

## **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. 2009-1, page 248.**

**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 January 2009.

#### **Notice 2009-4, page 251.**

**Basis determination.** This notice sets forth the substance of the guidance that the IRS currently contemplates issuing regarding the determination of basis in stock that is acquired in reorganizations described in section 368(a)(1)(B) of the Code and other transferred basis transactions.

#### **Rev. Proc. 2009-10, page 267.**

This procedure provides a safe harbor under which the Service will not challenge the treatment of a payment or excess amount received by a money market fund from a fund advisor before January 1, 2010, if the money market fund treats the payment or excess amount, as applicable, as short-term capital gain in the taxable year in which it is received.

### **EMPLOYEE PLANS**

#### **Rev. Rul. 2009-2, page 245.**

**2009 covered compensation tables; permitted disparity.** The covered compensation tables under section 401 of the Code for the year 2009 are provided for use in determining contributions to defined benefit plans and permitted disparity.

#### **Notice 2009-3, page 250.**

This notice provides relief during 2009 for sponsors of section 403(b) plans with respect to the requirement to have a written section 403(b) plan in place by January 1, 2009. This notice

also briefly describes other programs the Service intends to establish relating to section 403(b) plans. Rev. Proc. 2007-71 modified.

### **EXEMPT ORGANIZATIONS**

#### **Rev. Proc. 2009-9, page 256.**

**Determination letters and rulings.** This document sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under sections 501 and 521 of the Code. The procedures also apply to the revocation and modification of determination letters or rulings, and provide guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under section 7428. Rev. Proc. 2008-9 superseded.

### **ADMINISTRATIVE**

#### **Notice 2009-1, page 250.**

This notice provides guidance regarding the restriction on investment direction described in section 529(b)(4) of the Code. The notice permits a change in investment strategy for a section 529 account twice in calendar year 2009. Notice 2001-55 modified.

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

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

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2009. See Rev. Rul. 2009-1, page 248.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of January 2009. See Rev. Rul. 2009-1, page 248.

## 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 January 2009. See Rev. Rul. 2009-1, page 248.

## Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

26 CFR 1.401(l)-1: Permitted disparity in employer-provided contributions or benefits.

**2009 covered compensation tables; permitted disparity.** The covered compensation tables under section 401 of the Code for the year 2009 are provided for use in determining contributions to defined benefit plans and permitted disparity.

## Rev. Rul. 2009-2

This revenue ruling provides tables of covered compensation under § 401(l)(5)(E) of the Internal Revenue Code (the “Code”) and the Income Tax Regulations, thereunder, for the 2009 plan year.

Section 401(l)(5)(E)(i) defines covered compensation with respect to an employee, as the average of the contribution and benefit bases in effect under section 230 of the Social Security Act (the “Act”) for each year in the 35-year period ending with the year in which the employee attains social security retirement age.

Section 401(l)(5)(E)(ii) of the Code states that the determination for any year preceding the year in which the employee attains social security retirement age shall be made by assuming that there is no increase in covered compensation after the determination year and before the employee attains social security retirement age.

Section 1.401(l)-1(c)(34) defines the taxable wage base as the contribution and benefit base under section 230 of the Act.

Section 1.401(l)-1(c)(7)(i) defines covered compensation for an employee as the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the calendar year in which the employee attains (or will attain) social security retirement age. A 35-year period is used for all individuals regardless

of the year of birth of the individual. In determining an employee’s covered compensation for a plan year, the taxable wage base for all calendar years beginning after the first day of the plan year is assumed to be the same as the taxable wage base in effect as of the beginning of the plan year. An employee’s covered compensation for a plan year beginning after the 35-year period applicable under §1.401(l)-1(c)(7)(i) is the employee’s covered compensation for a plan year during which the 35-year period ends. An employee’s covered compensation for a plan year beginning before the 35-year period applicable under §1.401(l)-1(c)(7)(i) is the taxable wage base in effect as of the beginning of the plan year.

Section 1.401(l)-1(c)(7)(ii) provides that, for purposes of determining the amount of an employee’s covered compensation under §1.401(l)-1(c)(7)(i), a plan may use tables, provided by the Commissioner, that are developed by rounding the actual amounts of covered compensation for different years of birth.

For purposes of determining covered compensation for the 2009 year, the taxable wage base is \$106,800.

The following tables provide covered compensation for 2009:

### ATTACHMENT I

#### 2009 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2009 COVERED COMPENSATION TABLE II
1907	1972	\$ 4,488
1908	1973	4,704
1909	1974	5,004
1910	1975	5,316
1911	1976	5,664
1912	1977	6,060
1913	1978	6,480
1914	1979	7,044
1915	1980	7,692
1916	1981	8,460

ATTACHMENT I  
2009 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2009 COVERED COMPENSATION TABLE II
1917	1982	9,300
1918	1983	10,236
1919	1984	11,232
1920	1985	12,276
1921	1986	13,368
1922	1987	14,520
1923	1988	15,708
1924	1989	16,968
1925	1990	18,312
1926	1991	19,728
1927	1992	21,192
1928	1993	22,716
1929	1994	24,312
1930	1995	25,920
1931	1996	27,576
1932	1997	29,304
1933	1998	31,128
1934	1999	33,060
1935	2000	35,100
1936	2001	37,212
1937	2002	39,444
1938	2004	43,992
1939	2005	46,344
1940	2006	48,816
1941	2007	51,348
1942	2008	53,952
1943	2009	56,628
1944	2010	59,268
1945	2011	61,884
1946	2012	64,464
1947	2013	67,008
1948	2014	69,408
1949	2015	71,724
1950	2016	73,920
1951	2017	76,044
1952	2018	78,084
1953	2019	80,052
1954	2020	81,972
1955	2022	85,620
1956	2023	87,384
1957	2024	89,064
1958	2025	90,660
1959	2026	92,184
1960	2027	93,648
1961	2028	95,052
1962	2029	96,372
1963	2030	97,680
1964	2031	98,940
1965	2032	100,116
1966	2033	101,220
1967	2034	102,192
1968	2035	103,068
1969	2036	103,824
1970	2037	104,448
1971	2038	105,012
1972	2039	105,552

ATTACHMENT I  
2009 COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	CALENDAR YEAR OF SOCIAL SECURITY RETIREMENT AGE	2009 COVERED COMPENSATION TABLE II
1973	2040	106,032
1974	2041	106,392
1975	2042	106,656
1976 and Later	2043	106,800

ATTACHMENT II  
2009 ROUNDED COVERED COMPENSATION TABLE

CALENDAR YEAR OF BIRTH	2009 COVERED COMPENSATION ROUNDED
1937	\$ 39,000
1938 - 1939	45,000
1940	48,000
1941	51,000
1942	54,000
1943	57,000
1944	60,000
1945 - 1946	63,000
1947	66,000
1948	69,000
1949	72,000
1950 - 1951	75,000
1952	78,000
1953 - 1954	81,000
1955 - 1956	87,000
1957 - 1958	90,000
1959 - 1960	93,000
1961 - 1962	96,000
1963 - 1965	99,000
1966 - 1968	102,000
1969 - 1972	105,000
1973 and Later	106,800

**DRAFTING INFORMATION**

The principal author of this revenue ruling is Michael Spaid of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, please contact the Employee Plans taxpayer assistance telephone service at 1-877-829-5500, between the hours of 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday (a toll-free number). Mr. Spaid may be reached via e-mail at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

**Section 403.—Taxation of Employee Annuities**

A notice provides relief during 2009 for sponsors of § 403(b) plans with respect to the requirement to have a written § 403(b) plan in place by January 1, 2009. See Notice 2009-3, page 250.

**Section 412.—Minimum Funding Standards**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2009. See Rev. Rul. 2009-1, page 248.

**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 January 2009. See Rev. Rul. 2009-1, page 248.

**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 January 2009. See Rev. Rul. 2009-1, page 248.

## 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 January 2009. See Rev. Rul. 2009-1, page 248.

## 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 January 2009. See Rev. Rul. 2009-1, page 248.

## Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of January 2009. See Rev. Rul. 2009-1, page 248.

## 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 January 2009. See Rev. Rul. 2009-1, page 248.

## 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 January 2009. See Rev. Rul. 2009-1, page 248.

## 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 January 2009.

### Rev. Rul. 2009-1

This revenue ruling provides various prescribed rates for federal income tax purposes for January 2009 (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)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. 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. Finally, Table 6 contains the deemed rate of return for transfers made during calendar year 2009 to pooled income funds described in section 642(c)(5) that have been in existence for less than 3 taxable years immediately preceding the taxable year in which the transfer was made.

REV. RUL. 2009-1 TABLE 1  
Applicable Federal Rates (AFR) for January 2009

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.81%	.81%	.81%	.81%
110% AFR	.89%	.89%	.89%	.89%
120% AFR	.97%	.97%	.97%	.97%
130% AFR	1.05%	1.05%	1.05%	1.05%
<i>Mid-term</i>				
AFR	2.06%	2.05%	2.04%	2.04%
110% AFR	2.27%	2.26%	2.25%	2.25%
120% AFR	2.48%	2.46%	2.45%	2.45%
130% AFR	2.69%	2.67%	2.66%	2.66%
150% AFR	3.10%	3.08%	3.07%	3.06%
175% AFR	3.62%	3.59%	3.57%	3.56%
<i>Long-term</i>				
AFR	3.57%	3.54%	3.52%	3.51%
110% AFR	3.93%	3.89%	3.87%	3.86%
120% AFR	4.30%	4.25%	4.23%	4.21%
130% AFR	4.65%	4.60%	4.57%	4.56%

REV. RUL. 2009-1 TABLE 2				
Adjusted AFR for January 2009				
	<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	3.45%	3.42%	3.41%	3.40%
Long-term adjusted AFR	5.49%	5.42%	5.38%	5.36%

REV. RUL. 2009-1 TABLE 3	
Rates Under Section 382 for January 2009	
Adjusted federal long-term rate for the current month	5.49%
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.)	5.49%

REV. RUL. 2009-1 TABLE 4	
Appropriate Percentages Under Section 42(b)(1) for January 2009	
Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.	
Appropriate percentage for the 70% present value low-income housing credit	7.65%
Appropriate percentage for the 30% present value low-income housing credit	3.28%

REV. RUL. 2009-1 TABLE 5	
Rate Under Section 7520 for January 2009	
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	2.4%

REV. RUL. 2009-1 TABLE 6	
Deemed Rate for Transfers to New Pooled Income Funds During 2009	
Deemed rate of return for transfers during 2009 to pooled income funds that have been in existence for less than 3 taxable years	4.8%

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**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 January 2009. See Rev. Rul. 2009-1, page 248.

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**Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of January 2009. See Rev. Rul. 2009-1, page 248.

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**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 January 2009. See Rev. Rul. 2009-1, page 248.

# Part III. Administrative, Procedural, and Miscellaneous

## Section 529 Programs

### Notice 2009-1

This notice provides guidance to qualified tuition programs described in section 529 of the Internal Revenue Code and participants in section 529 programs regarding the restriction on investment direction described in section 529(b)(4). This notice sets forth a special rule under which a program may permit investments in a section 529 account to be changed during 2009 on a more frequent basis than under current rules.

Section 529(b)(4) states that a program shall not be treated as a section 529 qualified tuition program unless it provides that any contributor to, or designated beneficiary under, such program may not directly or indirectly direct the investment of any contributions to the program (or any earnings thereon). The proposed regulations under section 529, which were published in the Federal Register on August 24, 1998 (REG-106177-97, 1998-2 C.B. 344 [63 F.R. 45019]), provide that a program does not violate this requirement if it permits a person who establishes a section 529 account to select among different investment strategies designed exclusively by the program, only at the time when the initial contribution is made establishing the account. Prop. Treas. Reg. §1.529-2(g).

Notice 2001-55, 2001-2 C.B. 299, was issued in response to comments on those proposed regulations, and acknowledged that there are a number of situations that might warrant a change in the investment strategy for a section 529 account. In that notice, the Treasury Department and the Internal Revenue Service (IRS) expressed an expectation that the final regulations under section 529 will provide that a program does not violate the investment restriction under section 529(b)(4) if it permits a change in the investment strategy selected for a section 529 account once per calendar year, and upon a change in the designated beneficiary of the account. The notice conditioned the applicability of this special rule on the program's compliance with a requirement that the program must (1) allow participants to select only from among broad-based investment strategies

designed exclusively by the program, and (2) establish procedures and maintain appropriate records to prevent a change in investment options from occurring more frequently than once per calendar year or upon a change in the designated beneficiary of the account.

In response to concerns that have been caused by the recent condition of the financial markets, commentators have requested more flexibility in this special rule, specifically the ability to change the investment strategies more frequently. Those commentators expressed concern that the inability to do so may interfere with the preservation of the value of a section 529 account in the face of changes in the markets.

Accordingly, this notice amends the provisions of Notice 2001-55 to further provide that a program does not violate the investment restriction under section 529(b)(4) if it permits a change in the investment strategy selected for a section 529 account twice per calendar year for calendar year 2009, as well as upon a change in the designated beneficiary of the account, subject to the program requirements as detailed in Notice 2001-55. The Treasury Department and the IRS expect that final regulations will incorporate this special rule for 2009.

Section 529 programs and their participants may rely on this notice pending the issuance of final regulations under section 529.

The Treasury Department and the IRS invite comments on the matter described in this notice and any other comments relating to section 529. Comments may be submitted to Internal Revenue Service, CC:PA:LPD:PR (Notice 2009-1), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk at 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:PR (Notice 2009-1), Room 5203. Submissions may also be sent electronically via the internet to the following email address: [Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov). Include the notice number (Notice 2009-1) in the subject line.

## EFFECT ON OTHER DOCUMENTS

Notice 2001-55 is modified.

## DRAFTING INFORMATION

The principal author of this notice is Monice Rosenbaum of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Rosenbaum at (202) 622-6070 (not a toll-free number).

## Relief From Immediate Compliance With 2009 § 403(b) Written Plan Requirement

### Notice 2009-3

This notice provides relief during 2009 for sponsors of § 403(b) plans with respect to the requirement to have a written § 403(b) plan in place by January 1, 2009. This notice also briefly describes other programs the Service intends to establish relating to § 403(b) plans.

## Background

Final regulations under § 403(b) were published on July 26, 2007 (T.D. 9340, 2007-36 I.R.B. 487 [72 Fed. Reg. 41128]) (the final regulations). Effective January 1, 2009, sponsors of § 403(b) plans are generally required to maintain a written plan that satisfies, in both form and operation, the requirements of the final regulations. Although many sponsors of § 403(b) plans have already adopted a written § 403(b) plan, the Service and Treasury are aware that some sponsors may not have a written § 403(b) plan in place by January 1, 2009.

Further, there is no current program under which a plan sponsor can obtain assurance that the written form of its plan satisfies § 403(b), other than through a private letter ruling. The Service and Treasury have therefore concluded that compliance with the final regulations would be facilitated by the establishment of both pre-approved and individually designed plan programs and that transition relief should be



provided to all § 403(b) plan sponsors who have made appropriate efforts to comply with the written plan requirement in the final regulations.

### Relief for 2009

The Service will not treat a § 403(b) plan as failing to satisfy the requirements of § 403(b) and the final regulations during the 2009 calendar year, provided that:

(1) on or before December 31, 2009, the sponsor of the plan has adopted a written § 403(b) plan that is intended to satisfy the requirements of § 403(b) (including the final regulations) effective as of January 1, 2009;

(2) during 2009, the sponsor operates the plan in accordance with a reasonable interpretation of § 403(b), taking into account the final regulations; and

(3) before the end of 2009, the sponsor makes its best efforts to retroactively correct any operational failure during the 2009 calendar year to conform to the terms of the written § 403(b) plan, with such correction to be based on the general principles of correction set forth in the Service's Employee Plans Compliance Resolution System (EPCRS) at section 6 of Rev. Proc. 2008-50, 2008-35 I.R.B. 464.

The relief under this notice applies solely with respect to the 2009 calendar year, and may not be relied on with respect to the operation of the plan or correction of operational defects in any prior or subsequent year.

### Upcoming Guidance

As part of the establishment of the prototype program, the Service will publish a request for comments on a draft revenue procedure on obtaining Service approval of prototype § 403(b) plans that will be adopted by eligible employers, and on sample plan language for drafting prototype plans. The Service also intends to establish a determination letter program for individually designed § 403(b) plans once the § 403(b) prototype program is established. The programs described in the revenue procedure will also provide for a retroactive remedial amendment of § 403(b) plans for years after 2009. The Service will also modify EPCRS to include additional § 403(b) issues.

### Effect on Other Documents

Section 6 of Rev. Proc. 2007-71, regarding the date amendments are adopted, is modified.

### Drafting Information

The principal authors of this notice are Angelique Carrington and James P. Flannery of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll-free number) or e-mail Ms. Carrington or Mr. Flannery at [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov).

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## Determination of Basis in Property Acquired in Transferred Basis Transaction

### Notice 2009-4

#### I. Purpose

The Internal Revenue Service (IRS) is studying various issues that have arisen in connection with the determination of basis in stock that is acquired in reorganizations described in section 368(a)(1)(B) of the Internal Revenue Code and other transferred basis transactions. The IRS intends to issue further guidance on the determination of such basis. This notice sets forth the substance of the guidance that the IRS currently contemplates issuing and requests comments on the administrability, accuracy, and appropriateness of such guidance.

#### II. Background

Section 368(a)(1)(B) of the Code provides that the term reorganization includes the acquisition by one corporation (Acquiring) of stock of another corporation (Target) solely in exchange for part or all of the voting stock of either Acquiring or its parent, provided that Acquiring has control of Target immediately after the acquisition (a B reorganization). Under section 362(b), Acquiring's basis in each share of Target stock acquired in the reorganization

is determined with reference to the basis of the share in the hands of the transferor shareholder immediately before the reorganization. Section 362(a) provides similar treatment for Target stock received in a section 351 exchange.

Section 1.368-3 of the Income Tax Regulations requires each significant holder and each corporate party to a reorganization to provide certain essential information regarding the reorganization, including the basis of the transferred property, in a statement on or with its return for the year of the reorganization. In general, a significant holder is any shareholder that owns five percent (by vote or value) of a publicly traded corporation or one percent (by vote or value) of a non-publicly traded corporation. Section 1.351-3 of the regulations imposes similar reporting requirements on significant transferors and transferee corporations in section 351 exchanges. In general, a significant transferor is any transferor that owns five percent (by vote or value) of a publicly traded corporation or one percent (by vote or value) of a non-publicly traded corporation immediately after the section 351 exchange.

By 1981, the IRS had identified two significant problems encountered by taxpayers in attempting to establish basis in Target stock acquired in a B reorganization. One was that the acquisition of basis information from shareholders surrendering stock of widely held corporations was time consuming, burdensome, and costly. The other was that not all surrendering shareholders were responding to requests for basis information. To facilitate the determination of basis in these cases, the IRS published Rev. Proc. 81-70, 1981-2 C.B. 729, which set forth general guidelines for surveying surrendering shareholders to determine the basis of Target stock acquired in B reorganizations and provided sampling and estimation procedures to address administrative burdens and shareholder nonresponsiveness.

At the time that Rev. Proc. 81-70 was published, most stock was registered stock, that is, the name of the beneficial owner of the stock was recorded by the issuing corporation's stock transfer agent on its books. However, market practices have changed substantially since the publication of Rev. Proc. 81-70. Today, stock of public companies is primarily held in street

name, that is, the stock is held by a nominee (typically a clearinghouse or other financial institution holding stock on behalf of their members or customers) and the transfer agent's books list the nominee as the owner of the stock. Often there are several tiers of nominee owners, each subject to confidentiality and other constraints that could bar the release of information. As a result, the identification of the beneficial owners of large portions of public companies, and thus their bases in those interests, is often difficult or impossible to discover. To address this problem, many taxpayers have developed complicated modeling techniques intended to establish Acquiring's allowable basis in shares acquired in a B reorganization.

There is an additional concern that the information necessary to identify the nominee holders dissipates fairly quickly. In particular, the securities positions reports of depositories and clearinghouses, the most reliable means for identifying such holdings, are generally only maintained by the depository or clearinghouse for five to seven years. Thus, unless such information is secured within that time, the identification of nominee holders will be difficult if not impossible if a basis study subsequently becomes necessary. Accordingly, any model adopted to determine basis in nominee held shares must take that concern into account.

The IRS has been studying the issues raised by nominee stock holdings. As part of that study, the IRS issued Notice 2004-44, 2004-2 C.B. 32, requesting comments on both the difficulties encountered in applying, and the need for modification of, the guidelines set forth in Rev. Proc. 81-70. Written and oral comments were received from a number of sources, including taxpayers, practitioners, and IRS examination teams. Based on these comments, the IRS has concluded that the guidelines of Rev. Proc. 81-70 must be expanded to address the issues presented by nominee stock holdings. In addition, the IRS has concluded that basis determinations should be facilitated for small stock holdings and intends to adopt rules that simplify basis determination in such cases.

The IRS recognizes that the difficulties in establishing basis in Target stock acquired in B reorganizations can be presented whenever a corporation acquires

Target stock in a transaction in which the acquiring corporation's basis in the acquired stock is determined with reference to the transferring shareholder's basis (transferred basis transaction). In addition to B reorganizations, transferred basis transactions include section 351 exchanges (see section 362(a), which provides that the transferee corporation's basis in property received is determined with reference to the transferor's basis in the property). Transferred basis transactions also include reverse triangular mergers that qualify as either a section 351 exchange or a B reorganization if Acquiring elects to determine basis in acquired property under the provisions of section 362(b) (as permitted by § 1.368-6(c)(2)(ii)). Certain triangular reorganizations involving foreign corporations may also be transferred basis transactions. See § 1.367(b)-13. Accordingly, the IRS has concluded that any further guidance in this area will apply not only to B reorganizations, but to all transferred basis transactions in which Target stock is acquired.

### III. *The Proposed Guidance: an Expansion of Rev. Proc. 81-70*

#### A. *Overview*

The IRS continues to believe that the theoretically correct method for determining Target stock basis following a B reorganization is a survey of surrendering Target shareholders. The IRS also continues to believe that Rev. Proc. 81-70 provides essential guidance for obtaining Target stock basis information by surveying surrendering Target shareholders and for using sampling and estimation techniques in appropriate cases. Accordingly, those provisions of Rev. Proc. 81-70 will be preserved without material modification in the guidance that the IRS intends to issue. In this notice, the guidance that the IRS expects to issue is referred to as Expanded Rev. Proc. 81-70.

As noted above, the concerns expressed regarding the determination of basis following a B reorganization are present, at least to some extent, in any transferred basis transaction. Therefore, the provisions of Expanded Rev. Proc. 81-70 will apply to all transferred basis transactions.

To address those concerns, and to simplify the determination of basis for small

stock holdings, Expanded Rev. Proc. 81-70 will include several "safe harbor" provisions. Each safe harbor will apply to a specified group of surrendering shareholders and will prescribe a methodology that can be used to determine those shareholders' bases in surrendered stock. An acquiring corporation may use one or more of the safe harbors; Expanded Rev. Proc. 81-70 will not require the use of all the safe harbors.

The principal provisions of Expanded Rev. Proc. 81-70 are described in more detail in the following sections, beginning with generally applicable provisions in Section III.B of this notice.

The safe harbor provisions are described in Section III.C (describing a survey method applicable to shares acquired from "reporting shareholders"), Section III.D (describing a certificate method applicable to shares acquired from "registered, non-reporting shareholders"), and Section III.E (describing a basis modeling method applicable to shares acquired from "nominee, non-reporting shareholders").

Section III.F modifies the reporting requirements under §§ 1.351-3 and 1.368-3 to take into account the time needed to complete a basis determination following a transferred basis transaction subject to Expanded Rev. Proc. 81-70.

Section III.G provides a safe harbor for taxpayers using a methodology prescribed in Expanded Rev. Proc. 81-70 and states that the IRS will not assert a different basis determination methodology if a taxpayer complies with the provisions of Expanded Rev. Proc. 81-70.

Section III.H expands the issues that may be the subject of a pre-filing agreement to include basis studies completed in accordance with the terms of Expanded Rev. Proc. 81-70.

Finally, Section III.I provides that Rev. Proc. 81-70 will be obsolete, subject to a transition rule, when Expanded Rev. Proc. 81-70 is issued.

#### B. *Generally Applicable Provisions of Expanded Rev. Proc. 81-70*

A determination of basis must be done timely and diligently to satisfy the conditions of any safe harbor under Expanded Rev. Proc. 81-70.

For purposes of Expanded Rev. Proc. 81-70, a determination of basis will be

considered *timely* if it is completed within two years of the later of the date of the transferred basis transaction and the date that Expanded Rev. Proc. 81-70 becomes effective. In addition, a previously completed basis determination will be considered timely if made compliant with the provisions of Expanded Rev. Proc. 81-70 within two years of the date that Expanded Rev. Proc. 81-70 becomes effective.

For purposes of Expanded Rev. Proc. 81-70, an estimate of basis will be considered to have been done *diligently* if Acquiring made every reasonable effort to obtain best evidence and, to the extent it was unable to obtain such evidence, can demonstrate that the evidence or basis information could not have been reasonably obtained. The fact that the IRS could, or does, obtain basis information using methods not available to Acquiring does not prevent a determination that Acquiring was diligent in its estimate of basis. Further, Acquiring must have made every reasonable effort to identify and adjust for surrendered shares with low bases (relative to Target's average historical trading price) and for surrendered shares with bases lower than the bases of shares bought and sold under normal market conditions. Circumstances in which this can occur include those in which shares are (1) held by investors with a transferred basis, (2) exchanged for convertible stock or debt, or (3) exchanged for debt or other property, as in bankruptcy reorganizations.

The provisions of each safe harbor specify the evidence that should be used for the safe harbor. However, all basis determinations are to be based on best evidence and the determination of the source that is the best evidence is made as of the date of the transferred basis transaction. If a basis determination is not made timely and basis information is lost, missing, or disposed of (*e.g.*, pursuant to the Target's, clearinghouse's or financial institution's record retention policy), and such information could have been obtained if Acquiring had sought it on or shortly after the date of the transaction, Acquiring will not satisfy the best evidence requirement.

In any case in which best evidence is not used, the IRS, in its discretion, may nevertheless accept such evidence, subject to appropriate adjustments to reflect the diminished credibility of the evidence used.

Notwithstanding any safe harbor prescribed in Expanded Rev. Proc. 81-70, if Acquiring has or acquires actual knowledge of a surrendering shareholder's actual basis in a share of surrendered Target stock, Acquiring's allowable basis in the share is equal to that surrendering shareholder's basis. Further, if the examining team has or obtains knowledge of a surrendering shareholder's actual basis in surrendered Target stock, Acquiring's allowable basis in that share is the basis identified by the examining team, even if the basis determined by Acquiring differs from that identified by the examining team. Where the basis of a share is known, any estimated or modeled basis amount must be adjusted to eliminate any basis amount attributable to such share.

### *C. Safe Harbor for Target Stock Surrendered by or on behalf of Reporting Shareholders*

Under this safe harbor, the basis of stock surrendered by reporting shareholders must be determined by survey. For purposes of Expanded Rev. Proc. 81-70, a "reporting shareholder" is any surrendering Target shareholder that was a significant transferor, a significant holder, an officer or director of Target, or plan that acquired Target stock for or on behalf of Target employees, such as an employee stock option or pension, immediately before the date of the transferred basis transaction. The term significant transferor has the same meaning as in § 1.351-3 and the term significant holder has the same meaning as in § 1.368-3.

To identify reporting shareholders, Target's books and records, the Master Securityholder Files maintained by the stock transfer agent, and Securities Exchange Commission (SEC) filings, including Schedule 13 series data, may be used.

In general, a survey must be done in accordance with the guidelines set forth in Rev. Proc. 81-70. Thus:

1. The survey should begin with the mailing of an inquiry letter to each reporting shareholder, which states the purpose for requesting the basis information for the surrendered stock, explains how basis is determined, and sets forth the importance of responding timely and accurately. After 30 days, one follow-up letter should be

- sent to non-responding shareholders. Several attempts also should be made to telephone the non-respondent. These telephone contacts should be attempted on different days of the week and times of the day. Acquiring should maintain a log recording each attempted contact.
2. Any survey sent to a reporting shareholder must request all information necessary for proper determination of basis. Such information may include, but is not limited to:
  - a. Number of shares surrendered in the transferred basis transaction;
  - b. Dates those shares were acquired;
  - c. Total cost of those shares, including commission;
  - d. How the shares were acquired, for example, by gift, stock option, or inheritance, or as consideration in a prior transferred basis transaction;
  - e. Tax basis and, if different, cost basis;
  - f. The nominees (as defined in section E) that held the shares on both the date the shares were acquired and the date of the transferred basis transaction; and
  - g. In a transaction involving foreign corporations where the rules of § 1.367(b)-13 may apply, whether the shareholder is a section 1248 shareholder with respect to the Target corporation.
3. Survey questionnaires should be sent by certified or registered mail.
4. The procedures by which the survey is designed and implemented must be documented and such documentation must be made available to the IRS examination team on request.

Under this safe harbor, Acquiring's basis in shares acquired from the surveyed shareholders will be the basis reported by such shareholders. If Acquiring does not receive a response from a surveyed shareholder, Acquiring may use estimation techniques to determine the basis of Target shares surrendered by the nonresponding shareholder. The estimation guidelines in Sec. 3 of Rev. Proc. 81-70 will be incorporated in Expanded Rev. Proc. 81-70.

However, under this safe harbor, if Acquiring does not survey a reporting shareholder, estimation may not be used and

the basis of the shares acquired from such shareholder will be deemed to be zero.

*D. Safe Harbor for Target Stock Surrendered by or on behalf of Registered, Non-reporting Shareholders*

Under this safe harbor, the basis of stock surrendered by registered, non-reporting shareholders must be determined by the certificate method. For purposes of Expanded Rev. Proc. 81-70, a “registered, non-reporting” shareholder is a shareholder that held Target stock in certificated form, but that is not a reporting or nominee shareholder.

To determine basis under this certificate method, Acquiring must obtain or access Target’s books and records and, using those books and records, identify all outstanding certificated shares that were surrendered by or on behalf of non-reporting shareholders and the dates that all such shares were issued. Using both public and private stock exchange trading data, Acquiring must then determine the average trading price of the Target shares on the date each certificate was issued. Subject to the limitations described below, Acquiring may treat the basis of each such share as equal to the average trading price on its issuance date.

Notwithstanding the general rule of this safe harbor, if there has been an extraordinary issuance or event, appropriate adjustment must be made to the basis otherwise determined under this safe harbor. For this purpose, an extraordinary issuance or event is any issuance or event that could have caused the basis of a share to be materially different from the average trading price on its issuance date, including but not limited to the following —

1. On or about the date a stock certificate was issued to a surrendering Target shareholder, another certificate held by the same shareholder was cancelled. In such a case, to the extent that the number of shares issued is less than or equal to the number of shares cancelled, the shares will not be valued as of the date the new certificate was issued, but instead as of the date the earlier certificate was issued. If a cancelled certificate was originally issued concurrently with the cancellation of another certificate, the shares

would be valued as of the date of the earlier (or earliest) issuance.

2. A share was acquired by a surrendering Target shareholder in a tax-free stock split. In such a case, the share will be assigned a split adjusted basis.
3. A share was acquired by a surrendering Target shareholder as a result of a stock dividend. In such a case, the share will be assigned a zero basis.
4. A share was acquired by a surrendering Target shareholder in a transaction the details of which are known to the corporation either directly or indirectly. In such a case, the basis must be assigned based on all the information obtainable. This may include, but is not limited to, stock issued due to options, convertible stock, employee plans, and convertible debt.
5. A share was acquired by a surrendering Target shareholder in a prior tax-free exchange. In such a case, the share will be assigned a basis of zero unless, using Target’s books and records, Acquiring can otherwise establish such basis.

Further, the basis otherwise determined with respect to any share of stock under this safe harbor must be reduced by any distributions paid to the surrendering Target shareholder to the extent such distributions were treated as a return of capital under section 301(c)(2).

*E. Safe Harbor for Target Stock Surrendered by Nominees on Behalf of Non-reporting Shareholders*

Under this safe harbor, the basis of all stock surrendered by nominees on behalf of non-reporting shareholders is determined under the basis modeling method. For purposes of Expanded Rev. Proc. 81-70, the term nominee means the title owner of equity securities settled through a clearing agency registered pursuant to Section 17A of the Securities Exchange Act of 1934, that holds the stock for or on behalf of the beneficial owner of the stock, typically one of the nominee’s participating members.

Modeled basis is determined separately for each series of shares and is done in accordance with the following:

*1. Establish measuring dates*

Acquiring must identify the measuring dates that will be used in constructing the model. Measuring dates must include the date of the initial public offering (IPO), all subsequent public offering dates prior to the first date for which a depository’s or clearinghouse’s securities positions report (SPR) is available, the first date for which an SPR is available, and the date of the transferred basis transaction. In addition, there must be a number of measuring dates between the first SPR date and the date of the transferred basis transaction. It is not necessary that every business day be a measuring date. However, the dates selected should be representative of Target stock trading activity, including dates surrounding periods of significant volatility in share price or trading activity of Target stock. In addition, the number and the dates of all measuring dates should demonstrate good coverage over the entire relevant period. In general, this means at least one measuring date per quarter.

*2. Establish nominee starting basis*

Each nominee’s starting bases in its shares is determined differently depending on whether an SPR is available for the IPO date.

*a. If an SPR is available for the IPO Date*

Each nominee holding a share of Target stock on the IPO date is treated as having purchased that share for the IPO price or for the fair market value of the share on the IPO date, whichever is less. That deemed purchase price is the nominee’s estimated starting basis in the share.

*b. If no SPR is available for the IPO Date*

Each nominee holding a share of Target stock on the first SPR date is treated as having purchased that share for the share’s allocable portion of Target’s pre-SPR Public Offering aggregate basis. That deemed purchase price is the nominee’s estimated starting basis in the share.

For purposes of this rule, Target’s pre-SPR Public Offering aggregate basis is the excess of Target’s “public offering basis” over Target’s “redeemed share basis.” Target’s “public offering basis” is equal to the

number of shares offered in the IPO multiplied by the lesser of the offering price and the fair market value of shares issued in the offering, plus the amount so computed for each subsequent public offering before the first SPR date (specifically, the number of shares issued in an offering multiplied by the lesser of the offering price and the fair market value of the shares issued in the offering). Target's redeemed share basis is the sum of the bases of all shares redeemed by Target prior to the first SPR date, treating each redeemed share as having been issued in the public offering immediately preceding the redemption of the share.

A share's allocable portion of Target's pre-SPR Public Offering aggregate basis is determined by allocating Target's pre-SPR Public Offering aggregate basis equally among all shares outstanding as of the first SPR date, other than shares that were privately placed.

### 3. *Adjust estimated starting basis*

Nominee holdings on the first SPR date are compared to the nominee holdings on the second measuring date. Any nominees not identified on the Initial SPR Date are treated as having purchased their shares, and any increase or decrease in the holdings of a previously identified nominee is treated as a purchase or sale of that number of shares, on the second measuring date. Any deemed purchase is considered to have been made for an amount equal to the volume-weighted average of the trading prices for the period between the first and second measuring dates. As of the end of the second measuring date, each nominee's basis in its Target stock holdings is deemed to be equal to its aggregate estimated starting basis in shares held on the first SPR date, increased to reflect the deemed cost basis of any stock purchased, or decreased to reflect a deemed sale of any stock, as appropriate.

Nominee holdings are then compared to nominee holdings at each next successive measuring date to determine the extent to which there are previously unidentified nominee holdings and changes in previously identified nominee holdings. New and increased holdings are treated as purchases, and decreased holdings are treated as sales, of Target stock. Sales are treated as being made either on the first-in, first-out ("FIFO"), the last-in, first-out

("LIFO"), or the average cost ("ACO") method. Acquiring must identify and adopt the single method that best predicts estimated basis across all investors, which will generally be LIFO, FIFO or ACO basis whichever is lower. As of the end of each measuring date, each nominee's holdings are deemed to have a basis equal to its basis on the immediately preceding measuring date, increased to reflect the deemed cost basis of any purchased stock, or decreased to reflect a deemed sale of any stock, as appropriate.

### 4. *Allowable nominee basis*

At the end of the last measuring date (the day of the transferred basis transaction), the aggregate of all basis computed for nominee holdings in each class is allocated equally among the shares in the class that were held by nominees. Acquiring's basis in Target shares acquired from nominees on behalf of non-reporting shareholders is deemed to be the basis allocated to such shares under this safe harbor model. Acquiring's basis in Target shares acquired from nominees on behalf of reporting shareholders is the basis in such shares that is established under section C, notwithstanding the allocation made for computational purposes under this basis modeling safe harbor.

### F. *Reporting Requirements*

Corporations acquiring Target stock in a transferred basis transaction shall be treated as satisfying their reporting requirements under §§ 1.351-3 and 1.368-3 with respect to the return for the tax year in which the transaction is completed if the corporation includes a statement on or with such return stating that a basis study is pending with respect to the acquired stock. However, in such cases, the acquiring corporation must include complete statements as required under those regulations, with basis amounts determined pursuant to the study, on or with a return for a tax year that is no later than the tax year that includes the date that is two years after the date of the transferred basis transaction. These rules apply without regard to whether basis is determined under any of the Expanded Rev. Proc. 81-70 safe harbors.

### G. *Reliance on Expanded Rev. Proc. 81-70 Safe Harbors*

If an acquiring corporation complies with the terms of a safe harbor described in Expanded Rev. Proc. 81-70, including those provisions that apply to all safe harbors described in Expanded Rev. Proc. 81-70, the IRS will not assert an alternative method to determine that corporation's allowable basis in stock covered by that safe harbor.

### H. *Pre-filing Agreements*

The determination of whether a basis study is done in compliance with one or more of the Expanded Rev. Proc. 81-70 safe harbors may be the subject of a pre-filing agreement.

### I. *Effective Date, Effect on Other Documents*

Expanded Rev. Proc. 81-70 will be effective for transferred basis transactions on or after the date it is issued. Because Expanded Rev. Proc. 81-70 will incorporate the provisions of Rev. Proc. 81-70 that have continued application, Rev. Proc. 81-70 will be obsolete for transactions under Expanded Rev. Proc. 81-70.

### IV. *Interim Use of Safe Harbor Methodologies*

Prior to the issuance of Expanded Rev. Proc. 81-70, whether in the form described in this notice or otherwise, taxpayers may use the methodologies of any safe harbor described in this notice (taking into account those provisions generally applicable to all of the safe harbors) to determine the basis of Target stock acquired in any transferred basis transaction that occurs prior to the publication of Expanded Rev. Proc. 81-70. In such cases, the timeliness requirement will be deemed satisfied if the study is completed within two years of the later of the date of the transferred basis transaction and January 12, 2009. The IRS will not assert an alternative methodology against a taxpayer that determines basis in accordance with these proposed guidelines.

### V. *Request for Comments*

The IRS requests comments regarding whether the approaches described in

this notice should be adopted and to what extent, if any, the approaches should be further combined or modified to produce a set of rules that is both administrable and reflective of statutory intent. The IRS is particularly interested in comments regarding whether a simpler methodology, such as one that would determine the basis of all surrendered shares by using a weighted average trading price, would be helpful to taxpayers and appropriate for the tax system. The IRS also specifically requests comments regarding the determination of basis in atypical transferred basis transactions, such as acquisitions in bankruptcy reorganizations, acquisi-

tions involving foreign transfer agents, and acquisitions involving foreign corporations that may be subject to the rules of § 1.367(b)-13.

Comments should refer to **Notice 2009-4** and should be submitted to:

Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044  
Attn: CC:PA:LPD:PR  
Room 5203

or electronically via  
the IRS internet site at:  
*Notice.Comments@irscounsel.treas.gov.*

All comments will be available for public inspection and copying.

**VIII. DRAFTING INFORMATION**

The principal authors of this notice are George Johnson of the Office of Associate Chief Counsel (Corporate) and Ed Cohen of LMSB. For further information regarding this notice generally, contact Mr. Johnson at (202) 622-7930 (not a toll-free number). For further information about estimation techniques described in this notice, contact Edward Cohen at (212) 719-6693 (not a toll-free number).

26 CFR 601.201: Rulings and determination letters.

**Rev. Proc. 2009-9**

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

This revenue procedure sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under §§ 501 and 521 of the Internal Revenue Code other than those subject to Rev. Proc. 2009-6, 2009-1 I.R.B. 189 (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans). Generally, the Service issues these determination letters and rulings in response to applications for recognition of exemption from Federal income tax. These procedures also apply to revocation or modification of determination letters or rulings. This revenue procedure also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under § 7428 of the Code.

**Description of terms used in this revenue procedure**

- .01 For purposes of this revenue procedure –
  - (1) the term “Service” means the Internal Revenue Service.

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

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

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

(5) the term “Appeals Office” means any office under the direction and control of the Chief, Appeals. The purpose of the Appeals Office is to resolve tax controversies, without litigation, on a fair and impartial basis. The Appeals Office is independent of EO Determinations and EO Technical.

(6) the term “determination letter” means a written statement issued by EO Determinations or an Appeals Office in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521. This includes a written statement issued by EO Determinations or an Appeals Office on the basis of advice secured from EO Technical pursuant to the procedures prescribed herein and in Rev. Proc. 2009–5, 2009–1 I.R.B. 161.

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

#### **Updated annually**

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

#### **SECTION 2. NATURE OF CHANGES AND RELATED REVENUE PROCEDURES**

##### **Rev. Proc. 2008–9 is superseded and the processing of applications is now centralized**

.01 This revenue procedure updates Rev. Proc. 2008–9, 2008–2 I.R.B. 258, which is hereby superseded.

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

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

##### **Related revenue procedures**

.02 This revenue procedure supplements Rev. Proc. 76–34, 1976–2 C.B. 656, with respect to the effects of § 7428 of the Code on the classification of organizations under §§ 509(a) and 4942(j)(3). Rev. Proc. 80–27, 1980–1 C.B. 677, sets forth procedures under which exemption may be recognized on a group basis for subordinate organizations affiliated with and under the general supervision and control of a central organization. Rev. Proc. 72–5, 1972–1 C.B. 709, provides information for religious and apostolic organizations seeking recognition of exemption under § 501(d). General procedures for requests for a determination letter or ruling are provided in Rev. Proc. 2009–4, 2009–1 I.R.B. 118. User fees for requests for a determination letter or ruling are set forth in Rev. Proc. 2009–8, 2009–1 I.R.B. 229.



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

#### **In general**

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

#### **User fee**

.02 An application must be submitted with the correct user fee, as set forth in Rev. Proc. 2009–8.

#### **Form 1023 application**

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

#### **Form 1024 application**

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

#### **Letter application**

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

#### **Form 1028 application**

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

#### **Form 8871 notice for political organizations**

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

#### **Requirements for a substantially completed application**

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

(1) is signed by an authorized individual.

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

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

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

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

(6) if the organizing or enabling document is in the form of articles of incorporation, includes evidence that it was filed with and approved by an appropriate state official (*e.g.*, stamped

“Filed” and dated by the Secretary of State). Alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state. If a copy is submitted, the written declaration must include the date the articles were filed with the state.

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

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

**Terrorist organizations not eligible to apply for recognition of exemption**

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

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

**Exempt status must be established in application and supporting documents**

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

**Determination letter or ruling based solely on administrative record**

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

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

(2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.

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

**Exempt status may be recognized in advance of actual operations**

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

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

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

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

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

.04 A determination letter or ruling on exempt status will not ordinarily be issued if an issue involving the organization’s exempt status under § 501 or § 521 is pending in litigation, is under consideration within the Service, or if issuance of a determination letter or ruling is not in the interest of sound tax administration. If the Service declines to issue a determination or ruling to an organization seeking exempt status under § 501(c)(3), the organization may be able to

pursue a declaratory judgment under § 7428 provided that it has exhausted its administrative remedies.

### **Incomplete application**

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

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

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

(3) Generally, the user fee will not be refunded if an incomplete application is filed. *See* Rev. Proc. 2009–8, section 10.

### **Even if application is complete, additional information may be required**

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

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

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

### **Expedited handling**

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

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

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

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

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

### **EO Determinations issues a determination letter in most cases**

.01 Under the general procedures outlined in Rev. Proc. 2009–4, EO Determinations is authorized to issue determination letters on applications for exempt status under §§ 501 and 521.

### **Certain applications referred to EO Technical**

.02 EO Determinations will refer to EO Technical those applications that present issues which are not specifically covered by statute or regulations, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. In addition, EO Determinations will refer those applications that have been specifically reserved by revenue procedure or by other official Service instructions for handling by EO Technical for purposes of establishing uniformity or

centralized control of designated categories of cases. EO Technical will notify the applicant organization upon receipt of a referred application, and will consider each such application and issue a ruling directly to the organization.

**Technical advice may be requested in certain cases**

.03 If at any time during the course of consideration of an exemption application by EO Determinations the organization believes that its case involves an issue on which there is no published precedent, or there has been non-uniformity in the Service's handling of similar cases, the organization may request that EO Determinations either refer the application to EO Technical or seek technical advice from EO Technical. *See* Rev. Proc. 2009-5, section 4.04.

**Technical advice must be requested in certain cases**

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

**SECTION 6. WITHDRAWAL OF AN APPLICATION**

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

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

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

(2) Generally, the user fee will not be refunded if an application is withdrawn. *See* Rev. Proc. 2009-8, section 10.

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

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

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

**Proposed adverse determination letter or ruling**

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

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

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

**Appeal of a proposed adverse determination letter issued by EO Determinations**

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

**Protest of a proposed adverse ruling issued by EO Technical**

.03 A proposed adverse ruling issued by EO Technical will advise the organization of its opportunity to file a protest statement within 30 days and to request a conference. If a conference is requested, the conference procedures outlined in Rev. Proc. 2009–4, section 12, are applicable.

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

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

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

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

**Consideration by the Appeals Office**

.06 The Appeals Office will consider the organization’s appeal. If the Appeals Office agrees with the proposed adverse determination, it will either issue a final adverse determination or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, the Appeals Office will either issue a final adverse determination letter or a favorable determination letter. If the Appeals Office believes that an exemption or private foundation status issue is not covered by published precedent or that there is non-uniformity, the Appeals Office must request technical advice from EO Technical in accordance with Rev. Proc. 2009–5, section 4.04.

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

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

**An appeal or protest may be withdrawn**

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

**Appeal or protest and conference rights not applicable in certain situations**

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

**SECTION 8. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS AND RULINGS**

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

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

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

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

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

#### **Disclosure of adverse determination letters or rulings**

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

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

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

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

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

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

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

### **SECTION 9. REVIEW OF DETERMINATION LETTERS BY EO TECHNICAL**

#### **Determination letters may be reviewed by EO Technical to assure uniformity**

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

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

.02 If EO Technical takes exception to a determination letter issued by EO Determinations, the manager of EO Determinations will be advised. If EO Determinations notifies the organization of the exception taken, and the organization disagrees with the exception, the file will be returned to EO Technical. The referral to EO Technical will be treated as a request for technical advice and the procedures in Rev. Proc. 2009-5 will be followed.

### **SECTION 10. DECLARATORY JUDGMENT PROVISIONS OF § 7428**

#### **Actual controversy involving certain issues**

.01 Generally, a declaratory judgment proceeding under § 7428 of the Code can be filed in the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia with respect to an actual controversy involving a determination by the Service or a failure of the Service to make a determination with respect to the initial or continuing qualification or classification of an organization under § 501(c)(3) (charitable, educational, etc.); § 170(c)(2) (deductibility of contributions); § 509(a) (private foundation status); § 4942(j)(3) (operating foundation status); or § 521 (farmers cooperatives).

#### **Exhaustion of administrative remedies**

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

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

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

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

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

**Not earlier than 270 days after seeking determination**

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

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

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

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

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

**Final determination to which § 7428 applies**

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

**SECTION 11. EFFECT OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION**

**Effective date of exemption**

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

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

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

**Reliance on determination letter or ruling**

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

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

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

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

.01 The revocation or modification of a determination letter or ruling recognizing exemption may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which § 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. In certain cases an organization may seek relief from retroactive revocation or modification of a determination letter or ruling under § 7805(b). Requests for § 7805(b) relief are subject to the procedures set forth in Rev. Proc. 2009-4.

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

(2) In the case where a determination letter or ruling is issued in error or is no longer in accord with the Service's position and § 7805(b) relief is granted (*see* sections 13 and 14 of Rev. Proc. 2009-4), ordinarily, the revocation or modification will be effective not earlier than the date when the Service modifies or revokes the original determination letter or ruling.

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

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

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

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

## **SECTION 13. EFFECT ON OTHER REVENUE PROCEDURES**

Rev. Proc. 2008-9 is superseded.

## **SECTION 14. EFFECTIVE DATE**

This revenue procedure is effective January 12, 2009.

## **SECTION 15. PAPERWORK REDUCTION ACT**

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

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



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

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

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

## DRAFTING INFORMATION

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

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26 CFR 601.601: Rules and regulations.  
(Also Part I, §§ 61, 1012, 1016; 1.61-1.)

## Rev. Proc. 2009-10

### SECTION 1. PURPOSE

This revenue procedure provides a safe harbor for the treatment of certain payments received by a regulated investment company under Part 1 of subchapter M of the Internal Revenue Code (sections 851-855) that is a money market fund registered with the Securities and Exchange Commission and regulated under Rule 2a-7 of the Investment Company Act of 1940, 17 C.F.R. 270.2a-7 (“Money Market Fund”).

### SECTION 2. BACKGROUND

.01 *Payment.* Money Market Funds strive to maintain a stable per share net asset value of \$1.00. Persons who contract to perform investment advisory or management services (“Advisors”) are concerned that a decline in per share net asset value to a threshold amount below \$1.00 (commonly referred to as “breaking the buck”) will significantly harm their business reputations and could lead to litigation by shareholders. These Advisors may make a payment (“Payment”) to the Money Market Fund in order to maintain a per share net asset value of \$1.00. This Payment is

not calculated with reference to the investment advisory fees paid or to be paid to the Advisor by the Money Market Fund, is not a loan to the Money Market Fund, and does not give the Advisor any ownership interest in the Money Market Fund.

.02 *Excess Amount Received in a Purchase Transaction.* Alternatively, for the same reasons described in section 2.01 of this revenue procedure, an Advisor may purchase an asset of a Money Market Fund for an amount that exceeds the asset’s fair market value (such excess hereinafter referred to as an “Excess Amount”). For example, an Advisor may purchase a debt instrument from the Money Market Fund for \$100x at a time when the fair market value of the debt instrument is \$90x. When property is purchased for an amount above fair market value for a purpose other than the acquisition of the property, the Excess Amount (e.g., \$10x in the example in the preceding sentence) is generally not accounted for as part of the purchase/sale transaction for tax purposes. Thus, in the example, the Advisor is treated as having a cost basis in the purchased debt instrument of \$90x. The Excess Amount should be treated in the same manner as a Payment described in section 2.01 of this revenue procedure.

### SECTION 3. SCOPE

This revenue procedure applies to a Money Market Fund that receives a Pay-

ment or Excess Amount described in section 2 of this revenue procedure.

### SECTION 4. PROCEDURE

The Internal Revenue Service will not challenge the treatment of a Payment or Excess Amount by a Money Market Fund to which this revenue procedure applies if the Money Market Fund treats the Payment or Excess Amount as short-term capital gain in the taxable year in which the Payment or Excess Amount is received. No inference should be drawn from this revenue procedure as to whether or not other treatments of Payments or Excess Amounts may be appropriate.

### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective with respect to Payments or Excess Amounts received before January 1, 2010, by a Money Market Fund to which this revenue procedure applies.

### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Richard C. LaFalce of the Office of the Associate Chief Counsel (Financial Institutions & Products). For further information, contact him at (202) 622-3930 (not a toll-free call).

# 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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