03 of the APPENDIX of Rev. Proc. 2008-52 and will not be capitalized to inventory under § 263A and the regulations thereunder are costs that are subject to the taxpayer's effective election under [Insert, as appropriate: § 174(a) or § 174(b)] and the regulations thereunder" and

(b) "All § 174 costs that will be removed from inventory costs, have been identified as § 174 costs at the time that the costs were capitalized to inventory under § 263A and the regulations thereunder."

(3) *No audit protection.* A taxpayer does not receive audit protection under section 7 of this revenue procedure in connection with this change.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 11.03 of this APPENDIX is "24." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Donna Crawford or Kari Fisher at 202-622-4970 (not a toll-free call).

.04 Impact fees.

(1) *Description of change.* This change applies to a taxpayer that incurs impact fees as defined in Rev. Rul. 2002-9, 2002-1 C.B. 614, in connection with the construction of a new residential rental building that wants to capitalize the costs to the building under §§ 263(a) and 263A.

See Rev. Rul. 2002-9 for further information.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 11.04 of this APPENDIX is "25." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Cheryl Oseekey at 202-622-4970 (not a toll-free call).

.05 Change to capitalizing environmental remediation costs under § 263A.

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for environmental remediation costs from a method that does not comply with the holding in Rev. Rul. 2004-18, 2004-1 C.B. 509, to capitalizing them to inventory under § 263A.

(2) *Concurrent automatic changes.* A taxpayer that wants to make both this change and another automatic change in method of accounting under § 263A for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic change numbers for both changes on the appropriate line on that Form 3115, and complies with the ordering rules of § 1.263A-7(b)(2).

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 11.05 of this APPENDIX is "77." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact John Faron at 202-622-4930 (not a toll-free call).

.06 Change in allocating environmental remediation costs under § 263A.

(1) *Description of change.* This change applies to a taxpayer that capitalizes environmental remediation costs to inventory under § 263A, but allocates these costs to inventory using a method of accounting that does not comply with the holding in Rev. Rul. 2005-42, 2005-2 C.B. 67, and wants to change to allocating these costs to inventory produced during the taxable year in which the costs are incurred under § 263A. See Rev. Rul. 2005-42 for further information.

(2) *Concurrent automatic changes.* A taxpayer that wants to make both this change and another automatic change in method of accounting under § 263A for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115, and complies with the ordering rules of § 1.263A-7(b)(2).

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 11.06 of this APPENDIX is "92." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact John Faron at 202-622-4930 (not a toll-free call).

SECTION 12. LOSSES, EXPENSES AND INTEREST WITH RESPECT TO TRANSACTIONS BETWEEN RELATED TAXPAYERS (§ 267)

.01 Change to comply with § 267.

(1) *Description of change.* This change applies to a taxpayer that wants to change its method or methods of accounting to comply with the requirements of § 267, which disallows or defers certain deductions attributable to transactions between related taxpayers. However, this change applies to a change for stated interest only to the extent the stated interest is qualified stated interest (as defined in § 1.1273-1(c)).

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 12.01 of this APPENDIX is "26." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Steve Gee at 202-622-4970 (not a toll-free call).

.02 Reserved.

SECTION 13. DEFERRED COMPENSATION (§ 404)

.01 Change to comply with § 404(a)(11).

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting to comply with § 404(a)(11). Section 404(a)(11) provides that, for purposes of determining under § 404 whether compensation of an employee is deferred compensation and when deferred compensation is paid, no amount is treated as received by the employee, or paid, until it is actually received by the employee. Section 404(a)(11) overturns the decision in *Schmidt Baking Co., Inc. v. Commissioner*, 107 T.C. 271 (1996), in which the court held that a § 83(a) income inclusion event upon securitization of vacation and severance pay benefits with a letter of credit constitutes receipt of those benefits by employees for purposes of determining whether an employer's deduction for the benefits is subject to § 404. See Notice 99-16, 1999-1 C.B. 842.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Section 481(a) adjustment period.* A taxpayer must take the § 481(a) adjustment into account ratably over three taxable years beginning with the year of change.

(4) *No audit protection.* A taxpayer does not receive audit protection under section 7 of this revenue procedure in connection with this change.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 13.01 of this APPENDIX is "27." See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Maryellen Simpson at 202-622-6030 (not a toll-free call).

.02 *Deferred compensation.*

(1) *Description of change.* This change applies to an accrual method taxpayer that wants to change its method of accounting to treat bonuses or vacation pay as follows (see § 404(a)(5) and § 1.404(b)-1T, Q&A 2):

(a) *Applicability.*

(i) *Bonuses.*

(A) *Bonuses not subject to capitalization under § 263A.* If by the end of the tax-

able year all the events have occurred that establish the fact of the liability to pay a bonus and the amount of the liability can be determined with reasonable accuracy (see § 1.446-1(c)(1)(ii)), and the bonus is otherwise deductible, but the bonus is received by the employee after the 15th day of the 3rd calendar month after the end of that taxable year, to treat the bonus as deductible in the taxable year of the employer in which or with which ends the taxable year of the employee in which the bonus is includible in the gross income of the employee; or

(B) *Bonuses that are subject to capitalization under § 263A.* If by the end of the taxable year all the events have occurred that establish the fact of the liability to pay a bonus and the amount of the liability can be determined with reasonable accuracy (see § 1.446-1(c)(1)(ii)), and the bonus is otherwise deductible (without regard to § 263A), but the bonus is received by the employee after the 15th day of the 3rd calendar month after the end of that taxable year, to treat the bonus as capitalizable (within the meaning of § 1.263A-1(c)(3)) in the taxable year of the employer in which or with which ends the taxable year of the employee in which the bonus is includible in the gross income of the employee.

(ii) *Vacation pay.*

(A) *Vacation pay not subject to capitalization under § 263A.* If by the end of the taxable year all the events have occurred that establish the fact of the liability to pay vacation pay and the amount of the liability can be determined with reasonable accuracy (see § 1.446-1(c)(1)(ii)), and the vacation pay is otherwise deductible but the vacation pay is received by the employee after the 15th day of the 3rd calendar month after the end of that taxable year, to treat the vacation pay as deductible in the taxable year of the employer in which the vacation pay is paid to the employee; or

(B) *Vacation pay that is subject to capitalization under § 263A.* If by the end of the taxable year all the events have occurred that establish the fact of the liability to pay vacation pay and the amount of the liability can be determined with reasonable accuracy (see § 1.446-1(c)(1)(ii)), and the vacation pay is otherwise deductible (without regard to § 263A), but the vacation pay

is received by the employee after the 15th day of the 3rd calendar month after the end of that taxable year, to treat the vacation pay as capitalizable (within the meaning of § 1.263A-1(c)(3)) in the taxable year of the employer in which the vacation pay is paid to the employee.

(b) *Inapplicability.* This change does not apply to the extent that it is also described in section 13.01 of this APPENDIX.

This change also does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 13.02 of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 13.02 of this APPENDIX is "28." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Maryellen Simpson at 202-622-6030 (not a toll-free call).

.03 *Grace period contributions.*

(1) *Description of change.* This change applies to a taxpayer that wants to cease deducting contributions made during the § 404(a)(6) grace period to a qualified cash or deferred arrangement within the meaning of § 401(k) or to a defined contribution plan as matching contributions with the meaning of § 401(m) when the contributions are attributable to compensation earned by plan participants after the end of a taxable year as required by Rev. Rul. 2002-46, 2002-2 C.B. 117, as modified by Rev. Rul. 2002-73, 2002-2 C.B. 805.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 13.03 of this APPENDIX is "29." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact James Holland at

202-283-9699 or Carlton Watkins at 202-283-9625 (not toll-free calls).

SECTION 14. METHODS OF ACCOUNTING (§ 446)

.01 *Change in overall method from the cash method to an accrual method.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change its overall method of accounting from the cash receipts and disbursements (cash) method to an accrual method, with or without a “special method” as defined respectively in sections 14.01(3)(a), (b), and (e) of this APPENDIX, if subsequent to this change, the taxpayer will be using an overall accrual method of accounting (that is, all items of income and expense are accounted for using an accrual method). A taxpayer changing its overall method of accounting to an accrual method under this section 14.01 of the APPENDIX may also adopt the recurring item exception for one or more types of recurring items. A taxpayer that wants to change its method of accounting for one or more items of income or expense, but not its overall method of accounting, may be eligible to make such change(s) using section 14.09 of this APPENDIX.

If the year of change is the first taxable year the taxpayer is required by § 448 to change from the cash method (first § 448 year) and the taxpayer qualifies to make this change under the automatic consent procedures of § 1.448-1(g) and (h)(2) as well as this revenue procedure, the taxpayer must comply with both the provisions of § 1.448-1(h)(2) and the requirements of this revenue procedure.

(b) *Inapplicability.* This change does not apply to:

(i) a taxpayer that will not use an “overall accrual method of accounting” subsequent to this change under section 14.01 of this APPENDIX;

(ii) a taxpayer that is required by § 447 to change to an accrual method when the year of change is the first taxable year the taxpayer is required to change to that method;

(iii) a cooperative organization described in § 501(c)(12), 521, or 1381;

(iv) an individual taxpayer, except for activities conducted as a sole proprietorship;

(v) a taxpayer that is required by §§ 446 and 471 and §§ 1.446-1(a)(4)(i) and 1.471-1 to use an inventory method in the year of change. However, the taxpayer qualifies to make the change to an overall accrual method under this section 14.01 of this APPENDIX when in the year of change either:

(A) the taxpayer adopts or changes to a proper inventory method or continues to use a proper inventory method that it had used in the taxable year immediately prior to the year of change but only when:

(1) the taxpayer is a small reseller within the meaning of § 1.263A-3(a) and, if the taxpayer also has production activities, those activities qualify under the *de minimis* presumption of § 1.263A-3(a)(2)(iii);

(2) the taxpayer is a reseller within the meaning of § 263A and the regulations thereunder that qualifies to use the simplified resale method under § 1.263A-3(d) and the taxpayer either adopts or changes to that method in the year of change or continues its use of that method from the taxable year immediately prior to the year of change; or

(3) the taxpayer is a producer of real or tangible personal property described in § 1.263A-2 that adopts in the year of change a “UNICAP method specifically described in the regulations” within the meaning of section 14.01(3)(d) of this APPENDIX. (For purposes of this section 14.01(1)(b)(v)(A)(3) of the APPENDIX, a method not listed in section 14.01(3)(d) may not be adopted or changed in the year of change); or

(B) the taxpayer continues to use the proper inventory method and proper UNICAP method that it had used in the taxable year immediately prior to the year of change and the taxpayer is a producer of real or tangible personal property described in § 1.263A-2;

(vi) a taxpayer that is either required to or voluntarily wants to use a “special method of accounting” in the year of change regardless of whether a change to that special method is requested in that year. However, the taxpayer can request its change to an overall accrual method under this section 14.01 of the APPENDIX when (a) the change to the special

method of accounting is permitted to be changed automatically either under this revenue procedure or any other Code, regulation, or administrative provision, and (b) the change to the special method of accounting is requested for the identical taxable year of the change requested under this section 14.01 of the APPENDIX if the taxpayer is required to use the special method of accounting; and

(vii) a taxpayer engaged in two or more trades or businesses, unless the taxpayer makes such changes so that the same overall accrual method is used for each such trade or business beginning with the year of change.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02(6) of this revenue procedure do not apply to a change in method of accounting request made under section 14.01 of this APPENDIX when the taxpayer changed to the overall cash method within the previous 5 taxable years (including the year of change) either under the provisions of Rev. Proc. 2001-10, 2001-1 C.B. 272 or Rev. Proc. 2002-28, 2002-1 C.B. 815.

(3) *Definitions.*

(a) *Cash method of accounting* is the method identified by § 446(c)(1) and §§ 1.446-1(c)(1)(i), 1.451-1(a), and 1.461-1(a)(1).

(b) *Accrual method of accounting* is the method identified by § 446(c)(2) and §§ 1.446-1(c)(1)(ii), 1.451-1(a), and 1.461-1(a)(2).

(c) *Recurring item exception* is the method described in § 461(h)(3) and § 1.461-5.

(d) *UNICAP method specifically described in the regulations* is one of the following:

(i) the specific identification method within the meaning of § 1.263A-1(f)(2);

(ii) the burden rate method within the meaning of § 1.263A-1(f)(3);

(iii) the standard cost method within the meaning of § 1.263A-1(f)(3);

(iv) the direct reallocation method within the meaning of § 1.263A-1(g)(4)(iii)(A);

(v) the step-allocation method within the meaning of § 1.263A-1(g)(4)(iii)(B);

(vi) the simplified service cost method within the meaning of § 1.263A-1(h); and

(vii) the simplified production method without the historic absorption ratio election within the meaning of § 1.263A-2(b).

(e) *Special method of accounting* within the meaning of this section 14.01 of the APPENDIX is a method of accounting, other than the cash method, expressly permitted by the Code, regulations, or guidance published in the IRB that deviates from the tax accrual accounting rules of §§ 451 and 461 and the regulations thereunder. For example, the installment method of accounting under § 453, the mark-to-market method under § 475, a long-term contract method such as the percentage of completion method, and the deferral method of Rev. Proc. 2004-34, 2004-1 C.B. 991, used to account for advance payments are special methods of accounting. In contrast, application of the all-events test under a specific set of facts is not a special method of accounting. See, for example, Rev. Rul. 69-314, 1969-1 C.B. 139 (concerning the treatment of retainages).

(f) *Overall accrual method of accounting* within the meaning of this section 14.01 of the APPENDIX is a method of accounting where, but for the use of a “special method of accounting,” all items of income and expense are accounted for using an accrual method.

(4) *Manner of making change.*

(a) *Section 481(a) adjustment.* A taxpayer changing its method of accounting under this section 14.01 of the APPENDIX must compute a § 481(a) adjustment. This adjustment must reflect the account receivables, account payables, inventory, and any other item determined to be necessary in order to prevent items from being duplicated or omitted. However, the adjustment does not include any item of income accrued but not received that was worthless or partially worthless (within the meaning of § 166(a)) on the last day of the year immediately prior to the year of change.

(b) *Concurrent change to a special method of accounting not permitted to be made under this revenue procedure.* A taxpayer, that can not change to an overall accrual method of accounting using this section 14.01 of the APPENDIX because the taxpayer is seeking to make a concurrent change to a special method of accounting not permitted automatically

under this revenue procedure, may request both changes by filing one Form 3115 under Rev. Proc. 97-27 (or any successor). Only one user fee per taxpayer will be required when a Form 3115 is filed for both changes.

(c) *Adoption of recurring item exception.* The taxpayer must attach to its Form 3115 a statement describing the types of liabilities for which the recurring item exception will be used.

(5) *Coordination with section 33.01 of this APPENDIX for short-term obligations.* When a taxpayer subject to § 1281 is changing its method of accounting for interest income on short-term obligations as part of the change to an overall accrual method, the taxpayer must request the change for the interest income under section 33.01 of this APPENDIX. Section 14.01 will govern the request for change in method of accounting to an overall accrual method. The taxpayer must timely file individual Forms 3115 for each change requested.

(6) *Concurrent automatic change to the deferral method for advance payments.* A taxpayer that wants to make both a change to an overall accrual method under this section 14.01 of the APPENDIX and an automatic change to the deferral method for advance payments under Rev. Proc. 2004-34 (see section 15.07 of this APPENDIX) for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(7) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.01 of this APPENDIX for other than a taxpayer’s first § 448 year is “122.”

The designated automatic accounting method change number for a change under section 14.01 of this APPENDIX for the taxpayer’s first § 448 year is “123.” Entering designated automatic accounting method change number “123” on the appropriate line on the Form 3115 fulfills the requirement of § 1.448-1(h)(2) to type or print “Automatic Change to Accrual Method — Section 448” at the top of page 1 of the Form 3115. See section 6.02(4) of this revenue procedure.

(8) *Contact information.* For further information regarding a change under this section, contact W. Thomas McElroy, Jr. at 202-622-4970 (not a toll-free call).

.02 *Multi-year insurance policies for multi-year service warranty contracts.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a manufacturer, wholesaler, or retailer of motor vehicles or other durable consumer goods that wants to change its method of accounting for insurance costs paid or incurred to insure its risks under multi-year service warranty contracts to the method described in section 14.02(2) of this APPENDIX. Multi-year service warranty contracts to which this change applies include only those separately priced contracts sold by a manufacturer, wholesaler, or retailer also selling the motor vehicles or other durable consumer goods (to the ultimate customer or to an intermediary) underlying the contracts. The classification of goods as “durable consumer goods” for purposes of this change depends on the common usage of the goods, rather than the purchaser’s actual intended use of the goods.

(b) *Inapplicability.* This change does not apply to a taxpayer that covers its risks under its multi-year service warranty contracts through arrangements not constituting insurance.

(2) *Description of method.* If a taxpayer purchases a multi-year service warranty insurance policy (in connection with its sale of multi-year service warranty contracts to customers) by paying a lump-sum premium in advance, the taxpayer must capitalize the amount paid or incurred and may only obtain deductions for that amount by prorating (or amortizing) it over the life of the insurance policy (whether the cash method or an accrual method of accounting is used to account for service warranty transactions).

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.02 of this APPENDIX is “31.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Erika Reigle at 202-622-4950 (not a toll-free call).

.03 *Taxpayers changing to overall cash method.*

(1) *Description of change.* This change applies to either:

(a) a taxpayer (other than a taxpayer described in § 448(a)(3) or a bank described in section 14.12(2)(a) of this APPENDIX) with “average annual gross receipts” (as defined in section 5.01 of Rev. Proc. 2001–10, 2001–1 C.B. 272) of \$1,000,000 or less that wants to change to the overall cash receipts and disbursements (cash) method of accounting as provided in Rev. Proc. 2001–10; or

(b) a taxpayer (other than a taxpayer described in § 448 or a bank described in section 14.12(2)(a) of this APPENDIX) with “average annual gross receipts” (as defined in section 5.02 of Rev. Proc. 2002–28, 2002–1 C.B. 815) of \$10,000,000 or less that wants to change to the overall cash receipts and disbursements (cash) method of accounting as provided in Rev. Proc. 2002–28.

(2) *Scope limitations applicable.* Rev. Proc. 2001–10 and Rev. Proc. 2002–28 are modified to delete section 6.02(1)(a) of Rev. Proc. 2001–10 and section 7.02(1)(a) of Rev. Proc. 2002–28. Therefore, the scope limitations in section 4.02 of this revenue procedure (including the limitation regarding a prior change within five taxable years of section 4.02(6)) and the requirements in sections 6.03 (regarding taxpayers under examination), 6.04 (regarding taxpayers before an appeals office) and 6.05 (regarding taxpayers before a federal court) of this revenue procedure apply to a change in method of accounting made under this section 14.03 of the APPENDIX.

(3) *Manner of making change.* See either Rev. Proc. 2001–10 or Rev. Proc. 2002–28 for additional guidance on the computation of the § 481(a) adjustment and the completion of the Form 3115.

(4) *Concurrent automatic change to treat inventoriable items as nonincidental materials and supplies under Rev. Proc. 2001–10 or Rev. Proc. 2002–28.* A taxpayer that wants to make both a change to the overall cash method under this section 14.03 of the APPENDIX and a change to treat inventoriable items as materials and supplies that are not incidental under § 1.162–3 (see section 21.03 of this APPENDIX) for the same year of change may file a single Form 3115 for both

changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(5) *Banks changing to overall cash/hybrid method.* This change does not apply to a bank described in section 14.12(2)(a) of this APPENDIX. However, such a bank may be eligible to change to the overall cash/hybrid method under section 14.12 of this APPENDIX if it meets the requirements of that section.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.03(1)(a) of this APPENDIX is “32.” The designated automatic accounting method change number for a change under section 14.03(1)(b) of this APPENDIX is “33.” See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Kari Fisher at 202–622–4970 (not a toll-free call).

.04 *Nonaccrual-experience method.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer within the scope of section 3.01(1) through (5) of Rev. Proc. 2006–56, 2006–2 C.B. 1169, that wants to make certain changes to, from, or within a nonaccrual-experience (NAE) method of accounting.

(b) *Inapplicability.* This change does not apply to a taxpayer within the scope of section 3.01(6) through 3.01(8) of Rev. Proc. 2006–56.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change for the taxpayer’s first taxable year ending on or after August 31, 2006. However, if the taxpayer’s NAE method of accounting is an issue under consideration for taxable years under examination, before an appeals office, or before a federal court, at the time the Form 3115 is filed with the national office, the audit protection of section 7 of this revenue procedure does not apply.

(3) *Manner of making the change.* A change in method of accounting within section 3.01(1), (2), (3), or (5) of Rev.

Proc. 2006–56 is made with a § 481(a) adjustment. A change made under section 3.01(4) of Rev. Proc. 2006–56 is made on a cut-off basis and the new applicable period applies only to the taxpayer’s nonaccrual-experience calculation of its uncollectible amount for the year of change and for subsequent years. Accordingly, a § 481(a) adjustment is neither permitted nor required for changes made under section 3.01(4) of Rev. Proc. 2006–56.

(4) *Concurrent change to overall accrual method and a NAE method of accounting.*

(a) *First § 448 year.* A taxpayer that is within the scope of section 3.01(1) through (5) of Rev. Proc. 2006–56 that wants to change to a NAE method of accounting (with or without also changing to a periodic system) and is required to change to an overall accrual method of accounting under § 448 and the regulations thereunder for the taxpayer’s first § 448 year must request to make both changes by filing one Form 3115, and the taxpayer must follow the change in method of accounting provisions of § 1.448–1(h)(2). The taxpayer must complete all applicable sections of Form 3115, including sections that apply to the change to an overall accrual method and to the change to the NAE method, and must enter the automatic accounting method change numbers for both changes on Form 3115.

(b) *Concurrent automatic change to overall accrual method.* A taxpayer that is within the scope of section 3.01(1) through (5) of Rev. Proc. 2006–56 that wants to make a change to a NAE method of accounting (with or without also changing to a periodic system) under this section 14.04 of the APPENDIX and is eligible to and wants to change to an overall accrual method of accounting under Appendix section 14.01 of this APPENDIX for the same year of change, must file a single Form 3115 for both changes. The taxpayer must complete all applicable sections of Form 3115, including sections that apply to the change to an overall accrual method and to the change to the NAE method, and must enter the automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change

number for a change to the NAE method of accounting under section 14.04 of this APPENDIX is “35.”

The designated automatic accounting method change number for a change to an overall accrual method for the taxpayer’s first § 448 year under the provisions of § 1.448-1(h)(2) is “34.” Entering the designated automatic accounting method change number “34” on the appropriate line on the Form 3115 fulfills the requirement of § 1.448-1(h)(2) to type or print “Automatic Change to Accrual Method — Section 448” at the top of page 1 of the Form 3115. See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact W. Thomas McElroy, Jr. at 202-622-4970 (not a toll-free call).

.05 Interest accruals on short-term consumer loans—Rule of 78’s method.

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting from the Rule of 78’s method to the constant yield method for stated interest (including stated interest that is original issue discount) on short-term consumer loans described in Rev. Proc. 83-40, 1983-1 C.B. 774, which was obsoleted by Rev. Proc. 97-37, 1997-2 C.B. 455.

(2) *Background.*

(a) A short-term consumer loan is described in Rev. Proc. 83-40, provided:

(i) the loan is a self-amortizing loan that requires level payments, at regular intervals at least annually, over a period not in excess of five years (with no balloon payment at the end of the loan term); and

(ii) the loan agreement between the borrower and the lender provides that interest is earned, or upon the prepayment of the loan interest is treated as earned, in accordance with the Rule of 78’s method.

(b) In general, the Rule of 78’s method allocates interest over the term of a loan based, in part, on the sum of the periods’ digits for the term of the loan. See Rev. Rul. 83-84, 1983-1 C.B. 97, for a description of the Rule of 78’s method.

(c) In general, the constant yield method allocates interest and original issue discount over the term of a loan based on a constant yield. See § 1.1272-1(b) for a description of the constant yield method. The Rule of 78’s method gener-

ally front-loads interest as compared to the constant yield method.

(d) Rev. Proc. 83-40 was obsoleted because, under §§ 1.446-2 and 1.1272-1 (which were effective for debt instruments issued on or after April 4, 1994), taxpayers generally must account for stated interest and original issue discount on a debt instrument (loan) by using a constant yield method. As a result, the Rule of 78’s method is no longer an acceptable method of accounting for federal income tax purposes.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.05 of this APPENDIX is “71.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact William E. Blanchard at 202-622-3950 (not a toll-free call).

.06 Film producer’s treatment of certain creative property costs.

(1) *Description of change.* This change applies to a taxpayer that wants to change the method of accounting for creative property costs to the safe harbor method provided by section 5 of Rev. Proc. 2004-36, 2004-1 C.B. 1063. This safe harbor method of accounting applies to a taxpayer engaged in the trade of business of film production and to creative property costs (as defined in section 2.01 of Rev. Proc. 2004-36) properly written off by the taxpayer under The American Institute of Certified Public Accountants Statement of Position (SOP) 00-2, “Accounting for Producers or Distributors of Film.”

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.06 of this APPENDIX is “85.” See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Bernard Harvey at 202-622-4930 (not a toll-free call).

.07 Deduction of incentive payments to health care providers.

(1) *Description of change.* Rev. Proc. 2004-41, 2004-2 C.B. 90, permits an insurance company that makes incentive payments to health care providers to in-

clude those payments in discounted unpaid losses without regard to § 404. A payment by a taxpayer to a health care provider is a “provider incentive payment,” and thus eligible for this treatment, if (a) the taxpayer is taxable as an insurance company under Part II of subchapter L; (b) the payment is made pursuant to a written agreement the purpose of which is to encourage participating health care providers to provide quality health care to the taxpayer’s subscribers in a cost-efficient manner; (c) the taxpayer’s liability for the payment is dependent on the attainment of one or more preestablished goals during a performance period consisting of not more than 12 consecutive months; (d) the terms of the arrangement pursuant to which the payment is made are established unilaterally by the taxpayer, and are not negotiated with the health care providers; (e) the taxpayer normally makes payments to health care providers under the arrangement within 12 months after the close of the performance period; (f) deferring the receipt of income by the health care provider or otherwise providing a tax benefit to the provider is not a principal purpose of the arrangement; (g) the taxpayer records a liability for the payment on its annual statement filed for state regulatory purposes, and includes this liability in the determination of discounted unpaid losses under § 846; and (h) the health care provider is not an employee, and is not providing health care as an agent, of the taxpayer. See Rev. Proc. 2004-41.

(2) *Scope.* This procedure applies to a taxpayer that wants to change to the method of accounting for provider incentive payments, under which those payments are included in discounted unpaid losses without regard to § 404.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.07 of this APPENDIX is “90.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Josephine Firehock or Kay Hossofsky, at 202-622-3970 (not a toll-free call).

.08 Change by bank for uncollected interest.

(1) *Description of change.* This change applies to a “bank” as defined in § 1.166–2(d)(4)(i) that: (1) uses an accrual method of accounting to determine its taxable income for federal income tax purposes; (2) is subject to supervision by Federal authorities, or by state authorities maintaining substantially equivalent standards; (3) has uncollected interest other than interest described in § 1.446–2(a)(2); and (4) has six or more years of collection experience. Under the safe harbor method of accounting provided by section 4 of Rev. Proc. 2007–33, 2007–21 I.R.B. 1289, a bank determines for each taxable year the amount of uncollected interest (other than interest described in § 1.446–2(a)(2)) for which it is considered to have a reasonable expectancy of payment by multiplying: (1) the total accrued (determined under § 1.446–2) but uncollected interest for the year by, (2) the bank’s “recovery percentage” (determined under section 4.02 of Rev. Proc. 2007–33) for that year. Solely for purposes of this safe harbor, the bank is not considered to have a reasonable expectancy of payment for the excess, if any, of the accrued but uncollected interest over the expected collection amount determined using the bank’s recovery percentage. The bank includes in gross income the portion of accrued but uncollected interest for which it has a reasonable expectancy of payment. The bank excludes from income the portion of accrued but uncollected interest for which it has no reasonable expectancy of payment.

(2) *Recovery percentage.* Subject to the limitations and conditions in Rev. Proc. 2007–33, sections 4.02(2), (3), and (4), a bank determines its recovery percentage for each taxable year by dividing: (a) total payments that the bank received on loans (including principal and interest) during the 5 taxable years immediately preceding the taxable year, by (b) total amounts that were due and payable to the bank on loans during the same 5 taxable years. The recovery percentage cannot exceed 100 percent and must be calculated to at least four decimal places. The data used in the recovery percentage must take into account acquisitions and dispositions. If a bank acquires the major portion of a trade or business of another person (predecessor) or the major portion of a separate unit of a trade

or business of a predecessor, then in applying Rev. Proc. 2007–33 for any taxable year ending on or after the acquisition, the data from preceding taxable years of the predecessor attributable to the portion of the trade or business acquired, if available, must be used in determining the bank’s recovery percentage. If a bank disposes of a major portion of a trade or business or the major portion of a separate unit of a trade or business, and the bank furnished the acquiring person the information necessary for the computations required by Rev. Proc. 2007–33, then in applying the revenue procedure for any taxable year ending on or after the disposition, the data from preceding taxable years attributable to the disposed portion of the trade or business may not be used in determining the bank’s recovery percentage.

(3) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to a change made for either the bank’s first or second taxable year ending on or after December 31, 2006.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.08 of this APPENDIX is “108.” See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Timothy Sebastian at 202–622–3920 (not a toll-free call).

.09 *Change from the cash method to an accrual method for specific items.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer whose overall method of accounting is an accrual method of accounting but has identified a specific item or items of income and expense that are being accounted for on the cash method of accounting. This change does not apply to a taxpayer that is changing its overall method of accounting from cash to accrual. Such a taxpayer may be eligible to change to an overall accrual method using section 14.01 of this APPENDIX.

(b) *Inapplicability.* This change does not apply to:

(i) a taxpayer that will not have all items of income and expense on an accrual

method subsequent to this change under this section 14.09 of the APPENDIX;

(ii) a cooperative organization described in § 501(c)(12), 521, or 1381;

(iii) an individual taxpayer, except for activities conducted as a sole proprietorship;

(iv) a taxpayer engaged in two or more trades or businesses, unless the taxpayer makes this change so that the identical accrual method is used for each such trade or business beginning with the year of change;

(v) a change in method of accounting for any payment liability described in § 1.461–4(g); and

(vi) any change that is specifically provided in another section of the APPENDIX of this revenue procedure.

(2) *Definitions.*

(a) Cash method of accounting is the method identified by § 446(c)(1) and §§ 1.446–1(c)(1)(i), 1.451–1(a), and 1.461–1(a)(1).

(b) Accrual method of accounting is the method identified by § 446(c)(2) and §§ 1.446–1(c)(1)(ii), 1.451–1(a), and 1.461–1(a)(2).

(3) *Additional requirements.* In addition to the other filing requirements of this revenue procedure, to change a method of accounting under this section 14.09 of the APPENDIX, a taxpayer must fully and completely describe each specific item for which the change in method of accounting is being made and how the accrual method applies to each item and list the § 481(a) adjustment for each item, if any, associated with the change. The change is fully and completely described if the revenue or expense item is described with specificity and how the all-events test (and the economic performance requirement, if applicable) applies to the item is described under the facts and circumstances of the taxpayer’s trade or business. For example, a taxpayer that merely states that it is changing its accounting method for advertising expenses from the cash method to an accrual method, recites the regulations under § 1.461–1(a)(2), and enters the associated § 481(a) adjustment has failed to describe fully and completely the specific item for which the change in method of accounting is being made. In contrast, a taxpayer that states that it is changing its method of accounting for

print advertising expenses from the cash method to an accrual method, describes all of the relevant facts related to the print advertising expenses, and explains how the all-events test applies to those facts and when economic performance occurs has fully and completely described the item and the change. See section 6.02 of this revenue procedure for additional filing requirements.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.09 of this APPENDIX is “124.” See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Gwen Turner at 202-622-5020 (not a toll-free call).

.10 *Multi-year service warranty contracts.*

(1) *Description of change.*

(a) *Applicability.* This change applies to an eligible accrual method manufacturer, wholesaler, or retailer of motor vehicles or other durable consumer goods that wants to change to the service warranty income method described in section 5 of Rev. Proc. 97-38, 1997-2 C.B. 479. Under the service warranty income method, a qualifying taxpayer may, in certain specified and limited circumstances, include a portion of an advance payment related to the sale of a multi-year service warranty contract in gross income generally over the life of the service warranty obligation.

(b) *Inapplicability.* This change does not apply to a taxpayer outside the scope of Rev. Proc. 97-38.

(2) *Manner of making change and designated automatic accounting method change number.*

(a) This change is made on a cut-off basis and applies only to qualified advance payments for multi-year service warranty contracts on or after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) In accordance with § 1.446-1(e)(3)(ii), the requirement of § 1.446-1(e)(3)(i) to file an application on Form 3115 is waived and a statement

in lieu of the Form 3115 is authorized for this change. The statement must set forth:

(i) the designated automatic accounting method change number for this change, which is “125”;

(ii) the taxpayer’s name and employer identification (or social security number in the case of an individual);

(iii) the year of change (both the beginning and ending dates); and

(iv) the information required under section 6.03 of Rev. Proc. 97-38, except that the statement under section 6.03(2) (that the taxpayer agrees to all of the terms and conditions of the revenue procedure) also should refer to Rev. Proc. 2008-52.

(3) *Additional requirement.* A taxpayer changing to the service warranty income method of accounting under section 14.10 of this APPENDIX must satisfy the annual reporting requirement set forth in section 6.04 of Rev. Proc. 97-38.

(4) *Contact information.* For further information regarding a change under this section, contact Erika Reigle at 202-622-4950 (not a toll-free call).

.11 *Overall cash method for specified transportation industry taxpayers.*

(1) *Description of change.* This change applies to a “specified transportation industry taxpayer” with “average annual gross receipts” of more than \$10,000,000 and not in excess of \$50,000,000 that wants to change to the overall cash receipts and disbursement (cash) method.

(2) *Definitions.* For purposes of this section 14.11 of this APPENDIX, the following definitions apply:

(a) *Specified transportation industry taxpayer.* A specified transportation industry taxpayer is a taxpayer that satisfies the following criteria for the year of change:

(i) The taxpayer reasonably identifies its “business” (as defined in section 14.11(2)(b) below) as being described in one of the following NAICS subsector codes (first three digits of the six-digit NAICS codes):

(A) Air Transportation, Rail Transportation, Water Transportation, Truck Transportation, Transit and Ground Passenger Transportation, or Scenic and Sightseeing Transportation, within the meaning of NAICS subsector codes 481-485 and 487; or

(B) Support Activities for Transportation within the meaning of NAICS subsector code 488.

(ii) The taxpayer is not prohibited from using the overall cash method under § 448.

(b) *Business.* A taxpayer may use any reasonable method of applying the relevant facts and circumstances to determine its business. A business may consist of several activities, which may or may not be related. For example, a taxpayer engaged in transportation activities may provide various services such as transporting air cargo and then subsequently trucking the cargo throughout a metropolitan area to warehouses and wholesale/retail stores. However, each activity within a taxpayer’s business must individually satisfy the description of a NAICS subsector code in section 14.11(2)(a)(i)(A) or (B) of this APPENDIX. For example, a sightseeing bus operator that sells box lunches in connection with its tours is not a “specified transportation industry taxpayer” because each of its two activities (that is, sightseeing transportation and food sales) do not each satisfy the description of a NAICS subsector code in section 14.11(2)(a)(i)(A) or (B) of this APPENDIX. Similarly, a train operator who operates a dining car where meals are served is not a “specified transportation industry taxpayer” because all of the activities of its “business” fail to satisfy the descriptions of one or more of the NAICS subsector codes in section 14.11(2)(a)(i)(A) or (B) of this APPENDIX. That is, while the rail service satisfies the description of a NAICS subsector code in section 14.11(2)(a)(i)(A) of this APPENDIX, the food service does not satisfy the description of any NAICS subsector code in section 14.11(2)(a)(i)(A) or (B) of this APPENDIX, and thus, the taxpayer’s business fails to meet the criteria of section 14.11(2)(a)(i).

(c) *Average annual gross receipts.* A taxpayer has average annual gross receipts of more than \$10,000,000 and not in excess of \$50,000,000 if, for each prior taxable year ending on or after December 31, 2006, the taxpayer’s average annual gross receipts for the three prior taxable-year period ending with the applicable prior taxable year are more than \$10,000,000 and do not exceed \$50,000,000. If a taxpayer has not been in existence for three prior taxable years, the taxpayer must determine

its average annual gross receipts for the number of years (including short taxable years) that the taxpayer has been in existence. See § 448(c)(3)(A).

(d) *Gross receipts.* Gross receipts is defined consistent with § 1.448-1T(f)(2)(iv). Thus, gross receipts for a taxable year equal all receipts that must be recognized under the method of accounting actually used by the taxpayer for that taxable year for federal income tax purposes. See also § 448(c)(3)(C).

(e) *Aggregation of gross receipts.* For purposes of computing gross receipts under section 14.11(2)(d) of this APPENDIX, all taxpayers treated as a single employer under § 52(a) or (b) or § 414(m) or (o) (or that would be treated as a single employer under these sections if the taxpayers had employees) will be treated as a single taxpayer. However, when transactions occur between taxpayers that are treated as a single taxpayer by the previous sentence, gross receipts arising from these transactions will not be treated as gross receipts for purposes of the average annual gross receipts limitation. See § 448(c)(2) and § 1.448-1T(f)(2)(ii).

(f) *Treatment of short taxable year.* In the case of a short taxable year, a taxpayer's gross receipts must be annualized by multiplying the gross receipts for the short taxable year by 12 and then dividing the result by the number of months in the short taxable year. See § 448(c)(3)(B) and § 1.448-1T(f)(2)(iii).

(g) *Treatment of predecessors.* Any reference to a taxpayer in this section 14.11 of the APPENDIX includes a reference to any predecessor of that taxpayer. See § 448(c)(3)(D).

(h) *Cash method.* The cash method is the method identified by § 446(c)(1) and §§ 1.446-1(c)(1)(i), 1.451-1(a), and 1.461-1(a)(1).

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.11 of this APPENDIX is "126." See section 6.02(4) of this revenue procedure.

(4) *Example.*

Example. Taxpayer X is an LLC and taxed for federal income tax purposes as a partnership. Taxpayer X does not have any C corporations as partners and Taxpayer X is not a tax shelter within the meaning of § 448(d)(3). Taxpayer X's business consists of

short-haul trucking among various cities within State Y, which satisfies the description of the NAICS subsector code 484. Taxpayer X determines that its average annual gross receipts for each of the three prior taxable years have been more than \$10,000,000 and not in excess of \$50,000,000. Taxpayer X qualifies to change to the overall cash method using this section 14.11 of the APPENDIX.

(5) *Contact information.* For further information regarding a change under this section, contact Kari Fisher at 202-622-4970 (not a toll-free call).

.12 *Change to overall cash/hybrid method for certain banks.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a bank described in section 14.12(2)(a) of this APPENDIX that wants to change to an overall cash/hybrid method described in section 14.12(2)(b) of this APPENDIX.

(b) *Inapplicability.* A bank's change to an overall cash/hybrid method under this section 14.12 of the APPENDIX does not include any change in the accounting treatment of an item for which the bank uses a special method (as described in section 14.12(2)(b) of this APPENDIX) before the change, or is required to use a special method, or will use a special method after the change. No change in the accounting treatment of such an item may be made under this section 14.12 of the APPENDIX. Any change in the accounting treatment of such an item must be made under an applicable section of this APPENDIX, under Rev. Proc. 97-27 (or any successor), or under another guidance published in the IRB, as appropriate.

(2) *Definitions.*

(a) *Bank.* A bank is described in this section 14.12(2)(a) of the APPENDIX if the bank:

(i) is a bank as defined in § 581;

(ii) is an S corporation as defined in § 1361(a)(1), or a qualified subchapter S subsidiary as defined in § 1361(b)(3)(B); and

(iii) has average annual gross receipts (computed as described in section 14.12(5) of this APPENDIX) not in excess of \$50,000,000.

(b) *Overall cash/hybrid method.* An overall cash/hybrid method is the use of a combination of accounting methods under which some items of income or expense are reported on the cash receipts and disbursements method (cash method) and

other items of income or expense are reported on methods permitted or required for the accounting treatment of special items (special methods).

(i) *Cash method.* The cash method is the method identified by § 446(c)(1) and §§ 1.446-1(c)(1)(i), 1.451-1(a), and 1.461-1(a)(1).

(ii) *Special methods.* A few of the special methods typically used by banks include those provided for the accounting treatment of the following items: securities held by a dealer in securities as defined in § 475(c)(1) (the mark-to-market method of § 475); securities held by a dealer in securities as defined in § 1.471-5 (inventories maintained under § 471 and § 1.446-1(c)(2)(i)); hedging transactions (§ 1.446-4); contracts to which § 1256 applies (§ 1256); original issue discount on debt instruments (§§ 163(e) and 1271-1275); interest income (including acquisition discount and original issue discount) on short-term obligations (§§ 1281-1283); and stripped debt instruments (§ 1286). For example, a bank that regularly purchases or originates mortgages in the ordinary course of its business and engages in more than negligible sales of those mortgages generally is a dealer in securities under § 475(c)(1) and § 1.475(c)-1(c) and thus must use the mark-to-market method of § 475 for mortgages and any other securities (as defined in § 475(c)(2)) held by the bank.

(3) *Additional condition of change.* To change to an overall cash/hybrid method under this section 14.12 of the APPENDIX, a bank must comply with the following additional condition. In addition to complying with the terms and conditions set forth in section 5 of this revenue procedure, the bank must keep its books and records for the year of change and for subsequent taxable years on an overall cash/hybrid method allowed by this section 14.12 of the APPENDIX. This condition is considered satisfied if the bank reconciles the results obtained under the method used in keeping its books and records and those obtained under the method used for federal income tax purposes pursuant to this section 14.12 of the APPENDIX and the bank maintains sufficient records to support such reconciliation. See also § 1.446-1(a)(4).

(4) *Additional filing requirement.* To change to an overall cash/hybrid method under this section 14.12 of this APPENDIX, a bank must include the following additional information on its Form 3115 filed in accordance with section 6.02 of this revenue procedure. In addition to complying with all other applicable requirements, the Form 3115 must describe each specific item of the bank's income or expense that is affected by the change under this section 14.12 of the APPENDIX and, for each such item, identify the following: the accounting method under which the bank reports that item for federal income tax purposes immediately before the change; and the amount of the § 481(a) adjustment associated with changing that item to the cash method under this section 14.12 of the APPENDIX.

(5) *Computation of average annual gross receipts.* For purposes of section 14.12(2)(a)(iii) of this APPENDIX, a bank's average annual gross receipts are computed as described in this section 14.12(5) of the APPENDIX.

(a) *Average annual gross receipts.* A bank has average annual gross receipts not in excess of \$50,000,000 if, for each prior taxable year ending on or after December 31, 2006, the bank's average annual gross receipts for the three prior taxable-year period ending with the applicable prior taxable year do not exceed \$50,000,000. If a bank has not been in existence for three prior taxable years, the bank must determine its average annual gross receipts for the number of years (including short taxable years) that the bank has been in existence. See § 448(c)(3)(A).

(b) *Gross receipts.* Gross receipts is defined consistent with § 1.448-1T(f)(2)(iv). Thus, gross receipts for a taxable year equal all receipts that must be recognized under the method of accounting actually used by the bank for that taxable year for federal income tax purposes. See also § 448(c)(3)(C).

(c) *Aggregation of gross receipts.* For purposes of computing gross receipts under section 14.12(5)(b) of this APPENDIX, all taxpayers treated as a single employer under § 52(a) or (b) or § 414(m) or (o) (or that would be treated as a single employer under these sections if the taxpayers had employees) will be treated as a

single taxpayer (*i.e.*, a single bank). However, when transactions occur between taxpayers that are treated as a single taxpayer by the previous sentence, gross receipts arising from these transactions will not be treated as gross receipts for purposes of the average annual gross receipts limitation. See § 448(c)(2) and § 1.448-1T(f)(2)(ii).

(d) *Treatment of short taxable year.* In the case of a short taxable year, a bank's gross receipts must be annualized by multiplying the gross receipts for the short taxable year by 12 and then dividing the result by the number of months in the short taxable year. See § 448(c)(3)(B) and § 1.448-1T(f)(2)(iii).

(e) *Treatment of predecessors.* Any reference to a bank or taxpayer in section 14.12(5) of this APPENDIX includes a reference to any predecessor of that bank or taxpayer. See § 448(c)(3)(D).

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.12 of this APPENDIX is "127." See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Sharon Galm at 202-622-3930 (not a toll-free call).

.13 *Change to overall cash method for farmers.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer engaged in the trade or business of farming that wants to change to the overall cash receipts and disbursement (cash) method. If a taxpayer is engaged in more than one trade or business, this change applies only to the taxpayer's trade or business of farming.

(b) *Inapplicability.* This change does not apply to a taxpayer that is required to use an accrual method pursuant to § 447 or prohibited from using the cash method by § 448.

(2) *Definitions.*

(a) Cash method of accounting is the method defined by § 446(c)(1) and §§ 1.446-1(c)(1)(i), 1.451-1(a), and 1.461-1(a)(1). See also, §§ 1.61-4 and 1.162-12 for specific rules relating to farmers.

(b) The trade or business of farming is a farming business as defined by § 263A(e)(4) and the regulations thereunder.

(3) *Manner of making change.* Generally, a taxpayer changing its method of accounting under this section 14.13 of the APPENDIX, must compute a § 481(a) adjustment. However, if the taxpayer is changing from the crop method, that portion of the change shall be made using a cut-off basis under which expenses reported on the crop method and not deducted prior to the year of change are deducted in the year the related crop is sold.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.13 of this APPENDIX is "128." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Robert Basso at 202-622-4950 or Renay France at 202-622-5020 (not a toll-free call).

.14 *Nonshareholder contributions to capital under § 118.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for nontaxable contributions to capital from excluding certain payments received from gross income, by characterizing the payments as nontaxable contributions to capital under § 118(a), to including the payments in gross income. This change also applies to a taxpayer that wants to change its method of accounting of treating certain payments received from including the payments in gross income to excluding the payments from income, as nontaxable contributions to capital under § 118(a). See Rev. Rul. 2008-30, 2008-25 I.R.B. 1156.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.14 of this APPENDIX is "129." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Grant Anderson or Karla Meola at 202-622-4930 (not a toll-free call).

SECTION 15. TAXABLE YEAR OF INCLUSION (§ 451)

.01 *Accrual of interest on nonperforming loans.*

(1) *Description of change.*

(a) This change applies to an accrual method taxpayer that is a bank as defined in § 581 (or whose primary business is making or managing loans) and wants to change its method of accounting to comply with § 451 and § 1.451-1(a) for qualified stated interest (as defined in § 1.1273-1(c)) on nonperforming loans.

(b) Section 1.451-1(a) requires income to be accrued when all the events have occurred that fix the right to receive the income and the amount thereof can be determined with reasonable accuracy. A taxpayer may not stop accruing qualified stated interest on a nonperforming loan for federal income tax purposes merely because payments on the loan are overdue by a certain length of time, such as 90 days, even if a federal, state, or other regulatory authority having jurisdiction over the taxpayer permits or requires that the overdue interest not be accrued for regulatory purposes.

(c) Under § 451 and § 1.451-1(a), a taxpayer must continue accruing qualified stated interest on any nonperforming loan until either (i) the loan is worthless under § 166 and charged off as a bad debt, or (ii) the interest is determined to be uncollectible. In order for interest to be determined uncollectible, the taxpayer must substantiate, taking into account all the facts and circumstances, that it has no reasonable expectation of payment of the interest. This substantiation requirement is applied on a loan by loan basis.

(d) A taxpayer that changes its method of accounting under section 15.01 of this APPENDIX must do so for all of its loans.

(2) *Section 481(a) adjustment.* In general, the § 481(a) adjustment for a method change under section 15.01 of this APPENDIX represents the amount of qualified stated interest, on the taxpayer's nonperforming loans outstanding as of the beginning of the year of change, that should have been accrued under § 451 and § 1.451-1(a) and was not accrued. Interest for which the taxpayer, as of the beginning of the year of change, has no reasonable expectation of payment is not taken into

account in determining the amount of the § 481(a) adjustment.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.01 of this APPENDIX is "36." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Timothy Sebastian at 202-622-3920 (not a toll-free call).

.02 *Advance rentals.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for advance rentals (other than advance rentals subject to § 467 and the regulations thereunder) to include such advance rentals in gross income in the taxable year received. See § 1.61-8(b).

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.02 of this APPENDIX is "37." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact R. Matthew Kelley at 202-622-7900 (not a toll-free call).

.03 *State or local income or franchise tax refunds.*

(1) *Description of change.* This change applies to an accrual method taxpayer described in Rev. Rul. 2003-3, 2003-1 C.B. 252, that receives a state or local income or franchise tax refund and wants to accrue the refund in the year payment or notice of the approval of the refund claim is received (whichever is earlier).

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.03 of this APPENDIX is "38." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact R. Matthew Kelley at 202-622-7900 (not a toll-free call).

.04 *Capital cost reduction payments.*

(1) *Description of change.* This change applies to a taxpayer that purchases motor

vehicles subject to leases and assumes the associated leases from the vehicles' dealers and wants to use the safe harbor accounting method for capital cost reduction (CCR) payments specified in Rev. Proc. 2002-36, 2002-1 C.B. 993.

(2) *Audit protection.* If a taxpayer complies with the requirements of Rev. Proc. 2002-36 and changes its method of accounting for CCR payments to the CCR method provided in section 5 of Rev. Proc. 2002-36, the treatment of CCR payments will not be raised as an issue in any taxable year before the year of change.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.04 of this APPENDIX is "39." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact R. Matthew Kelley at 202-622-7900 (not a toll-free call).

.05 *Credit card annual fees.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for credit card annual fees as described in Rev. Rul. 2004-52, 2004-1 C.B. 973, either to a method that satisfies the all events test in accordance with Rev. Rul. 2004-52 or to the Ratable Inclusion Method for Credit Card Annual Fees that is described in section 4 of Rev. Proc. 2004-32, 2004-1 C.B. 988. Rev. Rul. 2004-52 holds that credit card annual fees are not interest for federal income tax purposes and that such fees are includible in income by the card issuer when the all events test under § 451 is satisfied. Rev. Proc. 2004-32 provides additional guidance for taxpayers seeking to change their methods of accounting for such fees, including guidance with respect to the Ratable Inclusion Method for Credit Card Annual Fees. However, a taxpayer may make either change under this revenue procedure only if the taxpayer uses an overall accrual method of accounting for federal income tax purposes and issues credit cards to, and receives annual fees from, cardholders under agreements that allow each cardholder to use a credit card to access a revolving line of credit to make purchases of goods and services and, if so authorized, to obtain cash advances.

(2) *Manner of making change.* A taxpayer making this change must identify the specific method to which the taxpayer is changing. See also section 15.05(3) of this APPENDIX.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.05 of this APPENDIX to a method that satisfies the all events test in accordance with Rev. Rul. 2004-52 is “80.” The designated automatic accounting method change number for a change under section 15.05 of this APPENDIX to the Ratable Inclusion Method for Credit Card Annual Fees is “81.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Santina Jannotta at 202-622-3930 (not a toll-free call).

.06 *Credit card late fees.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for credit card late fees to a method that treats these fees as interest income that creates or increases the amount of original issue discount (OID) on the pool of credit card loans to which the fees relate. This change is available only to a taxpayer that issues credit cards allowing cardholders to access a revolving line of credit established by the taxpayer and that, for federal income tax purposes, does not treat the credit card purchase transactions of its cardholders as creating either debt that is given in consideration for the sale or exchange of property (within the meaning of § 1274) or debt that is deferred payment for property (within the meaning of § 483). See Rev. Proc. 2004-33, 2004-1 C.B. 989, for additional guidance relating to this change.

(2) *Additional requirements.* A taxpayer making this change must be able to demonstrate both of the following:

(a) the amount of any credit card late fee charged to each cardholder by the taxpayer is separately stated on the cardholder’s account when that fee is imposed; and

(b) under the applicable credit card agreement governing each cardholder’s use of the credit card, no amount identified as a credit card late fee is charged for property or for specific services per-

formed by the taxpayer for the benefit of the cardholder.

(3) *Audit protection.* The audit protection provided in connection with this change is not a determination by the Commissioner that the taxpayer is properly accounting for any OID income on that pool of credit card loans. Thus, for example, the Service is not precluded from pursuing the issue of whether a taxpayer is properly accounting for its OID income (including any OID income attributable to credit card late fees) on its pool of credit card loans in accordance with § 1272(a)(6).

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.06 of this APPENDIX is “82.” See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Santina Jannotta at 202-622-3930 (not a toll-free call).

.07 *Advance payments.*

(1) *Description of change.* This change applies to a taxpayer using or changing to an overall accrual accounting method that receives advance payments, as defined in Rev. Proc. 2004-34, 2004-1 C.B. 991, and wants to use either the full inclusion or deferral method, as described in Rev. Proc. 2004-34. See also Announcement 2004-48, 2004-1 C.B. 998.

(2) *Manner of making change.* In lieu of providing the information and documentation required by line 1 of Schedule B to Form 3115, a taxpayer changing to the deferral method must also: (i) state whether the taxpayer uses an applicable financial statement and, if so, identify the type; (ii) describe the bases used for deferral (that is, the method the taxpayer uses in its applicable financial statement or how the taxpayer determines amounts earned, as applicable); and (iii) if the taxpayer makes an allocation to which section 5.02(4) of Rev. Proc. 2004-34 applies, include a statement that the allocation method is based on payments the taxpayer regularly receives for an item or items it regularly provides separately. See Rev. Proc. 2004-34 and Announcement 2004-48.

(3) *Concurrent automatic change to an overall accrual method.* A taxpayer that wants to make both a change to the deferral

method under this section 15.07 of the APPENDIX and a change to an overall accrual method under section 14.01 of this APPENDIX for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.07 of this APPENDIX to use the full-inclusion method is “83.” The designated automatic accounting method change number for a change under 15.07 of this APPENDIX to use the deferral method is “84.” See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact R. Matthew Kelley at 202-622-7900 (not a toll-free call).

.08 *Credit card cash advance fees.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for credit card cash advance fees to a method that treats these fees as creating or increasing original issue discount (OID) on a pool of credit card loans that includes the cash advances that give rise to the fees. This change is available only to a taxpayer that issues credit cards allowing cardholders to access a revolving line of credit established by the taxpayer both to make credit card purchase transactions and to obtain cash advances and that, for federal income tax purposes, does not treat the credit card purchase transactions of its cardholders as creating debt that is given in consideration for the sale or exchange of property. See Rev. Proc. 2005-47, 2005-2 C.B. 269, for additional guidance relating to this change.

(2) *Other requirements.* A taxpayer making this change must be able to demonstrate both of the following:

(a) the amount of any credit card cash advance fee charged to a cardholder by the taxpayer is separately stated on the cardholder’s account when that fee is imposed; and

(b) under the credit card agreement with the cardholder, no amount identified as a credit card cash advance fee is charged for property or for specific services performed

by the taxpayer for the benefit of the cardholder.

(3) *Audit protection.* The audit protection provided in connection with this change is not a determination by the Commissioner that the taxpayer is properly accounting for any OID income on that pool of credit card loans. Thus, for example, the Service is not precluded from pursuing the issue of whether, under § 1272(a)(6), a taxpayer is correctly accounting for its OID income (including any OID income attributable to credit card cash advance fees) on its pool of credit card loans.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.08 of this APPENDIX is "94." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Santina Jannotta at 202-622-3930 (not a toll-free call).

.09 *Sales or dispositions to implement Federal Energy Regulatory Commission or state electric restructuring policy.*

(1) *Description of change.* This change applies to a taxpayer that realizes qualified gain from a qualifying electric transmission transaction and elects, under § 451(i), to recognize all or part of the gain ratably over an 8-year period beginning with the year that includes the date of the qualifying electric transmission transaction.

(2) *Scope.*

(a) *Applicability.* This change applies only to a qualified electric transmission transaction occurring after October 22, 2004, for which a taxpayer filed its federal tax return for the taxable year in which the transaction occurred before June 15, 2006. This change may only be made for the taxpayer's first or second taxable year ending on or after December 31, 2005.

(b) *Inapplicability.* This change does not apply to a qualified electric transmission transaction occurring after October 22, 2004, for which a taxpayer filed its federal tax return for the taxable year in which the transaction occurred before June 15, 2006, and filed on or before November 15, 2006, an amended federal tax return for the taxable year in which the transaction occurred and all subsequent affected taxable years.

(3) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(4) *Additional requirements.* The statement described in section F.1, *Interim Rules*, of Notice 2006-47, 2006-1 C.B. 892, should be attached to the Form 3115.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.09 of this APPENDIX is "103." See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Michael Schmit at 202-622-4960 (not a toll-free call).

.10 *Retainages.*

(1) *Description of change.*

(a) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting for treating retainages under § 451 to a method consistent with the holding in Rev. Rul. 69-314, 1969-1 C.B. 139.

(b) *Inapplicability.* This change does not apply to retainages that are received under long-term contracts as defined in § 460.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 15.10 of this APPENDIX is "130." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact R. Matthew Kelley at 202-622-7900 (not a toll-free call).

SECTION 16. OBLIGATIONS ISSUED AT DISCOUNT (§ 454)

.01 *Series E, EE or I U.S. savings bonds.*

(1) *Description of change.* This change applies to a cash method taxpayer that wants to change its method of accounting for interest income on Series E, EE, or I U.S. savings bonds. However, this change only applies to a taxpayer that has previously made an election under § 454 to report as interest income the increase in redemption price on a bond occurring in a taxable year, and that now wants to

report this income in the taxable year in which the bond is redeemed, disposed of, or finally matures, whichever is earliest.

(2) *Manner of making change and designated automatic accounting method change number.*

(a) This change is made on a cut-off basis and is effective for any increase in redemption price occurring after the beginning of the year of change for all Series E, EE and I U.S. savings bonds held by the taxpayer on or after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) In accordance with § 1.446-1(e)(3)(ii), the requirement of § 1.446-1(e)(3)(i) to file an application on Form 3115 is waived and a statement in lieu of the Form 3115 is authorized for this change. The statement must set forth:

(i) the designated automatic accounting method change number for this change, which is "131";

(ii) the taxpayer's name and employer identification or social security number, as applicable;

(iii) the year of change (both the beginning and ending dates);

(iv) the Series E, EE or I U.S. savings bonds for which this change in accounting method is requested;

(v) an agreement to report all interest on any bonds acquired during or after the year of change when the interest is realized upon disposition, redemption, or final maturity, whichever is earliest; and

(vi) an agreement to report all interest on the bonds acquired before the year of change when the interest is realized upon disposition, redemption, or final maturity, whichever is earliest, with the exception of any interest income previously reported in prior taxable years.

(3) *Contact information.* For further information regarding a change under this section, contact William E. Blanchard at 202-622-3950 (not a toll-free call).

.02 *Reserved.*

SECTION 17. PREPAID SUBSCRIPTION INCOME (§ 455)

.01 *Prepaid subscription income.*

(1) *Description of change.* This change applies to an accrual method taxpayer that wants to change its method of accounting for prepaid subscription income to the method described in § 455 and the regulations thereunder, including an eligible taxpayer that wants to make the “within 12 months” election under § 1.455-2.

(2) *Manner of making change and designated automatic accounting method change number.*

(a) This change is made on a cut-off basis and applies only to prepaid subscription income received on or after the beginning of the year of change. Any prepaid subscription income received prior to the year of change is accounted for under the taxpayer’s former method of accounting. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) In accordance with § 1.446-1(e)(3)(ii), the requirement of § 1.446-1(e)(3)(i) to file an application on Form 3115 is waived and a statement in lieu of the Form 3115 is authorized for this change. The statement must set forth:

(i) the designated automatic accounting method change number for this change, which is “132”;

(ii) the taxpayer’s name and employer identification (or social security number in the case of an individual);

(iii) the year of change (both the beginning and ending dates);

(iv) the information described in § 1.455-6(a), as required by § 1.455-6(b); and

(v) if the taxpayer wants to make a “within 12 months” election under § 1.455-6(c), the information described in section § 1.455-6(c)(2).

(c) The consent granted under this revenue procedure satisfies the consent required under § 455(c)(3) and § 1.455-6(b).

(3) *Contact information.* For further information regarding a change under this section, contact Willie Armstrong at 202-622-4970 (not a toll-free call).

.02 *Reserved.*

SECTION 18. SPECIAL RULES FOR LONG-TERM CONTRACTS (§ 460)

.01 *Change from exempt-contract method to percentage-of-completion method.*

(1) *Description of change.* This change applies to a taxpayer that:

(a) is not required by § 460 and regulations thereunder to use the percentage-of-completion method to account for its long-term contracts, and

(b) wants to change its method of accounting for long-term contracts from an exempt-contract method properly applied (see § 1.460-4(c)) to the percentage-of-completion method (see § 1.460-4(b)).

(2) *Manner of making change.* This change is made on a cut-off basis and applies only to long-term contracts entered into on or after the beginning of the year of change. See § 1.460-1(c)(2) for a description of when a contract is treated as “entered into.” See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *No audit protection.* The taxpayer does not receive audit protection under section 7 of this revenue procedure in connection with this change.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 18.01 of this APPENDIX is “41.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Lore Cavanaugh at 202-622-4960 (not a toll-free call).

.02 *Reserved.*

SECTION 19. TAXABLE YEAR OF DEDUCTION (§ 461)

.01 *Timing of incurring liabilities for employee compensation.*

(1) *Self-insured employee medical benefits.*

(a) *Description of change.*

(i) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting for self-insured liabilities (including

any amounts not covered by insurance, such as a “deductible” amount under an insurance policy) relating to employee medical expenses that are not paid from a welfare benefit fund within the meaning of § 419(e) to a method as follows:

(A) If the taxpayer has a liability to pay an employee for medical expenses incurred by the employee, the taxpayer will treat the liability as incurred in the taxable year in which the employee files the claim with the employer. See *United States v. General Dynamics Corp.*, 481 U.S. 239 (1987), 1987-2 C.B. 134.

(B) If the taxpayer has a liability to pay a 3rd party for medical services provided to its employees, the taxpayer will treat the liability as incurred in the taxable year in which the services are provided.

(ii) *Inapplicability.* This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.01(1) of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

(b) *Amounts taken into account.* Applicable provisions of the Code, regulations, and other guidance published in the IRB prescribe the manner in which a liability that has been incurred is taken into account. For example, for a taxpayer with inventories, direct labor costs must be included in inventory costs and may be recovered through cost of goods sold. See § 1.263A-1(e)(2)(i)(B). A taxpayer may not rely on the provisions of this section 19.01 of the APPENDIX to take a current year deduction.

(c) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(d) *Designated automatic accounting method change number.* The des-

ignated automatic accounting method change number for a change under section 19.01(1) of this APPENDIX is "42." See section 6.02(4) of this revenue procedure.

(2) *Bonuses.*

(a) *Description of change.*

(i) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting to treat bonuses as incurred in the taxable year in which all events have occurred that establish the fact of the liability to pay a bonus and the amount of the liability can be determined with reasonable accuracy (see § 1.446-1(c)(1)(ii)). A taxpayer may change its method of accounting under this section 19.01(2) of the APPENDIX provided that:

(A) the terms of the bonus liability have been made available to employees;

(B) the amount of the bonus is calculable as of year end; and

(C) the bonus is received by the employee by the 15th day of the 3rd calendar month after the end of that taxable year.

(ii) *Inapplicability.* This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.01(2) of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

(b) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(c) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 19.01(2) of this APPENDIX is "133." See section 6.02(4) of this revenue procedure.

(3) *Vacation pay.*

(a) *Description of change.*

(i) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting to treat vacation pay as incurred in the taxable year in which all events have occurred that establish the fact of the liability to pay vacation pay, and the amount of the liability can be determined with reasonable accuracy (see § 1.446-1(c)(1)(ii)). A taxpayer may change its method of accounting under this section 19.01(3) of the APPENDIX provided that:

(A) the vacation pay vests in that taxable year; and

(B) the vacation pay is received by the employee by the 15th day of the 3rd calendar month after the end of that taxable year.

(ii) *Inapplicability.* This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.01(3) of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

(b) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(c) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 19.01(3) of this APPENDIX is "134." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Sandra Cheston at 202-622-7900 (not a toll-free call).

.02 *Timing of incurring liabilities for real property taxes, personal property taxes, state income taxes, and state franchise taxes.*

(1) *Background.* An accrual method taxpayer generally incurs a liability in the taxable year that all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and economic performance has occurred with respect to the liability. See § 1.446-1(c)(1)(ii). Under § 1.461-4(g)(6), if the liability of the taxpayer is to pay a tax, economic performance occurs as the tax is paid to the government authority that imposed the tax.

(2) *Description of change.*

(a) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting to:

(i) treat liabilities (for which the all events test of § 461(h)(4) is otherwise met) for real property taxes, personal property taxes, state income taxes, or state franchise taxes as incurred in the taxable year in which the taxes are paid, under § 461 and § 1.461-4(g)(6);

(ii) account for real property taxes, personal property taxes, state income taxes, or state franchise taxes under the recurring item exception method under § 461(h)(3) and § 1.461-5(b)(1); or

(iii) revoke an election under § 461(c) (ratable accrual election).

(b) *Inapplicability.* This change does not apply to:

(i) a taxpayer's liability for a tax subject to the limitation on acceleration of accrual of taxes under § 461(d); or

(ii) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.02 of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

(3) *Amounts taken into account.* Applicable provisions of the Code, regulations, and other guidance published in the IRB prescribe the manner in which a liability that has been incurred is taken into account. For example, for a taxpayer with inventories, certain real property taxes must be included in inventory costs and may be

recovered through cost of goods sold. See § 1.263A-1(e)(3)(ii)(L). A taxpayer may not rely on the provisions of this section 19.02 of the APPENDIX to take a current year deduction.

(4) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 19.02 of this APPENDIX is “43.” See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Jamie Kim at 202-622-4950 (not a toll-free call).

.03 *Timing of incurring liabilities under a workers’ compensation act, tort, breach of contract, or violation of law.*

(1) *Description of change.*

(a) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting for self-insured liabilities (including any amounts not covered by insurance, such as a “deductible” amount under an insurance policy) arising under any workers’ compensation act or out of any tort, breach of contract, or violation of law, to treating the liability for the workers’ compensation, tort, breach of contract, or violation of law as being incurred in the taxable year in which all the events have occurred which establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and payment is made to the person to which the liability is owed. See § 461 and § 1.461-4(g)(1) and (2).

(b) *Inapplicability.* This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.03 of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize

these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

(2) *Amounts taken into account.* Applicable provisions of the Code, regulations, and other guidance published in the IRB prescribe the manner in which a liability that has been incurred is taken into account. For example, for a taxpayer with inventories, certain employee benefit costs (including workers’ compensation) must be included in inventory costs and may be recovered through costs of goods sold. See § 1.263A-1(e)(3)(ii)(D). A taxpayer may not rely on the provisions of this section 19.03 of the APPENDIX to take a current year deduction.

(3) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 19.03 of this APPENDIX is “44.” See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Jamie Kim at 202-622-4950 (not a toll-free call).

.04 *Timing of incurring certain liabilities for payroll taxes.*

(1) *Description of change.*

(a) *Applicability.* This change applies to:

(i) an accrual method employer that wants to change its method of accounting for:

(A) FICA and FUTA taxes to a method consistent with the holding in Rev. Rul. 96-51, 1996-2 C.B. 36. Rev. Rul. 96-51 holds that, under the all events test of § 461, an accrual method employer may deduct in Year 1 its otherwise deductible FICA and FUTA taxes imposed with respect to year-end wages properly accrued in Year 1, but paid in Year 2, if the requirements of the recurring item exception are met; and

(B) state unemployment taxes and, in the event the taxpayer is an employer within the meaning of the Railroad Retirement Tax Act (RRTA) (see § 3231(a)), RRTA taxes to a method under which the taxpayer may deduct in Year 1 its otherwise deductible state unemployment taxes and railroad retirement taxes (if applicable) imposed with respect to year-end wages properly accrued in year 1, but paid in Year 2, if the requirements of the recurring item exception are met (including the requirement that, as of the end of the taxable year, all events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy, see § 1.461-5(b));

(ii) an accrual method employer that utilizes a method of accounting for FICA and FUTA taxes that is consistent with the holding in Rev. Rul. 96-51 and wants to change its method of accounting for state unemployment taxes and, in the event the employer is an employer within the meaning of RRTA (see § 3231(a)), RRTA taxes to a method under which the taxpayer may deduct in Year 1 its otherwise deductible state unemployment taxes and railroad retirement taxes (if applicable) imposed with respect to year-end wages properly accrued in Year 1, but paid in Year 2, if the requirements of the recurring item exception are met (including the requirement that, as of the end of the taxable year, all events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy, see § 1.461-5(b)); or

(iii) an accrual method taxpayer that wants to change its method of accounting for FICA and FUTA taxes to the safe harbor method provided in Rev. Proc. 2008-25, 2008-13 I.R.B. 686. Rev. Proc. 2008-25 provides that for purposes of the recurring item exception, a taxpayer will be treated as satisfying the requirement in § 1.461-5(b)(1)(i) for its payroll tax liability in the same taxable year in which all events have occurred that establish the fact of the related compensation liability and the amount of the related compensation liability can be determined with reasonable accuracy.

(b) *Inapplicability.* This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder

to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under this section 19.04 of the APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

(2) *Recurring item exception.* A taxpayer that previously has not changed to or adopted the recurring item exception for FICA taxes, FUTA taxes, state unemployment taxes, and railroad retirement taxes (if applicable) must change to the recurring item exception method for FICA taxes, FUTA taxes, state unemployment taxes, and railroad retirement taxes (if applicable) as specified in § 461(h)(3) as part of this change.

(3) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to a change described in section 19.04(a)(1)(iii) of this APPENDIX that is made for the taxpayer's first taxable year ending on or after December 31, 2007.

(4) *Amounts taken into account.* Applicable provisions of the Code, regulation, and other guidance published in the IRB prescribe the manner in which a liability that has been incurred is taken into account. For example, for a taxpayer with inventories, certain taxes must be included in inventory costs and may be recovered through cost of goods sold. See § 1.263A-1(e)(3)(ii)(L). A taxpayer may not rely on the provisions of this section 19.04 of the APPENDIX to take a current year deduction.

(5) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 19.04(1)(a)(i) or (ii) of this APPENDIX is "45." The designated automatic account-

ing method change number for a change under section 19.04(1)(a)(iii) of this APPENDIX is "113." See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Jamie Kim at 202-622-4950 (not a toll-free call).

.05 Cooperative advertising.

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for cooperative advertising costs to a method consistent with the holding in Rev. Rul. 98-39, 1998-2 C.B. 198. Rev. Rul. 98-39 generally provides that, under the all events test of § 461, an accrual method manufacturer's liability to pay a retailer for cooperative advertising services is incurred in the year in which the services are performed, provided the manufacturer is able to reasonably estimate this liability, and even though the retailer does not submit the required claim form until the following year.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 19.05 of this APPENDIX is "46." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Jamie Kim at 202-622-4950 (not a toll-free call).

.06 Timing of incurring certain liabilities for services or insurance.

(1) *Description of change.* This change applies to a taxpayer that is currently treating the mere execution of a contract for services or insurance as establishing the fact of the liability under § 461 and wants to change from that method of accounting for liabilities for services or insurance to comply with Rev. Rul. 2007-3, 2007-4 I.R.B. 350, that is, all the events needed to establish the fact of the liability occur when (a) the event fixing the liability, whether that be the required performance or other event occurs or (b) payment is due, whichever happens earliest.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 19.06 of this APPENDIX is "106." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Leta Ayres at 202-622-5020 (not a toll-free call).

.07 Rebates and allowances.

(1) *Description of change.*

(a) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting for treating its liability for rebates and allowances to the recurring item exception method under § 461(h)(3) and § 1.461-5.

(b) *Inapplicability.* This change does not apply to a taxpayer's liability to pay a refund.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 19.07 of this APPENDIX is "135." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Jamie Kim at 202-622-4950 (not a toll-free call).

SECTION 20. RENT (§ 467)

.01 Change from a ratable inclusion of rental income or expense to inclusion in accordance with the rent allocation.

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that:

(i) is a party to § 467 rental agreements (within the meaning of § 1.467-1(c)(1) for rental agreements entered into after May 18, 1999, and § 467(d) for all other agreements);

(ii) includes in taxable income a ratable or straight-line amount of rental income or expense for its § 467 rental agreements; and

(iii) wants to change its method of accounting for its fixed rent (as defined in § 1.467-1(d)(2)) to the rent allocation method provided in § 1.467-1(d)(2)(iii).

(b) *Inapplicability.* This change does not apply to taxpayers required to use the constant rental accrual method described in § 1.467-(3)(a) or the proportional rental accrual method described in § 1.467-(2)(a) for their fixed rent.

(2) *Additional requirements.* The taxpayer must attach to its Form 3115 a copy

of one of its § 467 rental agreements to be covered by this automatic change (or at least the pages of the agreement relating to the manner in which rent is allocated).

(3) *Audit protection.* A taxpayer receives audit protection under section 7 of this revenue procedure in connection with this change for all of its § 467 rental agreements except those determined by the Commissioner to be disqualified lease-backs or long-term agreements described in § 1.467-3(b).

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 20.01 of this APPENDIX is "136." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact William Ruane at 202-622-4920 (not a toll-free call).

.02 *Reserved.*

SECTION 21. INVENTORIES (§ 471)

.01 *Cash discounts.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for cash discounts (discounts granted for timely payment) when they approximate a fair interest rate, from a method of consistently including the price of the goods before discount in the cost of the goods and including in gross income any discounts taken (the "gross invoice method"), to a method of reducing the cost of the goods by the cash discounts and deducting as an expense any discounts not taken (the "net invoice method"), or *vice versa*. See Rev. Rul. 73-65, 1973-1 C.B. 216.

(2) *Computation of § 481(a) adjustment for changes to net invoice method.* In the case of a taxpayer changing from the gross invoice method to the net invoice method, a negative adjustment is required to prevent duplications arising from the fact that the gross invoice method reported income upon timely payment for some or all of the goods that remain in inventory, and a positive adjustment is required to prevent omissions arising from the fact that the gross invoice method included the invoice price, unadjusted for the cash discounts, of some or all goods in cost of goods sold

and the discount will be earned by payment in a subsequent taxable year. The net § 481(a) adjustment can be computed by deducting the "Applicable Discount" at the beginning of the year of change from the "Available Discount" at the beginning of the year of change. The Available Discount is equal to the difference between the accounts payable balance under the gross invoice method and the net invoice method. The Applicable Discount is equal to the difference between the beginning inventory value under the gross invoice method and the net invoice method.

Example. Taxpayer's accounts payable balance at the beginning of the year of change was \$1,000 under the gross invoice method and \$980 under the net invoice method. Taxpayer's inventory value was \$3,000 under the gross invoice method and \$2,955 under the net invoice method. The Available Discount is \$20 (\$1,000 - \$980) and the Applicable Discount is \$45 (\$3,000 - \$2,955). Thus, Taxpayer's net § 481(a) adjustment is a negative \$25 (\$20 - \$45).

(3) *Computation of § 481(a) adjustment for changes to gross invoice method.* In the case of a taxpayer changing from the net invoice method to the gross invoice method, a positive adjustment is required to prevent omissions arising from the fact that the net invoice method did not report income upon timely payment for some or all of the goods that remain in inventory, and a negative adjustment is required to prevent duplications arising from the fact that the net invoice method included the invoice price, adjusted for the cash discounts, of some or all goods in cost of goods sold and the discount will be earned by payment in a subsequent taxable year. The net § 481(a) adjustment can be computed by deducting the "Applicable Discount" at the beginning of the year of change from the "Available Discount" at the beginning of the year of change. The Available Discount is equal to the difference between the accounts payable balance under the gross invoice method and the net invoice method. The Applicable Discount is equal to the difference between the beginning inventory value under the gross invoice method and the net invoice method.

Example. Taxpayer's accounts payable balance at the beginning of the year of change was \$980 under the net invoice method and \$1,000 under the gross invoice method. Taxpayer's inventory value was \$2,955 under the net invoice method and \$3,000 under the gross invoice method. The Applicable Discount is \$45

(\$3,000 - \$2,955) and the Available Discount is \$20 (\$1,000 - \$980). Thus, Taxpayer's net § 481(a) adjustment is a negative \$25 (\$20 - \$45).

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.01 of this APPENDIX is "48." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Patty Ward at 202-622-4970 (not a toll-free call).

.02 *Estimating inventory "shrinkage".*

(1) *Description of change.* This change applies to a taxpayer that wants to change to a method of accounting for estimating inventory shrinkage in computing ending inventory, using:

(a) the "retail safe harbor method" described in section 4 of Rev. Proc. 98-29, 1998-1 C.B. 857; or

(b) a method other than the retail safe harbor method, provided (i) the taxpayer's present method of accounting does not estimate inventory shrinkage, and (ii) the taxpayer's new method of accounting (that estimates inventory shrinkage) clearly reflects income under § 446(b).

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Additional requirements.* If the taxpayer wants to change to a method of accounting for inventory shrinkage other than the retail safe harbor method, the taxpayer must attach to its Form 3115 a statement setting forth a detailed description of all aspects of the new method of estimating inventory shrinkage (including, for last-in, first-out (LIFO) taxpayers, the method of determining inventory shrinkage for, or allocating inventory shrinkage to, each LIFO pool).

(4) *Audit protection.* A taxpayer does not receive audit protection under section 7 of this revenue procedure in connection with a change to the retail safe harbor method if, on the date the taxpayer files a copy of the Form 3115 with the national office, the taxpayer's present method of estimating inventory shrinkage is an issue under consideration within the meaning of section 3.09 of this revenue procedure.

(5) *Future change.* A taxpayer that changes to the retail safe harbor method described in Rev. Proc. 98–29 will not be precluded, solely by reason of such change, from changing to another safe harbor method for estimating inventory shrinkage in computing ending inventory in the first year such other safe harbor method is available.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.02 of this APPENDIX is “49.” See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Steve Gee at 202–622–4970 (not a toll-free call).

.03 *Small taxpayer exception from requirement to account for inventories under § 471.*

(1) *Description of change.* This change applies to either a taxpayer (other than a taxpayer described § 448(a)(3)) with “average annual gross receipts” (as defined in section 5.01 of Rev. Proc. 2001–10, 2001–1 C.B. 272) of \$1,000,000 or less or a qualifying taxpayer (other than a taxpayer described in § 448) with “average annual gross receipts” (as defined in section 5.02 of Rev. Proc. 2002–28, 2002–1 C.B. 815) of \$10,000,000 or less that wants to change from a method of accounting for inventoriable items (including, if applicable, from the method of capitalizing costs under § 263A) to the method described in Rev. Proc. 2001–10 and Rev. Proc. 2002–28 for treating inventoriable items in the same manner as materials and supplies that are not incidental under § 1.162–3.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Manner of making change.* See Rev. Proc. 2001–10 or Rev. Proc. 2002–28 (as applicable) for additional guidance on the computation of the § 481(a) adjustment and the completion of the Form 3115.

(4) *Concurrent automatic change to the overall cash method under Rev. Proc. 2001–10 or Rev. Proc. 2002–28.* A taxpayer that wants to make both this change and a change to the overall cash method under Rev. Proc. 2001–10 or Rev. Proc.

2002–28 (see section 14.03 of this APPENDIX) for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.03 of this APPENDIX for the small taxpayer (\$1 million) inventory exception contained in Rev. Proc. 2001–10 is “50.” The designated automatic accounting method change number for a change under section 21.03 of this APPENDIX for the small taxpayer (\$10 million) inventory exception contained in Rev. Proc. 2002–28 is “51.” See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact W. Thomas McElroy, Jr. at 202–622–4970 (not a toll-free call).

.04 *Qualifying volume-related trade discounts.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting to treat qualifying volume-related trade discounts as a reduction in the cost of merchandise purchased at the time the discount is recognized in accordance with § 1.471–3(b). A “qualifying volume-related trade discount” means a discount satisfying the following criteria:

(a) the taxpayer receives or earns the discount based solely upon the purchase of a particular volume of the merchandise to which the discount relates;

(b) the taxpayer is neither obligated nor expected to perform or provide any services in exchange for the discount; and

(c) the discount is not a reimbursement of any expenditure incurred or to be incurred by the taxpayer.

(2) *Section 481(a) adjustment.* The net § 481(a) adjustment attributable to the change is computed in a manner similar to the computation of a net § 481(a) adjustment in the case of a change to the net invoice method of accounting for cash discounts. See section 21.01(2) of this APPENDIX.

(3) *Designated automatic accounting method change number.* The designated

automatic accounting method change number for a change under section 21.04 of this APPENDIX is “53.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Patty Ward at 202–622–4970 (not a toll-free call).

.05 *Impermissible methods of identification and valuation.*

(1) *Description of change.* This change applies to a taxpayer:

(a) changing from an impermissible method of accounting described in §§ 1.471–2(f)(1) through (5), including a LIFO taxpayer restoring a write down of inventory below cost or discontinuing maintaining an inventory reserve; or

(b) changing from a gross profit method or from a method of determining market that is not in accordance with § 1.471–4.

(i) *Gross profit method.* A gross profit method is a method in which the taxpayer estimates the cost of goods sold by reducing its gross sales by a percentage “mark-up” from cost. The estimated cost of goods sold is subtracted from the sum of the beginning inventory and purchases and the result is used as the ending inventory.

(ii) *Method of determining market.* An example of a method of determining market that is not in accordance with § 1.471–4 is where a taxpayer, under ordinary circumstances, determines the market value of purchased merchandise using judgment factors, and not using the prevailing current bid price on the inventory date for the particular merchandise in the volume in which it is usually purchased by the taxpayer.

(2) *Applicability.* For purposes of this change, a taxpayer must be changing to an inventory method (identification or valuation, or both) specifically permitted by the Code, the regulations, or a decision by the United States Supreme Court, a revenue ruling, a revenue procedure, or other guidance published in the IRB for the inventory goods, and the taxpayer is neither prohibited from using that method nor required to use a different inventory method for those inventory goods. This change does not apply to a change described in another section of this revenue procedure or in other guidance published in the IRB.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.05 of this APPENDIX is “54.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Patty Ward at 202–622–4970 (not a toll-free call).

.06 Core Alternative Valuation Method.

(1) *Description of change.*

(a) *Applicability.* This change applies to a remanufacturer and rebuilder of motor vehicle parts and a reseller of remanufactured and rebuilt motor vehicle parts that use the cost or market, whichever is lower, (LCM) inventory valuation method to value their inventory of cores held for remanufacturing or sale and wants to use the Core Alternative Valuation (CAV) method specified in Rev. Proc. 2003–20, 2003–1 C.B. 445.

(b) *Inapplicability.* This change does not apply to a taxpayer that values its inventory of cores at cost (including a taxpayer using the LIFO inventory method) unless the taxpayer concurrently changes (under section 6.02 of Rev. Proc. 2003–20) from cost to the LCM method for its cores (including labor and overhead related to the cores in raw materials, work-in-process and finished goods).

(2) *Concurrent automatic change.* A taxpayer that wants to make both this change and (i) a change from the cost method to the LCM method under section 21.11 of this APPENDIX, or (ii) a change from the LIFO inventory method to a permitted method for identification under (and as determined and defined in) section 22.01(1)(b) of this APPENDIX for the same year of change, should file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.06 of this APPENDIX is “55.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under

this section, contact Willie Armstrong at 202–622–4970 (not a toll-free call).

.07 Replacement cost for automobile dealers’ parts inventory.

(1) *Description of change.* This change applies to a taxpayer that is engaged in the trade or business of selling vehicle parts at retail, that is authorized under an agreement with one or more vehicle manufacturers or distributors to sell new automobiles or new light, medium, or heavy-duty trucks, and that wants to use the replacement cost method described in section 4 of Rev. Proc. 2002–17, 2002–1 C.B. 676, for its vehicle parts inventory. See Rev. Proc. 2002–17 for further information regarding this change.

(2) *Manner of making change.* This change is made on a cut-off basis and applies only to the computation of ending inventories on or after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.07 of this APPENDIX is “63.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Willie Armstrong at 202–622–4970 (not a toll-free call).

.08 Replacement cost for heavy equipment dealers’ parts inventory.

(1) *Description of change.* This change applies to a heavy equipment dealer that is engaged in the trade or business of selling heavy equipment parts at retail, that is authorized under an agreement with one or more heavy equipment manufacturers or distributors to sell new heavy equipment, and that wants to use the replacement cost method described in section 4 of Rev. Proc. 2006–14, 2006–1 C.B. 350, for its heavy equipment parts inventory.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change for either the first or second taxable year ending on or after April 30, 2005.

(3) *Manner of making the change.* This change is made on a cut-off basis and ap-

plies only to the computation of ending inventories after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(4) *Concurrent automatic change.* A taxpayer that wants to make both this change and another automatic change in method of accounting under § 263A (see section 11 of this APPENDIX) for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115, and complies with the ordering rules of § 1.263A–7(b)(2).

(5) *Designated automatic accounting method change number.* The taxpayer must prepare and file a Form 3115 in accordance with section 6 of Rev. Proc. 2006–14. The designated automatic accounting method change number for a change under section 21.08 of this APPENDIX is “96.” See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Willie Armstrong at 202–622–4970 (not a toll-free call).

.09 Rotable spare parts.

(1) *Description of change.* This change applies to a taxpayer that is using the safe harbor method of accounting to treat its rotatable spare parts as depreciable assets in accordance with Rev. Proc. 2007–48, 2007–29 I.R.B. 110, and wants to change its method of accounting to treat its rotatable spare parts as inventoriable items. This change also applies to a taxpayer who is treating its rotatable spare parts as depreciable assets in a manner similar to the safe harbor method described in Rev. Proc. 2007–48, and wants to change its method of accounting to treat its rotatable spare parts as inventoriable items. A taxpayer changing its method of accounting for rotatable spare parts under this section 21.09 of the APPENDIX, must use a proper inventory method to identify and value its rotatable spare parts.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to a taxpayer that is required to make the change

in method of accounting pursuant to section 5.06 of Rev. Proc. 2007-48.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.09 of this APPENDIX is "110." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Gwen Turner at 202-622-5020 (not a toll-free call).

.10 *Advance Trade Discount Method.*

(1) *Description of change.* This change applies to a taxpayer that wants to use the Advance Trade Discount Method described in Rev. Proc. 2007-53, 2007-30 I.R.B. 233.

(2) *Scope.* This change in method of accounting applies to an accrual method taxpayer required to use an inventory method of accounting and maintaining inventories, as provided in § 471 and the regulations thereunder, that receives advance trade discounts as defined in § 4.03 of Rev. Proc. 2007-53.

(3) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to a taxpayer that wants to make the change for its first taxable year ending on or after July 2, 2007.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.10 of this APPENDIX is "111." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact W. Thomas McElroy, Jr. at 202-622-4970 (not a toll-free call).

.11 *Permissible methods of identification and valuation.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change from one permissible method of identifying and valuing inventories to another permissible method of identifying and valuing inventories that is not a change described in another section of this revenue procedure or in other guidance published in the IRB.

(b) *Permissible method defined.* For purposes of this change, a permissible

method is an inventory method (identification or valuation, or both) specifically permitted by the Code, the regulations, a decision by the United States Supreme Court, a revenue ruling, a revenue procedure, or other guidance published in the IRB for the inventory goods, and the taxpayer is neither prohibited from using that method nor required to use a different inventory method for those inventory goods.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.11 of this APPENDIX is "137." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Patty Ward at 202-622-4970 (not a toll-free call).

.12 *Change in the official used vehicle guide utilized in valuing used vehicles.*

(1) *Description of change.* Used vehicles taken in trade as part payment on the sale of vehicles by a dealer may be valued for inventory purposes at valuations comparable to those listed in an official used vehicle guide as the average wholesale prices for comparable vehicles. See Rev. Rul. 67-107, 1967-1 C.B. 115. This change applies to: (a) a taxpayer that wants to change from not using an official used vehicle guide to using an official used vehicle guide for valuing used vehicles; or (b) a taxpayer that wants to change to a different official used vehicle guide for valuing used vehicles.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.12 of this APPENDIX is "138." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Patty Ward at 202-622-4970 (not a toll-free call).

.13 *Invoiced advertising association costs for new vehicle retail dealerships.*

(1) *Description of change.* This change applies to a taxpayer that is engaged in the trade or business of retail sales of new automobiles or new light-duty trucks ("dealership") that wants to discontinue capitalizing certain advertising costs as acquisition costs under § 1.471-3(b). The change

applies to advertising costs that meet the following criteria: (a) the dealership must pay this advertising fee when acquiring vehicles from the manufacturer; (b) the advertising costs are separately coded and included in the manufacturer's invoice cost of the new vehicle; (c) the advertising cost is a flat fee per vehicle or a fixed percentage of the invoice price; and (d) the fees collected by the manufacturer are paid to local advertising associations that promote and advertise the manufacturer's products in the dealership's market area. Under the new method, the dealership will exclude advertising costs that meet the above criteria from the cost of new vehicles and deduct the advertising costs under § 162 as the advertising services are provided to the dealership. See § 1.461-4(d)(2)(i).

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.13 of this APPENDIX is "139." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Patty Ward at 202-622-4970 (not a toll-free call).

.14 *Rolling-average method of accounting for inventories.*

(1) *Description of change.* This change applies to a taxpayer that uses a rolling-average method to value inventories for financial accounting purposes and wants to use the same rolling-average method to value inventories for federal income tax purposes in accordance with Rev. Proc. 2008-43, 2008-30 I.R.B. 186.

(2) *Certain scope limitation inapplicable.* The scope limitation in section 4.02(7) of this revenue procedure does not apply to the change to a rolling-average method in the taxpayer's first or second taxable year ending on or after December 31, 2007.

(3) *Manner of making change.* This change is made on a cut-off basis unless the taxpayer's books and records contain sufficient information to compute a § 481(a) adjustment, in which case the taxpayer may choose to implement the change with a § 481(a) adjustment as provided in section 5.04 of this revenue procedure. See section 2.06 of this revenue procedure for more information regarding a cut-off basis.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 21.14 of this APPENDIX is “114.” See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202-622-4970 (not a toll-free call).

SECTION 22. LAST-IN, FIRST-OUT (LIFO) INVENTORIES (§ 472)

.01 *Change from the LIFO inventory method.*

(1) *Description of change.*

(a) *In general.* This change applies to a taxpayer that wants to:

(i) change from the LIFO inventory method for all its LIFO inventory or for one or more dollar-value pools; and

(ii) change to a permitted method or methods as determined in section 22.01(1)(b) of this APPENDIX.

(b) *Method to be used.*

(i) *Determining the permitted method to be used.* A taxpayer may change to one or more non-LIFO inventory methods for the LIFO inventories that are the subject of this accounting method change, but only if the selected non-LIFO method is a permitted method for the inventory goods to which it will be applied. For example, a heavy equipment dealer may change to the specific identification method for new heavy equipment inventories and the replacement cost method, as described in Rev. Proc. 2006-14, 2006-1 C.B. 350, for heavy equipment parts inventories.

(ii) *Permitted method defined.* For purposes of section 22.01 of this APPENDIX, an inventory method (identification or valuation, or both) is a permitted method if it is specifically permitted by the Code, the regulations, a decision by the United States Supreme Court, a revenue ruling, a revenue procedure, or other guidance published in the IRB for the inventory goods and if the taxpayer is neither prohibited from using that method nor required to use a different inventory method for those inventory goods.

(iii) *Determining permitted method.* Whether an inventory method is a permitted method is determined without regard

to the types and amounts of costs capitalized under the taxpayer’s method of computing inventory cost. See § 263A and the regulations thereunder, which govern the types and amounts of costs required to be included in inventory cost for taxpayers subject to those provisions.

(2) *Certain scope limitation inapplicable.* The scope limitation in section 4.02(7) of this revenue procedure does not apply in the first taxable year that the taxpayer does not or will not comply with the requirements of § 472(e)(2) because the taxpayer has applied or will apply International Financial Reporting Standards in its financial statements or because the taxpayer has been acquired by an entity that has not or will not use the LIFO method in its financial statements.

(3) *Limitation on LIFO election.* The taxpayer may not re-elect the LIFO inventory method for a period of at least five taxable years beginning with the year of change unless, based on a showing of unusual and compelling circumstances, consent is specifically granted by the Commissioner to change the method of accounting at an earlier time. A taxpayer that wants to re-elect the LIFO inventory method within a period of five taxable years (beginning with the year of change) must file a Form 3115 in accordance with Rev. Proc. 97-27 (or any successor). A taxpayer that wants to re-elect the LIFO inventory method after a period of five taxable years (beginning with the year of change) is not required to file a Form 3115 in accordance with Rev. Proc. 97-27, but must file a Form 970, *Application To Use LIFO Inventory Method*, in accordance with § 1.472-3.

(4) *Effect of subchapter S election by corporation.*

(a) *S election effective for year of LIFO discontinuance.* If a C corporation elects to be treated as an S corporation for the taxable year in which it discontinues use of the LIFO inventory method, § 1363(d) requires an increase in the taxpayer’s gross income for the LIFO recapture amount (as defined in § 1363(d)(3)) for the taxable year preceding the year of change (the taxpayer’s last taxable year as a C corporation) and a corresponding adjustment to the basis of the taxpayer’s inventory as of the end of the taxable year preceding the year of change. Any increase in in-

come tax as a result of the inclusion of the LIFO recapture amount is payable in four equal installments, beginning with the taxpayer’s last taxable year as a C corporation as provided in § 1363(d)(2). Any corresponding basis adjustment is taken into account in computing the § 481(a) adjustment (if any) that results upon the discontinuance of the LIFO inventory method by the corporation.

(b) *S election effective for a year after LIFO discontinuance.* If a C corporation elects to be treated as an S corporation for a taxable year after the taxable year in which it discontinued use of the LIFO inventory method, the remaining balance of any positive § 481(a) adjustment must be included in its gross income in its last taxable year as a C corporation. If this inclusion results in an increase in tax for its last taxable year as a C corporation, this increase in tax is payable in four equal installments, beginning with the taxpayer’s last taxable year as a C corporation as provided in § 1363(d)(2), unless the taxpayer is required to take the remaining balance of the § 481(a) adjustment into account in the last taxable year as a C corporation under another acceleration provision in section 5.04(3)(c) of this revenue procedure.

(5) *Additional requirements.* The taxpayer must complete the following statements and attach them to its Form 3115. If the taxpayer will use different methods for different inventory goods to which the change applies, the taxpayer must complete the statements for each of those different types of inventory goods.

(a) “The new method of identifying [*Insert description of inventory goods*] is the [*Insert method, as appropriate; that is, specific identification; FIFO; retail; etc.*] method.”

(b) “The new method of valuing [*Insert description of inventory goods*] is [*Insert method, as appropriate; that is, cost; LCM; etc.*].”

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.01 of this APPENDIX is “56.” See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202-622-4970 (not a toll-free call).

.02 *Determining current-year cost under the LIFO inventory method.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer using the LIFO inventory method that wants to change its method of determining current-year cost to:

(i) the actual cost of the goods most recently purchased or produced (most-recent-acquisitions method);

(ii) the actual cost of the goods purchased or produced during the taxable year in the order of acquisition (earliest-acquisitions method);

(iii) the average unit cost equal to the aggregate actual cost of all the goods purchased or produced throughout the taxable year divided by the total number of units so purchased or produced. See § 1.472-8(e)(2)(ii);

(iv) the specific identification method; or

(v) a rolling-average method if the taxpayer uses that rolling-average method in accordance with Rev. Proc. 2008-43, 2008-30 I.R.B. 186.

(b) *Inapplicability.* This change does not apply to a taxpayer using the lower of cost or market method to determine current-year cost. A taxpayer using the lower of cost or market method that valued inventory below cost may not change to a proper cost valuation under this section 22.02 of the APPENDIX.

(2) *Certain scope limitation inapplicable.* The scope limitation in section 4.02(7) of this revenue procedure does not apply to the change to a rolling-average method in the taxpayer's first or second taxable year ending on or after December 31, 2007.

(3) *Manner of making change.* This change is made using a cut-off basis and applies only to the computations of current-year cost after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(4) *Concurrent change to a rolling-average method.* A taxpayer that wants to make both a change to a rolling-average method of determining current-year cost for its LIFO inventory under this section 22.02 of the APPENDIX and a change to a rolling-average method of ac-

counting for non-LIFO inventories under Rev. Proc. 2008-43 (see section 21.14 of this APPENDIX) should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.02 of this APPENDIX is "57." See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202-622-4970 (not a toll-free call).

.03 *Alternative LIFO inventory method for retail automobile dealers.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer engaged in the trade or business of retail sales of new automobiles or new light-duty trucks ("automobile dealer") that wants to change to the "Alternative LIFO method" described in section 4 of Rev. Proc. 97-36, 1997-2 C.B. 450, as modified by Rev. Proc. 2008-23, 2008-12 I.R.B. 664, for its LIFO inventories of new automobiles and new light-duty trucks. Light-duty trucks are trucks with a gross vehicle weight of 14,000 pounds or less, which also are referred to as class 1, 2, or 3 trucks.

(b) *Inapplicability.* This change does not apply to an automobile dealer that uses the inventory price index computation (IPIC) method for goods other than new automobiles, new light-duty trucks, parts and accessories, used automobiles, and used trucks.

(2) *Manner of making change.*

(a) *Cut-off basis.* This change is made using a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. See section 2.06 of this revenue procedure and section 5.03(6) of Rev. Proc. 97-36 for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) *Concurrent change from IPIC method.* An automobile dealer using the IPIC method that also has parts and accessories, used automobiles, or used

light-duty trucks (other goods) inventory may incorporate a change, using a cut-off basis, from IPIC to another acceptable LIFO method for those other goods into this change. When changing from IPIC to a dollar-value LIFO method for its other goods, the automobile dealer must establish separate inventory pools for new automobiles and new light-duty trucks, unless the automobile dealer also concurrently changes to the Vehicle-Pool Method (see section 22.08 of this APPENDIX). Further, the automobile dealer must establish a separate inventory pool for the parts and accessories.

(c) *Additional requirements.* An automobile dealer also must comply with the following:

(i) the conditions in section 5.03 of Rev. Proc. 97-36; and

(ii) for an automobile dealer changing from the IPIC method, the automobile dealer also must attach to the application a schedule setting forth the classes of goods for which the automobile dealer has elected to use the LIFO method and the accounting method changes being made under section 22.03 of this APPENDIX for each class of goods.

(3) *Concurrent change to the Vehicle-Pool Method.* A taxpayer that wants to make both a change to the Alternative LIFO Method under this section 22.03 of the APPENDIX and a change to the Vehicle-Pool Method under Rev. Proc. 2008-23, 2008-12 I.R.B. 664, (see section 22.08 of this APPENDIX) should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.03 of this APPENDIX is "58." See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202-622-4970 (not a toll-free call).

.04 *Used vehicle alternative LIFO method.*

(1) *Description of change.* This change applies to a taxpayer that sells used automobiles and used light-duty trucks ("used

vehicle dealers”) that wants to change to the “Used Vehicle Alternative LIFO Method” as described in Rev. Proc. 2001–23, 2001–1 C.B. 784, as modified by Announcement 2004–16, 2004–1 C.B. 668, and Rev. Proc. 2008–23, 2008–12 I.R.B. 664.

(2) *Additional requirements.* A taxpayer making this change must comply with the additional conditions set forth in section 5.04 of Rev. Proc. 2001–23.

(3) *Manner of making change.*

(a) *Cut-off basis.* This change is made on a cut-off basis, which requires that the value of the taxpayer’s used automobile and used light-duty truck inventory at the beginning of the year of change must be the same as the value of that inventory at the end of the preceding taxable year, plus cost restorations, if any, required by section 5.04(5) of Rev. Proc. 2001–23. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) *Bargain purchase.* If the taxpayer has previously improperly accounted for a bulk bargain purchase, the taxpayer must, as part of this change, first change its method of accounting to comply with *Hamilton Industries, Inc. v. Commissioner*, 97 T.C. 120 (1991), and compute a § 481(a) adjustment for that part of the change. See Announcement 91–173, 1997–47 I.R.B. 29. Upon examination, if a taxpayer has properly changed under section 22.04 of this APPENDIX except for complying with section 22.04(3)(b) of this APPENDIX, an examining agent may not deny the taxpayer the change. However, the taxpayer does not receive audit protection under section 7 of this revenue procedure with respect to the improper method of accounting for the bargain purchase. Accordingly, the examining agent may make any necessary adjustments in any open year to effect compliance with *Hamilton Industries, Inc.*

(c) *New base year.* In effecting a change to the Used Vehicle Alternative LIFO Method under this revenue procedure, any LIFO inventory cost increments previously determined and the value of those increments must be retained. Instead of using the earliest taxable year for which the taxpayer adopted LIFO as the base

year, the year of change must be used as the new base year in determining the value of all existing LIFO cost increments for the year of change and later taxable years. (The cumulative index at the beginning of the year of change will be 1.00). The base-year cost of all LIFO cost increments at the beginning of the year of change must be restated in terms of new base-year costs, using the year of change as the new base year, and the indexes for previously determined inventory increments must be recomputed accordingly. The new base-year cost of a pool is equal to the total current-year cost of all the vehicles in the pool.

(d) *Application.* Taxpayers are reminded to complete all applicable parts of the Form 3115, including Part I of Schedule C.

(4) *Concurrent change from IPIC method.* A used vehicle dealer using the IPIC method that also has parts and accessories, new automobiles, or new light-duty trucks (other goods) inventory may incorporate a change, using a cut-off basis, from IPIC to another acceptable LIFO method for those other goods into this change. When changing from IPIC to a dollar-value LIFO method for its other goods, the used vehicle dealer must establish separate inventory pools for new automobiles and new light-duty trucks, unless the used vehicle dealer also concurrently changes to the Vehicle-Pool Method (see section 22.08 of this APPENDIX). Further, the used vehicle dealer must establish a separate inventory pool for the parts and accessories.

(5) *Concurrent change to the Vehicle-Pool Method.* A taxpayer that wants to make both a change to the Used Vehicle Alternative LIFO Method under this section 22.04 of the APPENDIX and a change to the Vehicle-Pool Method under Rev. Proc. 2008–23 (see section 22.08 of this APPENDIX) should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.04 of this APPENDIX is “59.” See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202–622–4970 (not a toll-free call).

.05 *Determining the cost of used vehicles purchased or taken as a trade-in.*

(1) *Description of change and scope.*

(a) *Applicability.* This change applies to a taxpayer using the LIFO inventory method that wants to:

(i) determine the cost of used vehicles acquired by trade-in using the average wholesale price listed by an official used vehicle guide on the date of the trade-in. See Rev. Rul. 67–107, 1967–1 C.B. 115. The official used vehicle guide selected must be consistently used unless the taxpayer receives permission to use a different guide;

(ii) use a different official used vehicle guide for determining the cost of used vehicles acquired by trade-in;

(iii) determine the cost of used vehicles purchased for cash using the actual purchase price of the vehicle; or

(iv) reconstruct the beginning-of-the-year cost of used vehicles purchased for cash using values computed by national auto auction companies based on vehicles purchased for cash. The national auto auction company selected must be consistently used.

(b) *Inapplicability.* This change does not apply to a taxpayer that adopted or changed to the Used Vehicle Alternative LIFO Method (see section 22.04 of the APPENDIX of this revenue procedure).

(2) *Manner of making change.* This change is made on a cut-off basis and applies only to used vehicles acquired on or after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.05 of this APPENDIX is “60.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Patty Ward at 202–622–4970 (not a toll-free call).

.06 *Change to the inventory price index computation (IPIC) method.*

(1) *Description of change.* This change applies to a taxpayer that wants to change:

(a) from a non-IPIC LIFO inventory method to the IPIC method in accordance with all relevant provisions of § 1.472-8(e)(3); or

(b) from the IPIC method as described in T.D. 7814, 1982-1 C.B. 84, (March 15, 1982) (the old IPIC method) to the IPIC method as described in T.D. 8976, 2002-1 C.B. 421, (January 8, 2002) (the new IPIC method), which includes the following required changes (if applicable):

(i) from using 80% of the inventory price index (IPI) to using 100% of the IPI to determine the base-year cost and dollar-value of a LIFO pool(s);

(ii) from using a weighted arithmetic mean to using a weighted harmonic mean to compute an IPI for a dollar-value pool(s); and

(iii) from using a components-of-cost method to define inventory items to using a total-product-cost method to define inventory items.

(2) *Manner of making change.* This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(3) *Bargain purchase.* If the taxpayer has previously improperly accounted for a bulk bargain purchase, the taxpayer must, as part of this change, first change its method of accounting to comply with *Hamilton Industries, Inc. v. Commissioner*, 97 T.C. 120 (1991), and compute a § 481(a) adjustment for that part of the change. See Announcement 91-173, 1997-47 I.R.B. 29. Upon examination, if a taxpayer has properly changed under section 22.06 of this APPENDIX except for complying with section 22.06(3) of this APPENDIX, an examining agent may not deny the taxpayer the change. However, the taxpayer does not receive audit protection under section 7 of this revenue procedure with respect to the improper method of accounting for the bargain purchase. Accordingly, the examining agent may make any necessary adjustments in

any open year to effect compliance with *Hamilton Industries, Inc.*

(4) *Concurrent automatic changes.*

(a) A taxpayer that wants to make this change and to change its method of determining current-year cost under section 22.02 of this APPENDIX for the same year of change may file a single Form 3115 for both changes, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(b) A taxpayer that wants to make this change and to change its method of pooling to IPIC-method pools described in § 1.472-8(b)(4) or § 1.472-8(c)(2) under section 22.07 of this APPENDIX for the same year of change may file a single Form 3115, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(c) A taxpayer that wants to make this change and to change its method of pooling under section 22.10 of this APPENDIX for the same year of change may file a single Form 3115, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.06 of this APPENDIX is "61." See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202-622-4970 (not a toll-free call).

.07 *Changes within the inventory price index computation (IPIC) method.*

(1) *Description of change.* This change applies to a taxpayer using the IPIC method described in § 1.472-8(e)(3) as revised by T.D. 8976, 2002-1 C.B. 421, (new IPIC method) that wants to make one or more of the following changes:

(a) change from the double-extension IPIC method to the link-chain IPIC method, or *vice versa*. See § 1.472-8(e)(3)(iii)(E) for principles concerning the computation of the inventory price index under the double-extension IPIC method and the link-chain IPIC method;

(b) change to or from the 10 percent method. See § 1.472-8(e)(3)(iii)(C) for principles concerning the assignment of inventory items to BLS categories under the IPIC method;

(c) change to IPIC-method pools described in § 1.472-8(b)(4) or § 1.472-8(c)(2), including a change to begin or discontinue applying one or both of the 5 percent pooling rules;

(d) change to combine or separate pools as a result of the application of a 5 percent pooling rule described in § 1.472-8(b)(4) or § 1.472-8(c)(2);

(e) change its selection of BLS table from Table 3 (Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, detailed expenditure categories) of the monthly CPI Detailed Report to Table 6 (Producer price indexes percent changes for commodity groupings and individual items, not seasonally adjusted) of the monthly PPI Detailed Report, or *vice versa*. See § 1.472-8(e)(3)(iii)(B)(2) for principles concerning the selection of a BLS table under the IPIC method;

(f) change the assignment of one or more inventory items to BLS categories under either Table 3 (Consumer Price Index for All Urban Consumers (CPI-U): U.S. City average, detailed expenditure categories) of the monthly CPI Detailed Report or Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the monthly PPI Detailed Report. See § 1.472-8(e)(3)(iii)(C) for principles concerning the assignment of inventory items to BLS categories under the IPIC method; and

(g) change the representative month when necessitated because of a change in taxable year or a change in method of determining current-year cost made pursuant to section 22.02 of this APPENDIX. See § 1.472-8(e)(3)(iii)(B) for principles concerning the determination of a representative month under the IPIC method. A change in method of determining current-year cost and a change of the representative month may be made using a single Form 3115, provided the taxpayer enters the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115. See section 6.02(4) of this revenue procedure.

(2) *Manner of making change.* These changes are made on a cut-off basis and apply only to the computation of ending inventories after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required. A taxpayer that changes pursuant to sections 22.07(1)(a), (b) and (e) of this APPENDIX must establish a new base year in the year of change.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.07 of this APPENDIX is “62.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202-622-4970 (not a toll-free call).

.08 *Changes to the Vehicle-Pool Method.*

(1) *Description of change.* This change applies to a retail dealer or wholesale distributor (“reseller”) of cars and light-duty trucks that wants to change to the “Vehicle-Pool Method” as described in Rev. Proc. 2008-23, 2008-12 I.R.B. 664.

(2) *Manner of making change.* This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required. A reseller that changes its method of pooling under Rev. Proc. 2008-23 and this section 22.08 of the APPENDIX must comply with § 1.472-8(g). Instead of using the earliest taxable year for which the reseller adopted the LIFO method for any items in a pool, the reseller must use the year of change as the base year when determining the LIFO value of that pool for the year of change and subsequent taxable years (*i.e.*, the cumulative index at the beginning of the year of change will be 1.00). The reseller must restate the base-year cost of all layers of increment in a pool at the beginning of the year of change in terms of new base-year cost. For an example of establishing a new base year, see § 1.472-8(e)(3)(iv)(B)(I)(ii).

(3) *Scope limitations inapplicable.* The scope limitation in section 4.02(7) of this revenue procedure does not apply for the reseller’s first taxable year ending on or after December 31, 2007.

(4) *Concurrent change to the Alternative LIFO Method or the Used Vehicle Alternative LIFO Method.* A reseller that wants to make both a change to the Vehicle-Pool Method under this section 22.08 of the APPENDIX and a change to the Alternative LIFO Method under Rev. Proc. 97-36 (*see* section 22.03 of this APPENDIX) or the Used Vehicle Alternative LIFO Method under Rev. Proc. 2001-23 (*see* section 22.04 of this APPENDIX) should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.08 of this APPENDIX is “112.” See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202-622-4970 (not a toll-free call).

.09 *Changes within the used vehicle alternative LIFO method.*

(1) *Description of change.* This change applies to a taxpayer using the “Used Vehicle Alternative LIFO Method” as described in Rev. Proc. 2001-23, 2001-1 C.B. 784, as modified by Announcement 2004-16, 2004-1 C.B. 668, and Rev. Proc. 2008-23, 2008-12 I.R.B. 664, that wants to change the particular “official used vehicle guide” utilized by the taxpayer in connection with the Used Vehicle Alternative LIFO Method or any change in the precise manner of its utilization (*e.g.*, a change in the specific guide category that a taxpayer uses to represent vehicles of average condition for purposes of section 4.02(5)(a) of Rev. Proc. 2001-23).

(2) *Manner of making change.* This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) ad-

justment is neither permitted nor required. A taxpayer that changes its method pursuant to section 22.09 of this APPENDIX must establish a new base year in the year of change.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.09 of this APPENDIX is “140.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202-622-4970 (not a toll-free call).

.10 *Changes to dollar-value pools of manufacturers.*

(1) *Description of change.* This change applies to a manufacturer that:

(a) purchases goods for resale (resale goods) and, thus, must reassign resale goods from the pool(s) it maintains for the goods it manufactures to one or more resale pools;

(b) wants to change from using multiple pools described in § 1.472-8(b)(3) to using natural business unit (NBU) pools described in § 1.472-8(b)(1), or *vice versa*; and

(c) wants to reassign items in NBU pools described in § 1.472-8(b)(1) into the same number or a greater number of NBU pools.

(2) *Manner of making change.* This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off method. Accordingly, a § 481(a) adjustment is neither permitted nor required. A taxpayer that changes its method of pooling pursuant to section 22.10 of this APPENDIX must combine or separate pools as required by § 1.472-8(g). A taxpayer that changes its method of pooling pursuant to section 22.10 of this APPENDIX must combine or separate pools as required by § 1.472-8(g).

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 22.10 of this APPENDIX is “141.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Leo Nolan at 202-622-4970 (not a toll-free call).

SECTION 23. MARK-TO-MARKET ACCOUNTING METHOD FOR DEALERS IN SECURITIES (§ 475)

.01 *Commodities dealers, securities traders, and commodities traders electing to use the mark-to-market method of accounting under § 475(e) or (f).*

(1) *Description of change.* This change applies to certain taxpayers that have elected to use the mark-to-market method of accounting under § 475(e) or (f). Under § 475(e) and (f) and Rev. Proc. 99-17, 1999-1 C.B. 503, if a taxpayer makes an election under § 475(e) or (f), then beginning with the first taxable year for which the election is effective (election year), mark to market is the only permissible method of accounting for securities or commodities subject to the election. Thus, if the electing taxpayer's method of accounting for its taxable year immediately preceding the election year is inconsistent with § 475, the taxpayer is required to change its method of accounting to comply with the election. A taxpayer that makes a § 475(e) or (f) election but fails to change its method of accounting to comply with that election is using an impermissible method. See section 4 of Rev. Proc. 99-17.

(2) *Scope.* This change applies to a taxpayer if all of the following conditions are satisfied:

(a) the taxpayer is a commodities dealer, securities trader, or commodities trader that has made a valid election under § 475(e) or (f) (see section 5.03(1) of Rev. Proc. 99-17) and that is required to change its method of accounting to comply with the election;

(b) the method of accounting to which the taxpayer changes is in accordance with its election under § 475(e) or (f); and

(c) the year of change is the election year.

(3) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(4) *Election under Rev. Proc. 99-17.* In accordance with section 5.03(1) of Rev.

Proc. 99-17, in order to make a section 475(e) or (f) election, a taxpayer must file a statement satisfying the requirements in section 5.04 of Rev. Proc. 99-17. The statement must be filed not later than the due date (without regard to extensions) of the original federal income tax return for the taxable year immediately preceding the election year and must be attached either to that return or, if applicable, to a request for an extension of time to file that return. For example, if a calendar year individual taxpayer wants to make a section 475(e) or (f) election for 2009 (the election year), the taxpayer must file the statement on or before April 15, 2009, with the taxpayer's timely filed (without regard to extensions) federal income tax return for 2008 or the taxpayer's timely filed request for an extension of time to file the 2008 federal income tax return. On the Form 3115 filed for the year of change, a taxpayer should indicate that the taxpayer has filed the statement in compliance with section 5.03(1) of Rev. Proc. 99-17.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 23.01 of this APPENDIX is "64." See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Eric E. Boody at 202-622-3950 (not a toll-free call).

.02 *Reserved.*

SECTION 24. BANK RESERVES FOR BAD DEBTS (§ 585)

.01 *Changing from the § 585 reserve method to the § 166 specific charge-off method.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a bank (as defined in § 581, including a bank for which a qualified subchapter S subsidiary (QSub) election is filed) that wants to change its method of accounting for bad debts from the § 585 reserve method to the § 166 specific charge-off method.

(b) *Inapplicability.* This change does not apply to a large bank as defined in § 585(c)(2).

(2) *Certain scope limitations inapplicable.* A bank that changed from the § 593 reserve method under § 593(g) to the § 585 reserve method will not be prohibited under section 4.02(7) of this revenue procedure from changing its method of accounting for bad debts under this section 24.01 of the APPENDIX solely because of the § 593(g) change. A bank for which a QSub election is filed will not be prohibited under section 4.02(7) of this revenue procedure from changing its method of accounting for bad debts under this section 24.01 of the APPENDIX solely because of the deemed liquidation of the bank arising from a QSub election.

(3) *Section 481(a) adjustment.* Generally, the amount of the § 481(a) adjustment for a change in method of accounting under this section 24.01 of the APPENDIX is the amount of the bank's reserve for bad debts as of the close of the taxable year immediately before the year of change. However, the amount of the § 481(a) adjustment does not include the amount of a bank's pre-1988 reserves (as described in § 593(g)(2)(A)(ii), without taking into account § 593(g)(2)(B)) if the bank changed in a prior year from the § 593 reserve method to the § 585 reserve method and § 593(g) applied to that change. The deemed liquidation of a bank occurring solely because its parent makes a QSub election does not accelerate the § 481(a) adjustment. In accordance with section 5.04(3)(c) of this revenue procedure, a bank that ceases to be a bank under § 581 must accelerate its § 481(a) adjustment.

(4) *Change from § 585 required when electing S corporation status.*

(a) *General rule.* A bank electing S corporation status (or a bank for which a QSub election is filed) cannot use the § 585 reserve method. The filing by a bank of a Form 2553, *Election by a Small Business Corporation*, or the filing by a bank's parent of Form 8869, *Qualified Subchapter S Subsidiary Election*, with respect to the bank will constitute an agreement by the bank to change its method of accounting for bad debts from the § 585 reserve method to the § 166 specific charge-off method effective as of the taxable year for which the S corporation election or QSub election is effective (year of change) in accordance

with all of the applicable provisions of this revenue procedure (including section 6 of this revenue procedure, which requires filing a Form 3115 in duplicate). The resulting § 481(a) adjustment is recognized built-in gain under § 1374, unless the bank elects under § 1361(g) and section 24.01(4)(b) of this APPENDIX to take the § 481(a) adjustment into account in determining taxable income for the taxable year immediately preceding the year of change. See § 1.1374-4 (d).

(b) *Election to include § 481(a) adjustment in taxable year immediately preceding the year of change.*

(i) *Election requirements.* For a taxable year beginning after December 31, 2006, a bank that changes its method of accounting for bad debts under this section 24.01 of the APPENDIX, from the § 585 reserve method to the § 166 specific charge-off method for the first taxable year for which the bank's S corporation election is effective (year of change) may elect under § 1361(g) to take into account the amount of the resulting § 481(a) adjustment in determining taxable income for the taxable year immediately preceding the year of change. To make this election, a bank must (1) file an original and copy of Form 3115 under section 6.02(3) of this revenue procedure for the year of change, (2) file an additional copy of the Form 3115 with its original (or amended) federal income tax return for the taxable year immediately preceding the year of change filed no later than the date the original Form 3115 is properly filed under section 6.02(3) of this revenue procedure, and (3) include the amount of the § 481(a) adjustment in gross income for the taxable year immediately preceding the year of change. The bank must attach a statement to the original and both copies of Form 3115 stating that the bank elects under § 1361(g) to take the § 481(a) adjustment into account in determining taxable income for the taxable year immediately preceding the year of change.

(ii) *Special rule for QSub banks.* In the case of a QSub bank, the S corporation parent must file an original and copy of Form 3115 under section 6.02(3) of this revenue procedure for the year of change. The QSub bank must file an additional copy of the Form 3115 with its original (or amended) federal income tax return for the taxable year immediately preced-

ing the year of change filed no later than the date the original Form 3115 is properly filed under section 6.02(3) of this revenue procedure, and include the amount of the § 481(a) adjustment in gross income for the taxable year immediately preceding the year of change. In the case of a QSub bank, the Form 3115 should indicate that the "filer" is the S corporation parent and the "applicant" is the QSub bank.

(iii) The following example illustrates the principles of section 24.01(4)(b) of this APPENDIX.

Example. X, a calendar year taxpayer, is a bank as defined in § 581 and is not a large bank as defined in § 585(c)(2). For taxable years before 2007, X accounted for its bad debts under the § 585 reserve method. By March 15, 2007, X properly filed a Form 2553 electing to be an S corporation effective January 1, 2007. Pursuant to section 24.01(4)(a) of this APPENDIX, the filing of the Form 2553 constituted an agreement by X to change from the § 585 reserve method to the § 166 specific charge-off method in 2007 in accordance with all of the applicable provisions of this revenue procedure. Thus, for example, X must file a Form 3115 for this 2007 change in duplicate, in accordance with section 6.02(3) of this revenue procedure, by attaching the original Form 3115 to X's timely filed (including extensions) original federal income tax return for 2007 and filing a copy of the Form 3115 with the national office. The amount of X's § 481(a) adjustment for the change is the amount of X's bad debt reserve as of the close of December 31, 2006. X wishes to elect under § 1361(g) to include the § 481(a) adjustment in income in the taxable year ending December 31, 2006, the taxable year immediately preceding the year of change. To make this election, X must (1) file an original and copy of Form 3115 for the 2007 change under section 6.02(3) of this revenue procedure, (2) file an additional copy of that Form 3115 with its original (or amended) federal income tax return for 2006 filed no later than the date the original Form 3115 is properly filed under section 6.02(3) of this revenue procedure, and (3) include the amount of its § 481(a) adjustment in gross income in its return for 2006. X must attach a statement to the original and both copies of Form 3115 stating that X elects under § 1361(g) to take the § 481(a) adjustment into account in determining taxable income for 2006, the taxable year immediately preceding the year of change.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 24.01 of this APPENDIX is "66." See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Sharon Galm at 202-622-3930 or Laura Fields at 202-622-3050 (not a toll-free call).

.02 *Reserved.*

SECTION 25. INSURANCE COMPANY PREMIUM ACQUISITION EXPENSES (§ 832)

.01 *Safe harbor method of accounting for premium acquisition expenses.*

(1) *Description of change.* Rev. Proc. 2002-46, 2002-2 C.B. 105, sets forth a safe harbor method of accounting for premium acquisition expenses of certain non-life insurance companies. Under this method, an insurance company is permitted to treat as premium acquisition expenses incurred for the taxable year an amount equal to the sum of (a) the amount of premium acquisition expenses paid during the taxable year; (b) the difference between the unpaid premium acquisition expenses shown on the company's annual statement for the taxable year and the unpaid premium acquisition expenses shown on the company annual statement for the preceding taxable year; and (c) the difference between the amount of the insurance company's *pro forma* premium acquisition expenses at the end of the taxable year and the company's *pro forma* premium acquisition expenses at the end of the preceding taxable year. The amount taken into account as a net increase in the *pro forma* premium acquisition expenses, however, cannot exceed the insurance company's unearned premium reserve offset amount for that year. A special rule applies to premium acquisition expenses with respect to certain contracts with installment premiums. See Rev. Proc. 2002-46.

(2) *Scope.* This automatic change in accounting method applies to any insurance company that is subject to tax under § 831(a) and determines its premiums earned for insurance contracts during the taxable year under § 832(b)(4) in accordance with the provisions of § 1.832-4. The automatic change does not apply to an existing Blue Cross or Blue Shield organization or any other organization to which § 833 applies. The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 25.01

of this APPENDIX is “67.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Melissa Luxner or Kay Hossofsky at 202-622-3970 (not a toll-free call).

.02 *Reserved.*

SECTION 26. DISCOUNTED UNPAID LOSSES (§ 846)

.01 *Composite method for discounting unpaid losses.*

(1) *Description of change.* Section 846 defines “discounted unpaid losses” for purposes of computing the insurance company taxable income of certain insurance companies. Notice 88-100, 1988-2 C.B. 439, section V, sets forth a composite method for computing unpaid losses with respect to accident years not separately stated on the NAIC annual statement. Rev. Proc. 2002-74, 2002-2 C.B. 980, section 3.01, clarifies that the composite method of Notice 88-100, section V, is permitted, but not required; section 3.02 sets forth an alternative method for those taxpayers that do not use the composite method of section 3.01. An insurance company using a method provided in section 3.01 or 3.02 of Rev. Proc. 2002-74 to compute discounted unpaid losses, must use the same method to compute discounted estimated salvage recoverable. An insurance company that currently uses a permissible method of accounting for discounted unpaid losses may change its method of accounting to or from the composite method of Notice 88-100, section V, without the consent of the Commissioner. This change applies to insurance companies that are required to discount unpaid losses under § 846. See Rev. Proc. 2002-74.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 26.01 of this APPENDIX is “68.” See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Melissa Luxner or Kay Hossofsky at 202-622-3970 (not a toll-free call).

.02 *Reserved.*

SECTION 27. REAL ESTATE MORTGAGE INVESTMENT CONDUIT (REMIC) (§§ 860A-860G)

.01 *REMIC inducement fees.*

(1) *Description of change.* A taxpayer that receives an inducement fee in connection with becoming the holder of a non-economic residual interest in a REMIC must take that fee into account over the remaining expected life of the applicable REMIC in accordance with § 1.446-6. This change applies to a taxpayer that seeks to change from any method of accounting for such inducement fees to one of the safe harbor methods provided under § 1.446-6(e)(1) – (2). See Rev. Proc. 2004-30, 2004-1 C.B. 950, for additional guidance relating to this change.

(2) *Manner of making change.* A taxpayer making this change must identify the specific safe harbor method under § 1.446-6(e) to which the taxpayer is changing.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 27.01 of this APPENDIX is “79.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Santina Jannotta at 202-622-3930 (not a toll-free call).

.02 *Reserved.*

SECTION 28. INCOME FROM SOURCES WITHIN THE UNITED STATES (§ 861)

.01 *Transactions involving computer programs.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for transactions involving computer programs to conform to the provisions of § 1.861-18. This change applies only to transactions occurring pursuant to contracts entered into on or after December 31, 1998.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 28.01 of this APPENDIX is “69.” See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Anne Shelburne at 202-435-5145 (not a toll-free call).

.02 *Reserved.*

SECTION 29. FUNCTIONAL CURRENCY (§ 985)

.01 *Change in functional currency.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its functional currency or the functional currency of a qualified business unit (QBU) of the taxpayer. The preceding sentence does not apply to a QBU of a taxpayer described in § 1.985-1(b)(1)(iii).

(2) *Manner of making change.* A taxpayer making this change must make all necessary adjustments required by such change. See §§ 1.985-5, 1.985-8(c).

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 29.01 of this APPENDIX is “70.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact Barbara Felker at 202-622-3850 (not a toll-free call).

.02 *Reserved.*

SECTION 30. BASIS OF CERTAIN SECURITIES SOLD OR TRANSFERRED (§ 1012)

.01 *Change to comply with § 1.1012-1(c)(1) – (4).*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that sells or transfers shares of stock in a corporation, bonds, or book-entry securities (as defined in § 1.1012-1(c)(7)(iii)) (collectively referred to as “securities”), and wants to change to the method provided in § 1.1012-1(c)(1) for determining basis in the securities sold or transferred. The method in § 1.1012-1(c)(1) provides that the taxpayer determines the cost or basis of the securities sold or transferred by (1) adequately identifying the securities sold or transferred or the lot from which the securities are sold or transferred and, (2) being deemed to have identified the

cost or basis of the securities sold from the lot(s) of securities purchased or acquired the earliest, if the taxpayer does not make an adequate identification. See § 1.1012-1(c)(2) – (4) for examples of what constitutes adequate identification.

(b) *Inapplicability.*

(i) This change does not apply to any shares of stock for which a taxpayer may make an election as to certain regulated investment company stock under § 1.1012-1(e).

(ii) This change does not apply, because there is no change in method of accounting, when for prior sales a taxpayer who has not adequately identified securities sold or transferred is deemed to have identified the securities sold or transferred that were purchased or acquired the earliest and for subsequent sales that taxpayer adequately identifies the securities sold or transferred, or *vice versa*.

(2) *Manner of making change and designated automatic accounting method change number.*

(a) *Section 481(a) adjustment.* Except as provided in section 30.01(2)(b) of this APPENDIX, this change is made using a § 481(a) adjustment. The § 481(a) adjustment is calculated as the difference between the basis of the shares on hand at the beginning of the year of change under the new and prior methods.

(b) *Cut-off basis.* In lieu of a § 481(a) adjustment, the taxpayer may make an irrevocable election to make this change on a cut-off basis under which the taxpayer begins using the new method for determining basis in its securities for all sales and transfers made on or after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. The election to make this change on a cut-off basis must be made on the taxpayer's timely filed Form 3115 (see section 6.02(3) of this revenue procedure). If the taxpayer elects to make this change on a cut-off basis, the basis of the shares on hand at the beginning of the year of change is the basis determined under the taxpayer's prior method of accounting, *i.e.*, the method from which it is changing.

(c) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 30.01

of this APPENDIX is "142." See section 6.02(4) of this revenue procedure.

(d) *Contact information.* For further information regarding a change under this section, contact Shareen Pflanz at 202-622-4920 (not a toll-free call).

.02 *Reserved.*

SECTION 31. ORIGINAL ISSUE DISCOUNT (§§ 1272, 1273)

.01 *De minimis original issue discount (OID).*

(1) *Description of change.* This change applies to a taxpayer that wants to change to the principal-reduction method of accounting described in section 5 of Rev. Proc. 97-39, 1997-2 C.B. 485. The principal-reduction method of accounting is an aggregate method of accounting for *de minimis* OID (discount) on certain loans originated by the taxpayer.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure do not apply to this change.

(3) *Description.* The principal-reduction method of accounting is a permissible method for use by taxpayers to account for discount on one or more categories of loans described in section 4.02 or 4.03 of Rev. Proc. 97-39. If the principal-reduction method is used to account for any loans in a category of loans, the method must be used for the entire category of loans. The principal-reduction method applies only to loans described in section 3 of Rev. Proc. 97-39.

(4) *Manner of making change.*

(a) This change is made on a cut-off basis and applies only to loans described in section 3 of Rev. Proc. 97-39 that were acquired on or after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) The taxpayer must maintain books and records sufficient to satisfy the director that old and new loans have been adequately segregated.

(5) *Additional requirements.* On a statement attached to the Form 3115, the taxpayer must:

(a) identify the categories of loans to which the new method will apply; and

(b) describe any "additional categories" permitted under section 4.03 of Rev. Proc. 97-39.

(6) *No audit protection.* A taxpayer does not receive audit protection under section 7 of this revenue procedure in connection with this change.

(7) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 31.01 of this APPENDIX is "72." See section 6.02(4) of this revenue procedure.

(8) *Contact information.* For further information regarding a change under this section, contact William E. Blanchard at 202-622-3950 (not a toll-free call).

.02 *Reserved.*

SECTION 32. MARKET DISCOUNT BONDS (§ 1278)

.01 *Revocation of § 1278(b) election.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for market discount bonds by revoking its § 1278(b) election. Under § 1278(b), a taxpayer may elect a method of accounting under which market discount is currently included in gross income for the taxable years to which the discount is attributable. See Rev. Proc. 92-67, 1992-2 C.B. 429, for the procedures to make a § 1278(b) election (including a deemed § 1278(b) election). The procedures for revoking a § 1278 election were formerly provided in section 7 of Rev. Proc. 92-67.

(2) *Revocation of election.* The revocation of a § 1278(b) election applies to all market discount bonds that are held by the taxpayer on the first day of the first taxable year for which the revocation is effective (year of change), and to all market discount bonds that are subsequently acquired by the taxpayer. If a § 1278(b) election is revoked, then for purposes of § 1278(a), accrued market discount with respect to any bond previously subject to the election means accrued market discount as defined in § 1276(b) less any market discount included in income while the bond was subject to the § 1278(b) election.

(3) *Manner of making change.* This change is made on a cut-off basis and applies only to market discount accruing on or after the beginning of the year of change. See section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required. Market discount accruing on a bond prior to the year of change was currently included in income and market discount accruing on the bond on and after the first day of the year of change is included in income generally upon disposition of the bond. See § 1276(a). Because a cut-off basis is prescribed for this change, the basis of any bond, adjusted for amounts previously included in income during the period of the election, is not affected by the revocation.

(4) *Additional requirements.* On a statement attached to the Form 3115, the taxpayer must provide:

(a) the reason(s) for revoking the § 1278(b) election (or deemed § 1278(b) election);

(b) a description of the method by which, and the date on which, the taxpayer made the § 1278(b) election (or deemed § 1278(b) election) that is being revoked; and

(c) a statement that, after the revocation, the taxpayer will not make a constant interest rate election for any bond that has been subject to the § 1278(b) election (or deemed § 1278(b) election) being revoked and for which a constant interest rate election was not effective in the year of acquisition.

(5) *Audit protection.* A taxpayer receives audit protection under section 7 of this revenue procedure in connection with this change. However, the audit protection applicable to this change does not preclude the Commissioner from examining the method used by the taxpayer to determine the amount of accrued market discount under § 1276(b) for a taxable year prior to the year of change.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 32.01 of this APPENDIX is “73.” See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact William E. Blanchard at 202–622–3950 (not a toll-free call).

.02 *Reserved.*

SECTION 33. SHORT-TERM OBLIGATIONS (§ 1281)

.01 *Interest income on short obligations.*

(1) *Description of change.*

(a) This change applies to a taxpayer that wants to change its method of accounting to comply with § 1281 for interest income on short-term obligations.

(b) Under § 1281, a holder of certain short-term obligations, including a bank as defined in § 581, must include in gross income any accrued interest income on such obligations, regardless of the holder’s overall method of accounting. Section 1281 applies to all types of interest income, including acquisition discount, original issue discount (OID), and stated interest. See S. Rep. No. 99–313, 99th Cong., 2d Sess. 903 (1986), 1986–3 (Vol. 3) C.B. 903.

(c) Section 1283(a)(1) generally defines a short-term obligation as any bond, debenture, note, certificate, or other evidence of indebtedness that matures in one year or less from its issue date.

(d) Under §§ 1281(a) and 1283(c), a holder of a short-term obligation subject to § 1281 must include in gross income an amount equal to the sum of the daily portions of the acquisition discount or OID, whichever is applicable, on the obligation for each day during the taxable year that the obligation is held by the holder. See § 1283(b), as modified by § 1283(c), to determine the daily portions of acquisition discount or OID. In addition, § 1281(a) requires the holder to include in gross income any stated interest that is payable on the short-term obligation (other than stated interest taken into account to determine the amount of the acquisition discount or OID) as it accrues.

(2) *Section 481(a) adjustment period.* A taxpayer must take the entire § 481(a) adjustment into account in computing taxable income for the year of change.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 33.01 of this APPENDIX is “74.” See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact William E. Blanchard at 202–622–3950 (not a toll-free call).

.02 *Stated interest on short-term loans of cash method banks.*

(1) *Description of change.* This change applies to a bank that uses the cash receipts and disbursements (cash) method of accounting as its overall accounting method and that wants to change its method of accounting from accruing stated interest on short-term loans made in the ordinary course of business to using the cash method for that interest. For example, see *Security State Bank v. Commissioner*, 214 F.3d 1254 (10th Cir. 2000), *aff’g* 111 T.C. 210 (1998), *acq.*, 2001–1 C.B. xix; and *Security Bank Minnesota v. Commissioner*, 994 F.2d 432 (8th Cir. 1993), *aff’g* 98 T.C. 33 (1992), in which the courts held that § 1281 does not apply to short-term loans made by a cash method bank in the ordinary course of its business.

(2) *Scope limitations inapplicable.* The scope limitations in section 4.02 of this revenue procedure are not applicable to this change.

(3) *Section 481(a) adjustment period.* A taxpayer making this change must take the entire § 481(a) adjustment into account in computing taxable income for the year of change.

(4) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 33.02 of this APPENDIX is “75.” See section 6.02(4) of this revenue procedure.

(5) *Contact information.* For further information regarding a change under this section, contact William E. Blanchard at 202–622–3950 (not a toll-free call).

APPENDIX CONTACT LIST

APPENDIX Section Number	Designated Automatic Accounting Change Number	Contact Name	Telephone Number	Office
1.01	91	David Silber	202-622-3930	FI&P
2.01	1	William Ruane	202-622-4920	IT&A
3.01	2	Martin Osborne	202-622-7900	IT&A
3.02	3	Martin Osborne	202-622-7900	IT&A
3.03	4	Martin Osborne	202-622-7900	IT&A
3.04	86	Martin Osborne	202-622-7900	IT&A
4.01	5	Sean Dwyer	202-622-5020	IT&A
5.01	16	William E. Blanchard	202-622-3950	FI&P
6.01	7	Douglas Kim	202-622-4930	IT&A
6.02	8	Douglas Kim	202-622-4930	IT&A
6.03	10	Edward Schwartz	202-622-4960	IT&A
6.04	11	Douglas Kim	202-622-4930	IT&A
6.05	12	Douglas Kim	202-622-4930	IT&A
6.06	13	Douglas Kim	202-622-4930	IT&A
6.07	14	Douglas Kim	202-622-4930	IT&A
6.08	15	Douglas Kim	202-622-4930	IT&A
6.09	87	Douglas Kim	202-622-4930	IT&A
6.10	88	Douglas Kim	202-622-4930	IT&A
6.11	89	Bernard Harvey	202-622-4930	IT&A
6.12	97	Douglas Kim	202-622-4930	IT&A
6.13	98	Mark Weiss	202-622-7750	CORP
6.14	99	Bernard Harvey	202-622-4930	IT&A
6.15	104	Douglas Kim	202-622-4930	IT&A
6.16	105	Douglas Kim	202-622-4930	IT&A
6.17	107	Douglas Kim	202-622-4930	IT&A
6.18	116	Douglas Kim	202-622-4930	IT&A
6.19	117	Douglas Kim	202-622-4930	IT&A
6.20	118	Douglas Kim	202-622-4930	IT&A
6.21	119	Douglas Kim	202-622-4930	IT&A
6.22	115	Douglas Kim	202-622-4930	IT&A
7.01	17	Grant Anderson	202-622-4930	IT&A
8.01	100	Bernard Harvey	202-622-4930	IT&A
8.02	101	Jennifer Bernardini	202-622-3110	PS&I
8.03	102	Nicole Cimino	202-622-3110	PS&I
9.01	18	Douglas Kim	202-622-4930	IT&A
9.02	120	Douglas Kim	202-622-4930	IT&A
10.01	19	Gwen Turner	202-622-5020	IT&A
10.02	20	Gwen Turner	202-622-5020	IT&A
10.03	21	Gwen Turner	202-622-5020	IT&A
10.04	47	Gwen Turner	202-622-5020	IT&A
10.05	78	Gwen Turner	202-622-5020	IT&A
10.06	109	Gwen Turner	202-622-5020	IT&A
10.07	121	Gwen Turner	202-622-5020	IT&A
11.01	22	Donna Crawford	202-622-4970	IT&A
		Kari Fisher	202-622-4970	IT&A
11.02	23	Donna Crawford	202-622-4970	IT&A
		Kari Fisher	202-622-4970	IT&A
11.03	24	Donna Crawford	202-622-4970	IT&A
		Kari Fisher	202-622-4970	IT&A
11.04	25	Cheryl Oseekey	202-622-4970	IT&A
11.05	77	John Faron	202-622-4930	IT&A
11.06	92	John Faron	202-622-4930	IT&A
12.01	26	Steve Gee	202-622-4970	IT&A
13.01	27	Maryellen Simpson	202-622-6030	TEGE
13.02	28	Maryellen Simpson	202-622-6030	TEGE

APPENDIX Section Number	Designated Automatic Accounting Change Number	Contact Name	Telephone Number	Office
13.03	29	James Holland	202-283-9699	EP
		Carlton Watkins	202-283-9625	EP
14.01	122, 123	W. Thomas McElroy, Jr.	202-622-4970	IT&A
14.02	31	Erika Reigle	202-622-4950	IT&A
14.03	32,33	Kari Fisher	202-622-4970	IT&A
14.04	34, 35	W. Thomas McElroy, Jr.	202-622-4970	IT&A
14.05	71	William E. Blanchard	202-622-3950	FI&P
14.06	85	Bernard Harvey	202-622-4930	IT&A
14.07	90	Josephine Firehock	202-622-3970	FI&P
		Kay Hossofsky	202-622-3970	FI&P
14.08	108	Timothy Sebastian	202-622-3920	FI&P
14.09	124	Gwen Turner	202-622-5020	IT&A
14.10	125	Erika Reigle	202-622-4950	IT&A
14.11	126	Kari Fisher	202-622-4970	IT&A
14.12	127	Sharon Galm	202-622-3930	FI&P
14.13	128	Robert Basso	202-622-4950	IT&A
		Renay France	202-622-5020	IT&A
14.14	129	Grant Anderson	202-622-4930	IT&A
		Karla Meola	202-622-4930	IT&A
15.01	36	Timothy Sebastian	202-622-3920	FI&P
15.02	37	R. Matthew Kelley	202-622-7900	IT&A
15.03	38	R. Matthew Kelley	202-622-7900	IT&A
15.04	39	R. Matthew Kelley	202-622-7900	IT&A
15.05	80, 81	Santina Jannotta	202-622-3930	FI&P
15.06	82	Santina Jannotta	202-622-3930	FI&P
15.07	83, 84	R. Matthew Kelley	202-622-7900	IT&A
15.08	94	Santina Jannotta	202-622-3930	FI&P
15.09	103	Michael Schmit	202-622-4960	IT&A
15.10	130	R. Matthew Kelley	202-622-7900	IT&A
16.01	131	William E. Blanchard	202-622-3950	FI&P
17.01	132	Willie Armstrong	202-622-4970	IT&A
18.01	41	Lore Cavanaugh	202-622-4960	IT&A
19.01	42, 133, 134	Sandra Cheston	202-622-7900	IT&A
19.02	43	Jamie Kim	202-622-4950	IT&A
19.03	44	Jamie Kim	202-622-4950	IT&A
19.04	45, 113	Jamie Kim	202-622-4950	IT&A
19.05	46	Jamie Kim	202-622-4950	IT&A
19.06	106	Leta Ayres	202-622-5020	IT&A
19.07	135	Jamie Kim	202-622-4950	IT&A
20.01	136	William Ruane	202-622-4920	IT&A
21.01	48	Patty Ward	202-622-4970	IT&A
21.02	49	Steve Gee	202-622-4970	IT&A
21.03	50, 51	W. Thomas McElroy, Jr.	202-622-4970	IT&A
21.04	53	Patty Ward	202-622-4970	IT&A
21.05	54	Patty Ward	202-622-4970	IT&A
21.06	55	Willie Armstrong	202-622-4970	IT&A
21.07	63	Willie Armstrong	202-622-4970	IT&A
21.08	96	Willie Armstrong	202-622-4970	IT&A
21.09	110	Gwen Turner	202-622-5020	IT&A
21.10	111	W. Thomas McElroy, Jr.	202-622-4970	IT&A
21.11	137	Patty Ward	202-622-4970	IT&A
21.12	138	Patty Ward	202-622-4970	IT&A
21.13	139	Patty Ward	202-622-4970	IT&A
21.14	114	Leo Nolan	202-622-4970	IT&A
22.01	56	Leo Nolan	202-622-4970	IT&A
22.02	57	Leo Nolan	202-622-4970	IT&A
22.03	58	Leo Nolan	202-622-4970	IT&A
22.04	59	Leo Nolan	202-622-4970	IT&A
22.05	60	Patty Ward	202-622-4970	IT&A

APPENDIX Section Number	Designated Automatic Accounting Change Number	Contact Name	Telephone Number	Office
22.06	61	Leo Nolan	202-622-4970	IT&A
22.07	62	Leo Nolan	202-622-4970	IT&A
22.08	112	Leo Nolan	202-622-4970	IT&A
22.09	140	Leo Nolan	202-622-4970	IT&A
22.10	141	Leo Nolan	202-622-4970	IT&A
23.01	64	Eric E. Boody	202-622-3950	FI&P
24.01	66	Sharon Galm	202-622-3930	FI&P
		Laura Fields	202-622-3050	PS&I
25.01	67	Melissa Luxner	202-622-3970	FI&P
		Kay Hossofsky	202-622-3970	FI&P
26.01	68	Melissa Luxner	202-622-3970	FI&P
		Kay Hossofsky	202-622-3970	FI&P
27.01	79	Santina Jannotta	202-622-3930	FI&P
28.01	69	Anne Shelburne	202-435-5145	INTL
29.01	70	Barbara Felker	202-622-3850	INTL
30.01	142	Shareen Pflanz	202-622-4920	IT&A
31.01	72	William E. Blanchard	202-622-3950	FI&P
32.01	73	William E. Blanchard	202-622-3950	FI&P
33.01	74	William E. Blanchard	202-622-3950	FI&P
33.02	75	William E. Blanchard	202-622-3950	FI&P

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

Rev. Proc. 2008-53

SECTION 1. PURPOSE

This revenue procedure provides the domestic asset/liability percentages and domestic investment yields needed by foreign life insurance companies and foreign property and liability insurance companies to compute their minimum effectively connected net investment income under section 842(b) of the Internal Revenue Code for taxable years beginning after December 31, 2006. Instructions are provided for computing foreign insurance companies' liabilities for the estimated tax and installment payments of estimated tax for taxable years beginning after December 31, 2006. For more specific guidance regarding the computation of the amount of net investment income to be included by a foreign insurance company on its U.S. income tax return, see Notice 89-96, 1989-2 C.B. 417. For the domestic asset/liability percentage and domestic investment yield, as well as instructions for computing foreign insurance companies' liabilities for estimated tax and installment payments of estimated tax for taxable years beginning

after December 31, 2005, see Rev. Proc. 2007-58, 2007-37 I.R.B. 585.

SECTION 2. CHANGES

DOMESTIC ASSET/LIABILITY PERCENTAGES FOR 2007. The Secretary determines the domestic asset/liability percentage separately for life insurance companies and property and liability insurance companies. For the first taxable year beginning after December 31, 2006, the relevant domestic asset/liability percentages are:

124.4 percent for foreign life insurance companies, and

197.1 percent for foreign property and liability insurance companies.

.02 DOMESTIC INVESTMENT YIELDS FOR 2007. The Secretary is required to prescribe separate domestic investment yields for foreign life insurance companies and for foreign property and liability insurance companies. For the first taxable year beginning after December 31, 2006, the relevant domestic investment yields are:

4.9 percent for foreign life insurance companies, and

4.2 percent for foreign property and liability insurance companies.

.03 SOURCE OF DATA FOR 2007. The section 842(b) percentages to be used for the 2007 tax year are based on tax re-

turn data following the same methodology used for the 2006 year.

SECTION 3.

APPLICATION-ESTIMATED TAXES

To compute estimated tax and the installment payments of estimated tax due for taxable years beginning after December 31, 2006, a foreign insurance company must compute its estimated tax payments by adding to its income other than net investment income the greater of (i) its net investment income as determined under section 842(b)(5), that is actually effectively connected with the conduct of a trade or business within the United States for the relevant period, or (ii) the minimum effectively connected net investment income under section 842(b) that would result from using the most recently available domestic asset/liability percentage and domestic investment yield. Thus, for installment payments due after the publication of this revenue procedure, the domestic asset/liability percentages and the domestic investment yields provided in this revenue procedure must be used to compute the minimum effectively connected net investment income. However, if the due date of an installment is less than 20 days after the date this revenue procedure is published in the Internal Revenue Bulletin, the asset/liability percentages and domestic investment yields provided in Rev. Proc.

2007–58 may be used to compute the minimum effectively connected net investment income for such installment. For further guidance in computing estimated tax, see Notice 89–96.

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for taxable years beginning after December 31, 2006.

SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Sheila Ramaswamy of the Office of Associate Chief Counsel (International). For further information regarding this revenue procedure, contact Sheila Ramaswamy at (202) 622–3870 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G, and Requirement of Return for Filing of the Excise Tax Under Section 4980B, 4980D, 4980E or 4980G

REG-120476-07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G of the Internal Revenue Code (Code) as amended by sections 302, 305 and 306 of the Tax Relief and Health Care Act of 2006 (the Act). The proposed regulations also provide guidance relating to the requirement of a return to accompany payment of the excise tax under section 4980B, 4980D, 4980E, or 4980G of the Code and the time for filing that return. These proposed regulations would affect employers that contribute to employees' HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 14, 2008. Outlines of topics to be discussed at the public hearing scheduled for October 30, 2008, at 10:00 am, must be received by October 13, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-120476-07), In-

ternal Revenue Service, room 5203, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-120476-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-120476-07). The public hearing will be held in room 2116, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations as they relate to section 4980E or 4980G, Mireille Khoury at (202) 622-6080; concerning the proposed regulations as they relate to section 4980B or 4980D, Russ Weinheimer at (202) 622-6080; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 15, 2008.

Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper per-

formance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in Q&A-11 in §4980B-2, Q&A-1 in §4980D-1, Q&A-1 in §4980E-1, and Q&A-5 in §4980G-1. These collections of information result from the requirement to file a return for the payment of the excise tax under section 4980B, 4980D, 4980E, or 4980G of the Code. The likely respondents are employers that contribute to employees' HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan.

Estimated total annual reporting burden: 2,500 hours.

The estimated annual burden per respondent is 30 minutes.

Estimated number of respondents: 5,000.

The estimated frequency of responses per respondent is occasional, less than once per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return

information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed Pension Excise Tax Regulations (26 CFR part 54) under section 4980G of the Code, as amended by sections 302 and 305 of the Tax Relief and Health Care Act of 2006 (the Act), under paragraph (d) of section 4980G of the Code, as enacted by section 306 of the Act, and under section 4980E of the Code.

Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Modernization Act), Public Law 108-173, (117 Stat. 2066, 2003) added section 223 to the Code to permit eligible individuals to establish HSAs for taxable years beginning after December 31, 2003. Section 4980G was also added to the Code by the Modernization Act. Section 4980G(a) imposes an excise tax on the failure of an employer to make comparable contributions to the HSAs of its employees for a calendar year. Section 4980G(b) provides that rules and requirements similar to section 4980E (the comparability rules for Archer Medical Savings Accounts (Archer MSAs)) apply for purposes of section 4980G. Section 4980E(b) imposes an excise tax equal to 35% of the aggregate amount contributed by an employer to the Archer MSAs of employees during the calendar year if an employer fails to make comparable contributions to the Archer MSAs of its employees in a calendar year. Therefore, if the employer fails to make comparable contributions to the HSAs of its employees during a calendar year, an excise tax equal to 35% of the aggregate amount contributed by the employer to the HSAs of its employees during that calendar year is imposed on the employer. See sections 4980G(a) and (b) and 4980E(b). See also Notice 2004-2, 2004-1 C.B. 269, Q&A-32. On July 31, 2006, final regulations on comparability were published in the **Federal Register**, 71 FR 43056 (T.D. 9277, 2006-2 C.B. 226). In addition, on April 17, 2008, final regulations were published in the **Federal Register**, 73 FR 20794 (T.D. 9393, 2008-20 I.R.B. 975), providing guidance on employer comparable contributions to HSAs in instances where

an employee has not established an HSA by December 31st and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses. See §601.601(d)(2).

This document also contains proposed Pension Excise Tax Regulations (26 CFR part 54) under sections 4980B and 4980D of the Code. Under section 4980B of the Code, group health plans maintained by an employer with 20 or more employees must comply with continuation coverage requirements. If a plan does not satisfy these requirements, an excise tax is imposed of \$100 per day per affected beneficiary. Final regulations under section 4980B have been published, including provisions concerning the excise tax, but no return filing requirement has previously been imposed. See §54.4980B-2, Q&A-9 and Q&A-10. Moreover, under chapter 100 of the Code, group health plans must comply with various requirements, including limitations on preexisting condition exclusions, certification of creditable coverage, special enrollments, prohibitions against discrimination based on a health factor, parity in the annual and lifetime dollar limits placed on mental health benefits with those placed on medical/surgical benefits, and minimum hospital lengths of stay in connection with childbirth. If a plan does not satisfy any of these requirements under chapter 100, section 4980D imposes an excise tax of \$100 per day per affected individual. Regulations interpreting the substantive requirements of chapter 100 have previously been published, but no regulations have been published concerning the excise tax under section 4980D.

Explanation of Provisions

Special Rule for Contributions to Nonhighly Compensated Employees

New paragraph (d) of section 4980G provides an exception to the comparability rules that allows, but does not require, employers to make larger contributions to the HSAs of nonhighly compensated employees than the employer makes to the HSAs of highly compensated employees. These proposed regulations interpret that requirement. Specifically, the proposed regulations, in §54.4980G-4, provide that employer contributions to the HSAs of

nonhighly compensated employees may be larger than employer contributions to the HSAs of highly compensated employees with comparable coverage during a period. Conversely, employer contributions to the HSAs of highly compensated employees may not exceed employer contributions to the HSAs of nonhighly compensated employees with comparable coverage during a period.

The comparability rules still apply with respect to contributions to the HSAs of all nonhighly compensated employees who are comparable participating employees (eligible individuals who are in the same category of employees with the same category of high deductible health plan (HDHP) coverage) and an employer must make comparable contributions to the HSA of each nonhighly compensated employee who is a comparable participating employee during the calendar year. Similarly, the comparability rules still apply with respect to contributions to the HSAs of all highly compensated employees who are comparable participating employees and an employer must make comparable contributions to the HSA of each highly compensated employee who is a comparable participating employee during the calendar year. Collectively bargained employees are disregarded for purposes of section 4980G, as are HSA contributions made through a cafeteria plan.

For purposes of §4980G(d), highly compensated employee is defined under section 414(q) and includes any employee who was (1) a five-percent owner at any time during the year or the preceding year; or (2) for the preceding year, (A) had compensation from the employer in excess of \$105,000 (for 2008, indexed for inflation) and (B) if elected by the employer, was in the group consisting of the top 20 percent of employees when ranked based on compensation. Nonhighly compensated employees are employees that are not highly compensated employees.

Maximum HSA Contribution Permitted for Employees Who Become Eligible Individuals Mid-year

Section 305 of the Act provides that individuals who are eligible individuals during the last month of the taxable year (that is, who, in the case of calendar year taxpayers, are eligible individuals on Decem-

ber 1 of the year) may make or have made on their behalf the maximum annual HSA contribution based on their HDHP coverage (self only or family) on that date. A portion of the contribution is included in income and subject to an additional 10 percent tax if the individual fails to remain an eligible individual for 12 months after the last month of the taxable year. See section 223(b)(8). Section 54.4980G-6 of the proposed regulations provides that the employer can contribute up to this maximum contribution on behalf of all employees who are eligible individuals during the last month of the taxable year, including employees who become eligible individuals after January 1st of the calendar year and eligible individuals who are hired after January 1st of the calendar year (both such classes of individuals are hereinafter referred to as “mid-year eligible individuals”). An employer who makes the maximum calendar year HSA contribution, or who contributes more than a *pro-rata* amount, on behalf of employees who are mid-year eligible individuals will not fail to satisfy comparability merely because some employees will have received more contributions on a monthly basis than employees who worked the entire calendar year.

Employers are not required to make these greater than *pro-rata* contributions and may instead pro-rate contributions based on the number of months that an individual was both employed by the employer and an eligible individual. However, if an employer contributes more than the monthly *pro-rata* amount for the calendar year to the HSA of any employee who is a mid-year eligible individual, the employer must then contribute, on an equal and uniform basis, a greater than *pro-rata* amount to the HSAs of all comparable participating employees who are mid-year eligible individuals. Likewise, if the employer contributes the maximum annual contribution amount for the calendar year to the HSA of any employee who is a mid-year eligible individual, the employer must contribute that same amount to the HSAs of all comparable participating employees who are mid-year eligible individuals.

Special Comparability Rules For Qualified HSA Distributions

Section 302(a) of the Act provides for qualified HSA distributions. See section 106(e) and Notice 2007-22, 2007-10 I.R.B. 670. See §601.601(d)(2). A *qualified HSA distribution* is a direct distribution of an amount from a health flexible spending arrangement (health FSA) or a health reimbursement arrangement (HRA) to an HSA. The distribution must not exceed the lesser of the balance in the health FSA or HRA on September 21, 2006, or as of the date of the distribution. Section 54.4980G-7 of the proposed regulations would provide that if an employer offers qualified HSA distributions to any employee who is an eligible individual covered under any HDHP, the employer must offer qualified HSA distributions to all employees who are eligible individuals covered under any HDHP. However, an employer that offers qualified HSA distributions only to employees who are eligible individuals covered under the employer’s HDHP is not required to offer qualified HSA distributions to employees who are eligible individuals but are not covered under the employer’s HDHP.

Requirement of Return and Time for Filing of the excise tax under section 4980B, 4980D, 4980E or 4980G.

The regulations provide that persons who are liable for the excise tax under section 4980B, 4980D, 4980E, or 4980G are required to file a return on Form 8928, “*Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code.*” The excise tax under section 4980B, 4980D, 4980E or 4980G must be paid at the time prescribed for filing of the excise tax return (without extensions). With respect to the excise tax under section 4980B or 4980D for employers and third parties such as insurers or third party administrators, the return is due on or before the due date for filing the person’s federal income tax return. An extension to file the person’s income tax return does not extend the date for filing Form 8928. With respect to the excise tax under section 4980B or 4980D for multiemployer or specified multiple employer health plans, the return is due on or before the last day of the seventh month after the end of the

plan year. Finally, with respect to the excise tax under section 4980E or 4980G for noncomparable contributions, the return is due on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made.

Proposed Effective/Applicability Date

The sections of these regulations that provide guidance on employer comparable contributions to HSAs under section 4980G are proposed to apply to employer contributions made on or after the first day of the first calendar year after the final regulations are published in the **Federal Register**. However, taxpayers may rely on these regulations for guidance with respect to employer contributions made on or after January 1, 2007, and before the effective date of final regulations.

The sections of these regulations that provide guidance relating to the excise tax under section 4980B, 4980D, 4980E and 4980G are proposed to be effective for calendar years (or plan years, where applicable) beginning after the date the final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact, as previously noted, the estimated burden associated with the information collection averages thirty minutes per respondent and the estimated number of respondents is 5000. Moreover, the burden imposed under the collection of information in these regulations arises only if there has been a failure that triggers liability for the excise tax under section 4980B, 4980D, 4980E, or 4980G of the Code. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f)

of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

The public hearing has been scheduled for October 30, 2008, beginning at 10 a.m. in room 2116, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by October 14, 2008, and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 13, 2008. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving comments has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Mireille Khoury, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the IRS and

Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding entries to the table to read in part as follows:

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

Section 54.4980G-6 also issued under 26 U.S.C. 4980G.

Section 54.4980G-7 also issued under 26 U.S.C. 4980G. * * *

Par. 2. Section 54.4980B-0 is amended by adding a new Q-11 to §54.4980B-2 in the list of questions to read as follows:

§54.4980B-0 Table of contents.

* * * * *

List Of Questions

* * * * *

§54.4980B-2 *Plans that must comply.*

* * * * *

Q-11: If a person is liable for the excise tax under section 4980B, what form must the person file and what is the due date for the filing and payment of the excise tax?

* * * * *

Par. 3. Section 54.4980B-2 is amended by adding a new Q&A-11 to read as follows:

§54.4980B-2 *Plans that must comply.*

* * * * *

Q-11: If a person is liable for the excise tax under section 4980B, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-11: (a) *In general.* Any person who is liable for the excise tax under section 4980B must report this tax by filing Form 8928, "Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code", and the tax must be paid at the time prescribed for filing such return (without extensions). The return must include the information required by Form 8928 and the instructions issued with respect to it.

(b) *Due date for filing of return by employers or other persons responsible for*

benefits under a group health plan. If the person liable for the excise tax is an employer or other person responsible for providing or administering benefits under a group health plan (such as an insurer or a third party administrator), the return must be filed on or before the due date for filing the person's income tax return and must reflect the portion of the noncompliance period for each failure under section 4980B that falls during the person's taxable year. An extension to file the person's income tax return does not extend the date for filing Form 8928.

(c) *Due date for filing of return by multiemployer plans.* If the person liable for the excise tax is a multiemployer plan, the return must be filed on or before the last day of the seventh month following the end of the plan's plan year. The filing of Form 8928 by a plan must reflect the portion of the noncompliance period for each failure under section 4980B that falls during the plan's plan year.

(d) *Effective/applicability date.* In the case of an employer or other person mentioned in paragraph (b) of this Q&A-11, the rules in this Q&A-11 are effective for taxable years beginning after the date the final regulations are published in the **Federal Register**. In the case of a plan mentioned in paragraph (c) of this Q&A-11, the rules in this Q&A-11 are effective for plan years beginning after the date the final regulations are published in the **Federal Register**.

Par. 4. Section 54.4980D-1 is added to read as follows:

§54.4980D-1 *Requirement of Return and Time for Filing of the excise tax under section 4980D.*

Q-1: If a person is liable for the excise tax under section 4980D, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-1: (a) *In general.* Any person who is liable for the excise tax under section 4980D must report this tax by filing Form 8928, "Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code", and the tax must be paid at the time prescribed for filing such return (without extensions). The return must include the information required by Form 8928 and the instructions issued with respect to it.

(b) *Due date for filing of return by employers.* If the person liable for the excise tax is an employer, the return must be filed on or before the due date for filing the employer's income tax return and must reflect the portion of the noncompliance period for each failure under chapter 100 that falls during the employer's taxable year. An extension to file the employer's income tax return does not extend the date for filing Form 8928.

(c) *Due date for filing of return by multiemployer plans or multiple employer health plans.* If the person liable for the excise tax is a multiemployer plan or a specified multiple employer health plan, the return must be filed on or before the last day of the seventh month following the end of the plan's plan year. The filing of Form 8928 by a plan must reflect the portion of the noncompliance period for each failure under chapter 100 that falls during the plan's plan year.

(d) *Effective/applicability date.* In the case of an employer or other person mentioned in paragraph (b) of this Q&A-1, the rules in this Q&A-1 are effective for taxable years beginning after the date the final regulations are published in the **Federal Register**. In the case of a plan mentioned in paragraph (c) of this Q&A-1, the rules in this Q&A-1 are effective for plan years beginning after the date the final regulations are published in the **Federal Register**.

Par. 5. Section 54.4980E-1 is added to read as follows:

§54.4980E-1 Requirement of Return and Time for Filing of the excise tax under section 4980E.

Q-1: If a person is liable for the excise tax under section 4980E, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-1: (a) *In general.* Any employer who is liable for the excise tax under section 4980E must report this tax by filing Form 8928, "Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code", on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made. The tax must be paid at the time prescribed for filing such return (without extensions), and the return must include the information required by Form

8928 and the instructions issued with respect to it.

(b) *Effective/applicability date.* The rules in this Q&A-1 are effective for plan years beginning after the date the final regulations are published in the **Federal Register**.

Par. 6. Section 54.4980G-1 is amended by:

1. Revising the last sentence in A-1 and adding a new sentence at the end of paragraph (a) in A-2.

2. Adding a new Q&A-5.

The revisions and addition read as follows:

§54.4980G-1 Failure of employer to make comparable health savings account contributions.

* * * * *

A-1: * * * But see Q&A-6 in §54.4980G-3 for treatment of collectively bargained employees and Q&A-1 in §54.4980G-6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

* * * * *

A-2: (a) * * * See also §54.4980G-6 for the rules allowing larger comparable contributions to nonhighly compensated employees.

* * * * *

Q-5: If a person is liable for the excise tax under section 4980G, what form must the person file and what is the due date for the filing and payment of the excise tax?

A-5: (a) *In general.* Any employer who is liable for the excise tax under section 4980E must report this tax by filing Form 8928, "Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code", on or before the 15th day of the fourth month following the calendar year in which the noncomparable contributions were made. The tax must be paid at the time prescribed for filing such return (without extensions), and the return must include the information required by Form 8928 and the instructions issued with respect to it. See Q&A-4 of §54.4980G-1 for the rules on computation of the excise tax under section 4980G.

(b) *Effective/applicability date.* The rules in this Q&A-5 are effective for plan years beginning after the date the final

regulations are published in the **Federal Register**.

Par. 7. Section 54.4980G-3 is amended by:

1. Revising the introductory text in paragraph (a) of A-5.

2. Adding a new sentence at the end of paragraph (c) of A-5 and paragraph (a) of A-9.

The revision and additions read as follows:

§54.4980G-3 Failure of employer to make comparable health savings account contributions.

* * * * *

A-5: (a) *Categories.* The categories of employees for comparability testing are as follows (but see Q&A-6 of this section for the treatment of collectively bargained employees and Q&A-1 of §54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees)—

* * * * *

(c) * * * But see §54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

* * * * *

A-9: (a) * * * See §54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

* * * * *

Par. 8. Section 54.4980G-4 is amended by:

1. Adding a new sentence at the end of paragraph (a) of A-1.

2. Adding paragraphs (h) and (i) to A-2.

The additions read as follows:

§54.4980G-4 Calculating comparable contributions.

* * * * *

A-1: (a) * * * But see Q&A-1 of §54.4980G-6 for a special rule for contributions made to the HSAs of nonhighly compensated employees.

* * * * *

A-2: * * *

* * * * *

(h) *Maximum contribution permitted for all employees who are eligible individuals during the last month of the taxable year.* An employer may contribute up to the maximum annual contribution amount for the calendar year (based on the employees' HDHP coverage) to the HSAs of all employees who are eligible individuals during the last month of the taxable year, including employees who worked for the employer for less than the entire calendar year and employees who became eligible individuals after January 1st of the calendar year. For example, such contribution may be made on behalf of an eligible individual who is hired after January 1st or an employee who becomes an eligible individual after January 1st. Employers are not required to provide more than a *pro-rata* contribution based on the number of months that an individual was an eligible individual and employed by the employer during the year. However, if an employer contributes more than a *pro-rata* amount for the calendar year to the HSA of any eligible individual who is hired after January 1st of the calendar year or any employee who becomes an eligible individual any time after January 1st of the calendar year, the employer must contribute that same amount on an equal and uniform basis to the HSAs of all comparable participating employees (as defined in Q&A-1 in §54.4980G-1) who are hired or become eligible individuals after January 1st of the calendar year. Likewise, if an employer contributes the maximum annual contribution amount for the calendar year to the HSA of any eligible individual who is hired after January 1st of the calendar year or any employee who becomes an eligible individual any time after January 1st of the calendar year, the employer must contribute the maximum annual contribution amount on an equal and uniform basis to the HSAs of all comparable participating employees (as defined in Q&A-1 in §54.4980G-1) who are hired or become eligible individuals after January 1st of the calendar year. An employer who makes the maximum calendar year contribution or more than a *pro-rata* contribution to the HSAs of employees who become eligible individuals after the first day of the calendar year or eligible individuals who are hired after the first day of the calendar year will not fail to satisfy comparability merely because some employees will have

received more contributions on a monthly basis than employees who worked the entire calendar year.

(i) *Examples.* The following examples illustrate the rules in paragraph (h) in this Q&A-2. In the following examples, no contributions are made through a section 125 cafeteria plan and none of the employees are covered by a collective bargaining agreement.

Example 1. On January 1, 2009, Employer Q contributes \$1,000 for the calendar year to the HSAs of employees who are eligible individuals with family HDHP coverage. In mid-March of the same year, Employer Q hires Employee A, an eligible individual with family HDHP coverage. On April 1, 2009, Employer Q contributes \$1,000 to the HSA of Employee A. In September of the same year, Employee B becomes an eligible individual with family HDHP coverage. On October 1, 2009, Employer G contributes \$1,000 to the HSA of Employee B. Employer Q does not make any other contributions for the 2009 calendar year. Employer Q's contributions satisfy the comparability rules.

Example 2. For the 2009 calendar year, Employer R only has two employees, Employee C and Employee D. Employee C, an eligible individual with family HDHP coverage, works for Employer R for the entire calendar year. Employee D, an eligible individual with family HDHP coverage works for Employer R from July 1st through December 31st. Employer R contributes \$1,200 for the calendar year to the HSA of Employee C and \$600 to the HSA of Employee D. Employer R does not make any other contributions for the 2009 calendar year. Employer R's contributions satisfy the comparability rules.

* * * * *

Par. 9. Section 54.4980G-6 is added to read as follows:

§54.4980G-6 Special rule for contributions made to the HSAs of nonhighly compensated employees.

Q-1: May an employer make larger contributions to the HSAs of nonhighly compensated employees than to the HSAs of highly compensated employees?

A-1: Yes. Employers may make larger HSA contributions for nonhighly compensated employees who are comparable participating employees than for highly compensated employees who are comparable participating employees. See Q&A-1 in §54.4980G-1 for the definition of comparable participating employee. For purposes of this section, highly compensated employee is defined under section 414(q). Nonhighly compensated employees are employees that are not highly compensated employees. The comparability rules continue to apply with respect to

contributions to the HSAs of all nonhighly compensated employees. Employers must make comparable contributions for the calendar year to the HSA of each nonhighly compensated employee who is a comparable participating employee.

Q-2: May an employer make larger contributions to the HSAs of highly compensated employees than to the HSAs of nonhighly compensated employees?

A-2: (a) *In general.* No. Employer contributions to HSAs for highly compensated employees who are comparable participating employees may not be larger than employer HSA contributions for nonhighly compensated employees who are comparable participating employees. The comparability rules continue to apply with respect to contributions to the HSAs of all highly compensated employees. Employers must make comparable contributions for the calendar year to the HSA of each highly compensated comparable participating employee. See Q&A-1 in §54.4980G-1 for the definition of comparable participating employee.

(b) *Examples.* The following examples illustrate the rules in Q&A-1 and Q&A-2 of this section. No contributions are made through a section 125 cafeteria plan and none of the employees in the following examples are covered by a collective bargaining agreement. All of the employees in the following examples have the same HDHP deductible for the same category of coverage.

Example 1. In 2009, Employer A contributes \$1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer A makes no contribution to the HSA of any full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer A's HSA contributions for calendar year 2009 satisfy the comparability rules.

Example 2. In 2009, Employer B contributes \$2,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer B also contributes \$1,000 for the calendar year to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer B's HSA contributions for calendar year 2009 satisfy the comparability rules.

Example 3. In 2009, Employer C contributes \$1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer C contributes \$2,000 for the calendar year to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. Employer C's HSA contributions

for calendar year 2009 do not satisfy the comparability rules.

Example 4. In 2009, Employer D contributes \$1,000 for the calendar year to the HSA of each full-time nonhighly compensated employee who is an eligible individual with self-only HDHP coverage. Employer D also contributes \$1,000 to the HSA of each full-time highly compensated employee who is an eligible individual with self-only HDHP coverage. In addition, the employer contributes an additional \$500 to the HSA of each nonhighly compensated employee who participates in a wellness program. The nonhighly compensated employees did not receive comparable contributions, and, therefore, Employer D's HSA contributions for calendar year 2009 do not satisfy the comparability rules.

Example 5. In 2009, Employer E contributes \$1,000 for the calendar year to the HSA of each full-time non-management nonhighly compensated employee who is an eligible individual with family HDHP coverage. Employer E also contributes \$500 for the calendar year to the HSA of each full-time management nonhighly compensated employee who is an eligible individual with family HDHP coverage. The nonhighly compensated employees did not receive comparable contributions, and, therefore, Employer E's HSA contributions for calendar year 2009 do not satisfy the comparability rules.

Q-3: May an employer make larger HSA contributions for employees with self plus two HDHP coverage than employees with self plus one HDHP coverage even if the employees with self plus two are all highly compensated employees and the employees with self plus one are all nonhighly compensated employees?

A-3: (a) Yes. Q&A-1 in §54.4980G-4 provides that an employer's contribution with respect to the self plus two category of HDHP coverage may not be less than the contribution with respect to the self plus one category and the contribution with respect to the self plus three or more cate-

gory may not be less than the contribution with respect to the self plus two category. Therefore, the comparability rules are not violated if an employer makes a larger HSA contribution for the self plus two category of HDHP coverage than to self plus one coverage, even if the employees with self plus two coverage are all highly compensated employees and the employees with self plus one coverage are all nonhighly compensated employees. Likewise, the comparability rules are not violated if an employer makes a larger HSA contribution for the self plus three category of HDHP coverage than to self plus two coverage, even if the employees with self plus three coverage are all highly compensated employees and the employees with self plus two coverage are all nonhighly compensated employees.

(b) *Example.* The following example illustrates the rules in paragraph (a) of this Q&A-3. In the following examples, no contributions are made through a section 125 cafeteria plan and none of the employees are covered by a collective bargaining agreement.

Example. In 2009, Employer F contributes \$1,000 for the calendar year to the HSA of each full-time employee who is an eligible individual with self plus one HDHP coverage. Employer F contributes \$1,500 for the calendar year to the HSA of each employee who is an eligible individual with self plus two HDHP coverage. The deductible for both the self plus one HDHP and the self plus two HDHP is \$2,000. Employee A, an eligible individual, is a nonhighly compensated employee with self plus one coverage. Employee B, an eligible individual, is a highly compensated employee with self plus two coverage. For the 2009 calendar year, Employer F contributes \$1,000 to Employee A's HSA and \$1,500

to Employee B's HSA. Employer F's HSA contributions satisfy the comparability rules.

Par. 10. Section 54.4980G-7 is added to read as follows:

§54.4980G-7 Special comparability rules for qualified HSA distributions contributed to HSAs on or after December 20, 2006 and before January 1, 2012.

Q-1: How do the comparability rules of section 4980G apply to qualified HSA distributions under section 106(e)(2)?

A-1: The comparability rules of section 4980G do not apply to amounts contributed to employee HSAs through qualified HSA distributions. However, in order to satisfy the comparability rules, if an employer offers qualified HSA distributions, as defined in section 106(e)(2), to any employee who is an eligible individual covered under any HDHP, the employer must offer qualified HSA distributions to all employees who are eligible individuals covered under any HDHP. However, if an employer offers qualified HSA distributions only to employees who are eligible individuals covered under the employer's HDHP, the employer is not required to offer qualified HSA distributions to employees who are eligible individuals but are not covered under the employer's HDHP.

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

(Filed by the Office of the Federal Register on July 15, 2008, 8:45 a.m., and published in the issue of the Federal Register for July 16, 2008, 73 FR. 40793)

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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