Internal Revenue
bulletin

Bulletin No. 2009-24
June 15, 2009

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

T.D. 9450, page 1073.
Final regulations under section 6045 of the Code provide guidance regarding the information reporting requirements on sales or exchanges of standing timber for lump-sum payments.

Notice 2009–28, page 1082.
This notice provides guidance to employers that seek to claim the work opportunity credit for either of two new targeted groups of employees added to section 51 of the Code in the American Recovery and Reinvestment Tax Act of 2009.

Notice 2009–47, page 1083.
This notice would propose a safe harbor for contracts with a maturity age of 100, which are intended to qualify as life insurance contracts under section 7702 of the Code and avoid characterization as an MEC under section 7702A, provided the contract complies with certain testing methodologies set out in the notice. The notice also asks for comments on several issues related to the use of an age 100 maturity.

Notice 2009–48, page 1085.
This notice provides guidance under section 101(j) of the Code in the form of questions and answers concerning what entities are subject to the information reporting required for employer-owned life insurance contracts and how those entities can provide that information. Section 101(j) was added to the Code by the Pension Protection Act of 2006 to ensure that employees whose lives are insured by their employers are adequately informed of that coverage and its consequences. Section 6039I sets forth corresponding reporting obligations applicable to those employers who obtain life insurance coverage on their employees.

Rev. Proc. 2009–25, page 1088.
This procedure describes a new pilot program for single issue letter rulings in the context of section 355 distributions. Rev. Procs. 2009–1 and 2009–3 amplified.

TAX CONVENTIONS

Announcement 2009–43, page 1075.
This document provides a copy of the Competent Authority Agreement entered into on May 6, 2009, by the Competent Authorities of the United States and the Kingdom of Belgium regarding the arbitration process set forth in the United States-Belgium Income Tax Convention signed on November 27, 2006.

Announcement 2009–44, page 1079.
The Competent Authorities of the United States and Belgium have agreed to adopt guidelines regarding the arbitration process set forth in the United States-Belgium Income Tax Convention signed on November 27, 2006.

ADMINISTRATIVE

Announcement 2009–49, page 1092.
This document cancels a public hearing on proposed regulations (REG–138326–07, 2009–9 I.R.B. 638) under section 6231 of the Code that allow the IRS to convert partnership items to nonpartnership items when the application of the unified partnership audit and litigation procedures of sections 6221 thru 6234 (TEFRA partnership procedures) with respect to certain tax avoidance transactions interferes with the effective and efficient enforcement of the internal revenue laws.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

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

Section 355.—Distribution of Stock and Securities of a Controlled Corporation

26 CFR 1.355–1: Distribution of stock and securities of a controlled corporation.

This revenue procedure describes a new pilot program for letter rulings under section 355 for certain transactions under the jurisdiction of the Associate Chief Counsel (Corporate). The new program does not diminish the availability of letter rulings under existing programs. See Rev. Proc. 2009-25, page 1088.

Section 6039I.—Returns and Records With Respect to Employer-Owned Life Insurance Contracts

26 CFR 1.6039I–1: Reporting of certain employer-owned life insurance contracts.

Guidance is provided in the form of questions and answers concerning what entities are subject to the information reporting required for employer-owned life insurance contracts and how those entities can provide that information. See Notice 2009-48, page 1085.

Section 6045.—Returns of Brokers

26 CFR 1.6045–4: Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

T.D. 9450

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Information Reporting for Lump-Sum Timber Sales

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the information reporting requirements contained in section 6045(e) of the Internal Revenue Code (Code) on sales or exchanges of standing timber for lump-sum (outright) payments. The final regulations amend §1.6045–4 of the Income Tax Regulations to require real estate reporting persons, as defined in section 6045(e)(2) of the Code, to report lump-sum payments received by sellers (landowners) for sales or exchanges of standing timber. The final regulations do not change the information reporting requirements that currently apply to sales or exchanges of standing timber for pay-as-cut (contingent) payments under section 6050N of the Code.

DATES: *Effective date:* These regulations are effective on May 28, 2009.

Applicability date: The amendments to paragraphs (b)(2)(i)(E), (b)(2)(ii) and (c)(2)(i) of §1.6045–4 shall apply to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy S. Sheppard of the Office of Chief Counsel (Procedure and Administration), at (202) 622–4910.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1085. The collection of information in these final regulations is in §1.6045–4. This information is required by the IRS to verify compliance with income reporting obligations with respect to lump-sum sales of timber. This information will be used to enable the IRS to verify that a taxpayer is reporting the correct amount of income.

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.

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

Background

This document contains amendments to the Income Tax Regulations under section 6045(e) of the Code. These amendments provide that sales or exchanges of standing timber for lump-sum payments are "reportable real estate" transactions under §1.6045–4(b)(2) and, thus, shall be reported as provided in section 6045(e) and the regulations.

On November 29, 2007, a notice of proposed rulemaking (REG–155669–04, 2007–2 C.B. 1262) was published in the **Federal Register** (72 FR 67589). No comments were received from the public in response to the notice of proposed rulemaking and no public hearing was requested or held. Accordingly, the proposed regulations are adopted by this Treasury decision. The final regulations make certain minor clarifying changes to the rules of the proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information burden imposed by these regulations flows directly from section 6045(e) of the Code. Moreover, requiring information reporting as described in the preamble with regard to sales or exchanges of standing timber for lump-sum payments imposes minimal burden in time or expense. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation has been

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Timothy S. Sheppard of the Office of Associate Chief Counsel (Procedure and Administration). However, other personnel from the IRS and the Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Part 1—INCOME TAXES

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

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

Par. 2. Section 1.6045–4 is amended by:

1. Redesignating paragraph (b)(2) introductory text as (b)(2)(i) introductory text.

2. In redesignated paragraph (b)(2)(i), further redesignating paragraphs (2)(i), (2)(ii), (2)(iii), and (2)(iv) as paragraphs (2)(i)(A), (2)(i)(B), (2)(i)(C), and (2)(i)(D), respectively.

3. Redesignating the undesignated text after newly designated paragraph (b)(2)(i)(D) as paragraph (b)(2)(ii) and adding a sentence at the end of newly-designated paragraph (b)(2)(ii).

4. Adding new paragraph (b)(2)(i)(E).

5. Revising paragraphs (c)(2)(i) and (s).

The revisions and additions read as follows:

§1.6045–4 Information reporting on real estate transactions with dates of closing on or after January 1, 1991.

* * * * *

(b) * * *

(2)* * * (i) * * *

(E) Any non-contingent interest in standing timber.

(ii) * * * Further, the term "ownership interest" includes any contractual interest in a sale or exchange of standing timber for a lump-sum payment that is fixed and not contingent.

* * * * *

(c) * * *

(2) * * *

(i) An interest in surface or subsurface natural resources (for example, water, ores, and other natural deposits) or crops, whether or not such natural resources or crops are severed from the land. For purposes of this section, the terms "natural resources" and "crops" do not include standing timber.

* * * * *

(s) *Effective/applicability date*. This section applies for real estate transactions with dates of closing (as determined under paragraph (h)(2)(ii) of this section) that occur on or after January 1, 1991. The amendments to paragraphs (b)(2)(i)(E), (b)(2)(ii) and (c)(2)(i) of this section shall apply to sales or exchanges of standing timber for lump-sum payments completed after May 28, 2009.

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

Approved May 15, 2009.

Bernard J. Knight, Jr.,
Acting General Counsel of the Treasury.

(Filed by the Office of the Federal Register on May 27, 2009, 8:45 a.m., and published in the issue of the Federal Register for May 28, 2009, 74 F.R. 25429)

Part II. Treaties and Tax Legislation
Subpart A.—Tax Conventions and Other Related Items

Belgian Arbitration Memorandum of Understanding Announcement

Announcement 2009–43

The following is a copy of the Competent Authority Agreement entered into on May 6, 2009 by the Competent Authorities of the United States and the Kingdom of Belgium regarding the arbitration process set forth in the United States — Belgium Income Tax Convention signed on November 27, 2006.

The text of the Competent Authority Agreement is as follows:

Memorandum of Understanding Between The Competent Authorities of The Kingdom of Belgium And The United States of America

The competent authorities of the Kingdom of Belgium and of the United States of America hereby enter into the following agreement (the "Agreement") regarding the application of the arbitration procedure under paragraph 7 and 8 of Article 24 (Mutual Agreement Procedure) of the Convention Between the Kingdom of Belgium and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on 27 November 2006. The Agreement is entered into under paragraph 6(q) of the Protocol to the Convention signed the same date ("the Protocol"). The purpose of this Agreement is to provide guidance under which the U.S.-Belgian arbitration procedure will operate.

1. Cases Eligible for Arbitration
   a. According to paragraph 7 of Article 24 of the Convention, arbitration is available in respect of any case where the competent authorities have endeavored but are unable to reach an agreement under Article 24 regarding the application of the Convention.
   b. An unresolved competent authority request which originated with a bilateral advance pricing agreement (APA) request will be subject to arbitration procedures. (For procedures regarding APAs, see paragraph 19 below.)
   c. Once a case is accepted into the mutual agreement procedure, neither competent authority will cease unilaterally to consider a case, except for the circumstances described in paragraph 2.
2. Cases Ineligible for Arbitration
   a. Arbitration is not available for cases which a competent authority has not accepted for competent authority consideration or in which a competent authority ceases to provide assistance, in accordance with the Convention, the Protocol or published guidance.
   b. The U.S. competent authority generally will not accept a request for competent authority assistance or will cease providing assistance to a taxpayer, and thus not provide for arbitration in the circumstances described in section 12.02 (Denial of Assistance) of Revenue Procedure 2006–54 (or any applicable subsequent guidance). In addition the U.S. competent authority will not provide for arbitration for a case in which the taxpayer has reached a settlement on the issue with IRS Appeals (including an Appeals settlement through the Appeals arbitration process) or with Chief Counsel pursuant to an executed closing agreement or other written agreement such as Form 870–AD.
   c. The Belgian competent authority generally will cease providing mutual agreement procedure assistance to a taxpayer, and thus not provide relief through arbitration if the case presented for mutual agreement procedure involves improper use of the Convention or a violation of the Belgian domestic law committed with fraudulent intention.
   d. In the event a Concerned Person begins an administrative appeals or judicial litigation proceedings in a case for which competent authority assistance is requested, the case will be considered not suitable for arbitration as long as the appeal or litigation proceedings have not been suspended until such time as a competent authority resolution has been reached.
   e. Arbitration is not available for a case that has been accepted for competent authority consideration, but for which the competent authorities agree that the particular case is not suitable for determination by arbitration pursuant to paragraph 7 of Article 24 of the Convention. This agreement may, depending on the circumstances of the particular case, be either a final decision, or a temporary deferral as is contemplated in paragraph 4.a.i below.
3. Commencement Date
   a. Within 45 days of receipt of a MAP request for assistance each competent authority will review the request and verify whether it contains the information necessary to undertake substantive consideration for a mutual agreement.
   b. If a competent authority determines that the request for assistance is not complete, that competent authority will inform the taxpayer in writing within 45 days of what information is necessary consistent with Rev. Proc. 2006–54 (or any applicable subsequent guidance) or the information required by the Belgian Federal Public Service Finance in its circular relating to Article 24 of the Convention.
   c. Once complete information is provided, pursuant to paragraph 22(p) of the Protocol, each competent authority will inform the other competent authority of the date it received the information necessary to undertake substantive consideration for a mutual

agreement. The latter of these dates will be the Commencement Date.

d. Simultaneously, the competent authorities will confirm with each other that each has received the same information.

e. When the Commencement Date is established,

i. the competent authorities will exchange correspondence with each other confirming the Commencement Date and the date the arbitration proceedings shall begin for any subsequently necessary arbitration and

ii. each competent authority will inform its taxpayer(s) in writing of the Commencement Date and the date the arbitration proceedings potentially shall begin for any subsequently necessary arbitration.

4. Date Arbitration Proceedings Begin

a. Arbitration proceedings in a case shall begin on the later of:

i. Two years after the Commencement Date of that case, unless both competent authorities have previously agreed to a different date, and

ii. The earliest date upon which the nondisclosure agreements have been received by both competent authorities.

b. The competent authorities may agree that it is appropriate to arbitrate a case either before or after two years from the Commencement Date.

c. If the competent authorities agree to begin arbitration proceedings on a date different from that generally required, then the competent authorities will confirm that date in writing to each other and to the Concerned Person resident in their territory.

5. Board Member Appointment

a. Each competent authority will appoint a member to the arbitration board by sending a written communication indicating their appointment to the other competent authority within 60 days of the date on which the arbitration proceedings begin.

b. If either competent authority fails to appoint a member, or if the members appointed by the competent authorities fail to agree upon the third member, the remaining member(s) will be appointed by the highest-ranking member of the Secretariat at the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development (OECD) who is not a citizen of either Belgium or the United States, by written notice to both countries within 60 days of the date of such failure.

c. If the chair is unable to fulfill his or her duties, the remaining two board members will jointly inform both competent authorities and select a new chair within 14 days.

d. If a board member is unable to fulfill his or her duties the chair will notify the competent authorities. The competent authority that selected the board member who is unable to fulfill his or her duties will select a substitute board member within 14 days.

e. If any board member is unable to fulfill his or her duties the competent authorities will consult with the remaining board members to determine whether a new timetable is necessary.

f. The competent authorities will not appoint current government employees or former career government employees within two years from their last employment in the government.

g. The competent authorities will appoint members who have significant international tax experience. They need not, however, have experience as either a judge or arbitrator. Every member of an arbitration board shall be impartial and independent of the contracting states and the Concerned Persons at the time of accepting an appointment to serve, and shall remain so during the entire arbitration proceeding.

6. Nondisclosure Issues

a. Each Concerned Person and their authorized representatives or agents must agree in writing prior to the beginning of arbitration proceedings not to disclose to any other person any information received during the course of the arbitration proceeding from either competent authority or the arbitration board, other than the determination of the board.

7. List of Chairs

a. The competent authorities will identify and jointly agree up to 10 persons who are qualified and willing to serve as a Chair for an arbitration board.

b. The competent authorities will review or revise this list every third year.

c. Persons to be identified for this list will have significant international tax experience. They need not, however, have experience as either a judge or arbitrator. Like every member of an arbitration board, the Chair shall be impartial and independent of the contracting states and the Concerned Persons at the time of accepting an appointment to serve, and shall remain so during the entire arbitration proceeding.

8. Proposed Resolution, Position Papers, Supporting Papers and Reply Submissions

a. Each competent authority will be permitted to submit, within 60 days of the appointment of the Chair of the arbitration board, a Proposed Resolution paper, limited to five pages, describing the proposed disposition of the specific monetary amounts of income, expense or taxation at issue in the case, and a supporting Position Paper, limited to 30 pages, plus annexes, for consideration by the arbitration board.

b. The Proposed Resolution should be drafted in a form that provides a resolution for each specific amount of income, expense or tax at issue in the case. The Proposed Resolution may also address any related issues identified by a taxpayer's request for

competent authority assistance, that are required to be resolved to determine the specific amount of income, expense or tax, for example, the threshold existence of a permanent establishment (see paragraph 12 below). Thus, as may be appropriate in a particular case, the competent authorities may agree that a Proposed Resolution (or portion thereof) need not be "an amount of income, expense or tax".

c. In the event that only one competent authority submits a Proposed Resolution within the allotted time, then that Proposed Resolution will be deemed to be the determination of the board in that case and the Proceeding will be terminated.

d. Each competent authority may, if it so desires, submit a Reply Submission, limited to 10 pages, to the board within 120 days of the appointment of the Chair, to address any points raised by the Proposed Resolution or Position Paper submitted by the other competent authority.

e. In a particular case, the competent authorities may agree on different page limitations for the Proposed Resolutions, Position Papers or Reply Submissions.

f. Any annex to a Position Paper must be a document previously made available for the competent authorities to use in negotiation.

g. The competent authorities will send to the Chair four copies of each document submitted to the board, for distribution to the board members and other competent authority.

9. Requests for Additional Information

a. Additional information may be submitted to the board only at its request, and copies of the board's request and the competent authority's response shall be provided to the other competent authority on the date on which the request or the response is submitted.

b. The board may request additional information that consists only of existing documents and may not request new or additional analyses.

c. The board may establish a deadline for responding to the request.

10. Multiple Issues

a. A case may consist of multiple issues. The existence of multiple issues in a case will ordinarily be identified by the assertion of multiple discrete proposed adjustments arising from an audit (or if there is no adjustment, multiple discrete denied credits or claims). The Proposed Resolution and Position Paper should address each issue separately. However, in an appropriate case, the competent authorities may agree to a different presentation of issues to the board, for example, where interrelated adjustments have been proposed.

b. The board will make a determination on each issue separately. Thus, the final decision of the board may be comprised of portions of each of the Proposed Resolutions submitted by the competent authorities.

11. Permanent Establishment Cases

a. Position Papers and Supporting Papers may take alternative positions. Thus, for example, a competent authority may take the position that no permanent establishment exists and, nevertheless, propose an amount of income to be attributed to a permanent establishment, in the event that the board determines that a permanent establishment exists.

12. Competent Authority Initiating Proceedings

a. For requests for competent authority assistance concerning an adjustment raised in either Belgium or the United States, the competent authority of the country initiating the adjustment is considered the competent authority initiating the Mutual Agreement Procedure.

b. For requests originally submitted as an APA, the competent authority of the country in which the parent company is located is considered the competent authority initiating the Mutual Agreement Procedure. If the parent company is a resident of a 3rd state, the competent authorities will determine the competent authority serving as the one initiating the MAP.

c. Meeting facilities, related resources, financial management, other logistical support, and general administrative coordination of the Proceeding will be provided, at its own cost, by the competent authority that initiated the Mutual Agreement Proceeding.

13. Board Member Nondisclosure

a. Upon confirmation of appointment of the arbitration board, each board member must agree in a statement to abide by and be subject to the confidentiality and nondisclosure provisions of Article 25 of the Convention and the applicable domestic laws of the Contracting States, as well as to this Agreement and the Arbitration Board Operation Guidelines.

14. Communication between the Board and the Competent Authorities

a. Before the chair is appointed, the competent authorities will send any correspondence concurrently to both board members. The chair and the competent authorities shall use express mail for all correspondence other than that sent via facsimile or email.

b. After the chair is appointed, the competent authorities will send any correspondence to the chair. Similarly, the chair will send any correspondence concurrently to the competent authorities.

c. No competent authority will have any ex parte communications, except for administrative or logistical matters, with a board member.

d. All communication, except for logistical matters, between the competent authorities and the board must be in writing. Written communication by fax or email is allowed, however, no information that may identify the taxpayer(s) may be included in an email.

15. Fees and Expenses
    a. The fees and expenses will be borne equally by the Contracting States.
    b. Neither Contracting State will charge a taxpayer for costs associated with arbitration.
    c. The fees of members of the arbitration board will be set at the fixed amount of $2000 (two thousand United States dollars) or the equivalent in euro per day, subject to modification by the competent authorities.
    d. For one case, each board member will be compensated for no more than three days of preparation, for two meeting days (including through video-conference) and for the travel days necessary to attend the meetings. If the board members feel, however, they require additional time to properly consider the case; the board members may be compensated for additional time, with prior approval of the competent authorities.
    e. In general, the expenses of members of the arbitration board will be set in accordance with the International Centre for Settlement of Investment Disputes (ICSID) Schedule of Fees for arbitrators (as in effect on the date on which the arbitration proceedings begin, subject to modification by the competent authorities.
    f. Any fees for language translation will be borne equally by the competent authorities.
16. Board Determination
    a. The determination of the board will constitute a resolution by mutual agreement under Article 24 (Mutual Agreement Procedure) of the Convention and will be binding on both competent authorities with respect to that case.
    b. Within 45 days of receiving the determination each Concerned Person must accept the determination in writing sent to the Contracting State of which the Concerned Person is a resident. If one Concerned Person fails to accept the determination within 45 days, the determination is considered rejected and the case will be closed. (See also paragraph 2(c)(iv).)
    c. If a Concerned Person has not renounced domestic legal remedies with respect to all of the issues covered by the arbitration decision by the time that person accepts the board's determination, the determination is considered rejected and the case will be closed.
    d. The treatment of any interest or penalties will be determined by applicable domestic law of Belgium or the United States.
17. Terminating Proceedings
    a. If a taxpayer terminates by withdrawing its request for assistance, then the competent authorities will exchange letters to close the case.
    b. If a taxpayer terminates an arbitration proceeding by withdrawing its request for assistance, the taxpayer will not ordinarily be allowed access to the competent authority procedures for the same matter and same years.
18. Advance Pricing Agreements (APA)
    a. A case initially submitted to the competent authorities as a request for an APA is eligible for arbitration, but only to the extent tax returns have been filed with respect to the taxable years at issue, including any years for which the taxpayer has requested a rollback. Tax years prior to those covered by the APA will be covered by the arbitration determination only if both competent authorities have agreed to cover those years in their position papers and only to the extent the tax years are still open to assessment according to the time limits in the domestic law of both Contracting States.
    b. For APA years for which tax returns have not been filed, the competent authorities agree to apply the transfer pricing method used in the position paper of the competent authority whose result the board determined was the better result, provided the transfer pricing method is sufficiently described in the supporting position paper.
    c. For purposes of establishing a Commencement Date for a case initially submitted as a request for an APA, paragraph 6(p) of the Protocol provides that the information necessary to undertake substantive consideration for a mutual agreement in the United States is the information required to be submitted to the Internal Revenue Service under Revenue Procedure 2006–9, section 4 (or any applicable successor provisions). In Belgium, the information is that which would be required under instructions or commentaries published by the Federal Public Service Finance.
    d. Once complete information is provided, the Commencement Date of the case, for purposes of any subsequently necessary arbitration, will be the earlier of i) the date on which the competent authorities have exchanged position papers setting forth their initial negotiating positions or ii) two years from the earliest date on which the information necessary to undertake substantive consideration for a mutual agreement has been received by both competent authorities. However, the arbitration proceedings will in no event commence before one year after the submission of the tax return for the later of the corresponding tax years covered by the APA request (including any amendments) has elapsed.
    e. For requests originally submitted as an APA, the competent authority of the country in which the parent company is located is considered the competent authority initiating the Mutual Agreement Procedure. If the parent company is a resident of a 3rd state, the competent authorities will determine the competent authority serving as the one initiating the MAP.
    f. The provisions of paragraphs 1 through 18 apply as appropriate.

Agreed:

For the Kingdom of Belgium

Sandra Knaepen
Belgian Competent Authority
1st Attache of Finance
International Relations Department Division
Administration of Corporate and Income Tax

Date:

For the United States of America

Barry B. Shott
United States Competent Authority
Deputy Commissioner (International
Large and Mid-sized Business)

Date:

The principal author of this announcement is Ana C. Guzman of the Office of Associate Chief Counsel (International). For further information regarding this announcement, contact Ms. Guzman at (202) 622–3880 (not a toll-free call).

U.S.-Belgium Arbitration Board Guidelines Announcement

Announcement 2009–44

The Competent Authorities of the United States and Belgium have agreed to adopt guidelines regarding the arbitration process set forth in the United States — Belgium Income Tax Convention signed on November 27, 2006. These guidelines relate to the Memorandum of Understanding Between the Competent Authorities of the Kingdom of Belgium and the United States of America signed on May 6, 2009 (See Ann. 2009–43, I.R.B. 2009–24). The guidelines apply to the arbitration process and, specifically, to the operations of the arbitration board. The text of the guidelines is as follows:

Arbitration Board Operating Guidelines

The competent authorities of the Kingdom of Belgium and of the United States of America adopt the following guidelines (the "Guidelines") regarding the operation of an arbitration board established under paragraphs 7 and 8 of Article 24 (Mutual Agreement Procedure) of the Convention Between the Kingdom of Belgium and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed on 27 November 2006 (the "Convention"). These Guidelines are adopted in accordance with paragraph 6(q) of the Protocol to the Convention, signed on the same date (the "Protocol").

1. Chair Appointment
   a. Within 5 business days after the appointment of the second board member by a competent authority, the board members shall contact each other to discuss appointment of a third board member, who will serve as Chair.
   b. Within 60 calendar days after the appointment of the second board member by a competent authority, the two board members shall appoint a third member, who will serve as a Chair.
   c. The competent authorities will provide to their appointed board members a list of persons who the competent authorities have agreed may potentially serve as Chair of the board. The competent authorities encourage the board members to select a person from the list, particularly because of issues regarding governmental contracting.
   d. The two board members selected by the competent authorities may select as a Chair a person not on the list; however, the board members should inform the competent authorities, in writing, prior to making the appointment. If they select a person not on the list, the person need not have arbitration experience; however, he or she should have significant familiarity with international tax issues.
2. Non-disclosure
   a. Pursuant to paragraph 6(n) of the Protocol, upon confirmation of appointment of the arbitration board, each board member must agree in a statement to abide by and be subject to the confidentiality and nondisclosure provisions of Article 25 of the Convention and the applicable domestic laws of the Contracting States, as well as to the arbitration Memorandum of Understanding Between the Competent Authorities of the Kingdom of Belgium and the United States of America, and to these guidelines.
3. Installation of Board
   a. When the Chair accepts his or her appointment, the Chair shall write to both competent authorities to inform them of his or her acceptance, providing the nondisclosure agreements and indicating the date of appointment and provide the chair's contact information.
4. Operating Procedures
   a. To the extent needed, the board may adopt any additional procedures necessary for the conduct of its business, provided that the procedures are not inconsistent with any provision of Article 24 of the Convention, the Protocol, the MOU, or any other related agreement between Belgium and the United States.
   b. If the board adopts any additional procedures, the Chair shall provide a written copy of them to the competent authorities.
5. Communication with the Competent Authorities
   a. Before the Chair is appointed, the competent authorities will send any correspondence concurrently to both board members.
   b. After the Chair is appointed, the competent authorities will send any correspondence to the chair. Similarly, the Chair will send any

correspondence concurrently to the competent authorities.

c. No board member will have any ex parte communications, except for administrative or logistical matters, with one competent authority.

d. All communication, except for logistical matters, between the board and the competent authorities must be in writing. Written communication by fax or email is allowed, however, no information that may identify the taxpayer(s) may be included in an email. Express mail or air mail shall be used for all correspondence other than that sent via facsimile or email.

e. The board members may communicate by telephone, videoconference, fax or face-to-face meetings. Board members may communicate by email; however, they must not include any taxpayer information in the email.

f. All three board members must be present during substantive discussions.

g. No board member shall have communications regarding the issues or matters before the board with the taxpayers involved in the case or their representatives during or subsequent to the arbitration process.

6. Position Papers and Supporting Papers

a. Within 90 days of the appointment of the chair, each competent authority shall submit four copies of the following documents to the board:

i. A proposed resolution paper not to exceed 5 pages, and

ii. A supporting position paper not to exceed 30 pages, plus annexes.

b. The Chair will send a copy of each competent authority's proposed resolution and supporting position papers to the other competent authority within 5 days of receipt of the latter submission by the board.

c. In the event that only one competent authority submits a Proposed Resolution and supporting Position Paper within the allotted time, then that Proposed Resolution shall be deemed to be the determination of the board in that case and the Proceeding shall be terminated.

7. Reply Submissions

a. Within 180 days of the appointment of the chair, each competent authority may submit four copies of a reply submission not to exceed 10 pages, to address any points raised by the proposed resolution or position paper submitted by the other competent authority.

b. The Chair will send a copy of each competent authority's reply submission paper to the other competent authority within 5 days of receipt of the later reply by the board.

8. Requesting Additional Information

a. The competent authorities may not submit to the board any additional information, unless the Chair so requests.

b. The board may request additional information only from either competent authority. Such a request shall be in writing and include a response deadline. On the date the Chair issues the request, the Chair shall send a copy of the request to the other competent authority.

c. The Chair shall send a copy of a competent authority's response to the other competent authority.

9. Board Meetings

a. The competent authorities encourage the members to use teleconferencing and videoconferencing. If a face-to-face meeting is necessary, the Chair will contact the competent authority of the country that initiated the mutual agreement proceeding and ask it to arrange facilities for the meeting.

i. For requests for competent authority assistance concerning an adjustment raised in either Belgium or the United States, the competent authority of the country that proposed the adjustment (or in the case where there is no adjustment, denied the credit or claim) is considered the competent authority initiating the mutual agreement procedure.

ii. For requests originally submitted as an APA, the competent authority of the country in which the parent company is located is considered the competent authority initiating the mutual agreement procedure. If the parent company is a resident of a 3rd state, the competent authorities will determine the competent authority serving as the one initiating the MAP.

b. The competent authority will arrange meeting facilities in a location that minimizes the board's travel time and expenses. Each competent authority may arrange a meeting in the other's meeting facilities, as needed.

10. A Board Member's Use of Staff

a. The competent authorities anticipate that board members will be able to perform their duties without the use of additional staff.

b. If a board member uses staff, that staff person must sign a non-disclosure agreement before performing any work on the matter.

c. The board member must send the non-disclosure agreement to the competent authorities.

d. The staff person must be subject to the same conflict of interest rules as the board member.

e. The competent authorities will not compensate the staff member.

11. Payment of Board Members

a. The expenses of members of the board shall be set in accordance with the International Centre for Settlement of Investment Disputes (ICSID) Schedule of Fees for arbitrators, as in effect on the date on which the arbitration proceedings begin. This applies in particular for hotel, meals and incidental costs. With regard to travel expenses, board members will be reimbursed for economy class travel.

b. With respect to fees, each board member will be compensated

for no more than three days of preparation, for two meeting days (including through video-conference) and for travel days.

c. If the board members feel they require additional time to properly consider the case, the Chair will contact the competent authorities to request additional time.

12. Inability of a Board Member to Fulfill Duties
    a. If the Chair is unable to fulfill his or her duties, the remaining two board members will jointly inform both competent authorities and select a new Chair within 14 days.
    b. If one of the other board members is unable to fulfill his or her duties, the Chair will notify the competent authorities. The competent authority that selected the board member who is unable to fulfill his or her duties will select a substitute board member within 14 days.
    c. If any board member is unable to fulfill his or her duties the competent authorities will consult with the remaining board members to determine a new timetable, if necessary.
    d. Should it come to light that a board member has a conflict of interest which would have prevented that member's original appointment, the board member must recuse himself or herself from consideration of the case and inform the competent authorities.
13. Process for Board's Determination
    a. The board must make a determination by adopting one of the proposed resolutions submitted by the competent authorities.
    b. For each issue, each board member must choose one of the proposed resolutions.
    c. A majority vote shall determine the decisions of the board in a case.
14. Multiple Issue Cases.
    a. If a case contains more than one issue (for example, the case involves the transfer of tangible goods, the transfer of intangible goods and the performance of services) the board will make a determination on each issue individually.
15. Permanent Establishment Cases
    a. If the competent authorities have not reached an agreement on the existence of a permanent establishment, the first issue the board members must determine is whether a permanent establishment exists.
    b. Once it is determined that a permanent establishment exists, the second issue the board members must then determine is the amount of income attributable to that permanent establishment. Accordingly, the competent authorities may submit a position paper and supporting paper that takes alternative positions. For example, a competent authority may take the position that a permanent establishment does not exist and should the board decide that a permanent establishment exists, determine the amount of income that should be attributed to that permanent establishment.
16. Board's Determination
    a. Within 9 months of the appointment of the chair, the Chair must provide the written determination concurrently to each competent authority.
    b. The written determination must, for each issue, include only one of the two proposed resolutions for the issue presented to the Board.
    c. The board will not determine the treatment of any associated interest or penalties; rather that treatment will be determined by applicable domestic law of Belgium and the United States, as the case may be.
    d. The written determination shall not include any rationale or analysis.
    e. The determination of the board will have no precedential value.
    f. No information relating to the Proceeding (including the board's determination) may be disclosed by the members of the arbitration board or their staffs or by either competent authority, except as permitted by the Convention and the domestic laws of Belgium or the United States.
17. Terminating a Proceeding
    a. A Proceeding may be terminated by the board's determination in the matter, by the competent authorities reaching a mutual agreement, or by a taxpayer's withdrawal of its competent authority request.
    b. If a taxpayer withdraws its competent authority request, the competent authorities will notify the board that the taxpayer has withdrawn its request and the arbitration process is terminated.
    c. If the competent authorities wish to terminate a proceeding (for example, because they have reached an agreement on the treatment of the case), the competent authorities will notify the board that they have reached a mutual agreement and the arbitration process is terminated.
    d. Regardless, at the termination of any proceeding each board member must immediately destroy all documents or other information received from either competent authority, or otherwise reflecting the considerations or discussions of the arbitration board, and delete all information that may be stored on any computer, personal data assistant or other electronic device or media.
18. Terms that are capitalized but not defined in these Guidelines have the same meaning set forth in the Convention or Protocol.

The principal author of this announcement is Ana C. Guzman of the Office of Associate Chief Counsel (International). For further information regarding this announcement, contact Ana C. Guzman at (202) 622–3880 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Work Opportunity Tax Credit

Notice 2009–28

PURPOSE

Section 51 of the Internal Revenue Code (the Code) provides for a Work Opportunity Tax Credit (WOTC) for employers who hire individuals who are members of targeted groups. Section 1221 of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA), enacted February 17, 2009, Div. B, Tit. I of Pub. L. No. 111–5, amended § 51 to add two new targeted groups for purposes of the WOTC. New § 51(d)(14) provides that unemployed veterans and disconnected youth who begin work for an employer during 2009 or 2010 shall be treated as members of a targeted group for purposes of the WOTC.

This notice sets forth the statutory definitions of "unemployed veteran" and "disconnected youth," and provides guidance on the definition of "disconnected youth." It also provides transition relief for employers who hire unemployed veterans or disconnected youth after December 31, 2008, and before July 17, 2009.

I. STATUTORY DEFINITION OF UNEMPLOYED VETERAN

For purposes of § 51(d)(14), the term "veteran" means any individual who is certified by the designated local agency (as defined in § 51(d)(12) as a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. § 49–49n)) as:

(1) having served on active duty (other than active duty for training) in the Armed Forces of the United States (Armed Forces) for a period of more than 180 days; or

(2) having been discharged or released from active duty in the Armed Forces for a service-connected disability.

Section 51(d)(14)(B)(i) provides that the term "unemployed veteran" means any veteran who is certified by the designated local agency as:

(1) having been discharged or released from active duty in the Armed Forces at any time during the 5-year period ending on the hiring date; and

(2) being in receipt of unemployment compensation under State or Federal law for not less than four weeks during the one-year period ending on the hiring date.

II. DISCONNECTED YOUTH

A. Statutory Definition

Section 51(d)(14)(B)(ii) provides that the term "disconnected youth" means any individual who is certified by the designated local agency:

(I) as having attained age 16 but not age 25 on the hiring date;

(II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date;

(III) as not regularly employed during such 6-month period; and

(IV) as not readily employable by reason of lacking a sufficient number of basic skills.

The Conference Agreement on ARRTA, H.R. Rep. No. 111–16, at 554, states:

> For purposes of the disconnected youths, it is intended that a low level of formal education may satisfy the requirement that an individual is not readily employable by reason of lacking a sufficient number of skills. Further, it is intended that the Internal Revenue Service, when providing general guidance regarding the various new criteria, shall take into account the administrability of the program by the State agencies.

B. Not regularly attending any secondary, technical or post-secondary school

For purposes of § 51(d)(14)(B)(ii)(II), the term "not regularly attending" means that the individual states in writing that during the six months preceding his or her hiring date, he or she has not attended a secondary, technical or post-secondary school for more than an average of 10 hours per week, not counting periods during which the school is closed for scheduled vacations.

For purposes of § 51(d)(14)(B)(ii), the term "secondary school" means:

(1) A secondary school as defined in 20 U.S.C. § 7801(38); or

(2) a for-profit secondary school that otherwise meets the definition in 20 U.S.C. § 7801(38).

A General Education Development (GED) program is not a secondary school for purposes of § 51(d)(14)(B)(ii).

For purposes of § 51(d)(14)(B)(ii) and § 51(d)(14)(B)(ii)(IV), the terms "technical school" and "post-secondary school" mean institutions of higher education as defined in 20 U.S.C. §§ 1001; 1002(a)(1), (b) and (c); and 1059c(b)(3).

C. Not regularly employed

For purposes of § 51(d)(14)(B)(ii)(III), an individual was not regularly employed if, during each consecutive three-month period within the six months preceding his or her hiring date, the individual earned less than an amount equal to the gross amount he or she would have been paid at the minimum wage if he or she worked 30 hours every week during the three-month period.

For purposes of the preceding sentence, "minimum wage" is the higher of (1) the federal minimum wage (as defined in 29 U.S.C. § 206(a)(1)) or (2) the generally applicable State minimum wage (if any).

D. Not readily employable by reason of lacking a sufficient number of basic skills

For purposes of § 51(d)(14)(B)(ii)(IV), an individual is not readily employable by reason of lacking a sufficient number of basic skills if the individual states in writing that he or she does not have a certificate of graduation from a secondary school or a GED Certificate. For purposes of § 51(d)(14)(B)(ii)(IV), an individual also is not readily employable by reason of lacking a sufficient number of basic skills if the individual states in writing that he or she has a certificate of graduation from a secondary school or a GED Certificate that was awarded no less than six months preceding his or her hiring date and has not held a job or been admitted to a technical school or post-secondary school since receiving the certificate.

EFFECTIVE DATE

New § 51(d)(14) is effective for individuals who begin work for the employer after December 31, 2008, and before January 1, 2011.

TRANSITION RELIEF

Section 51(d)(13) provides that an individual shall not be treated as a member of a targeted group unless the employer obtains certification from a designated local agency on or before the day the individual begins work that the individual is a member of a targeted group or completes a pre-screening notice (IRS Form 8850) on or before the day the individual is offered employment and submits such notice to the designated local agency to request certification not later than 28 days after the individual begins work. However, under this notice, any employer who hires an unemployed veteran or a disconnected youth (as defined in § 51(d)(14)) after December 31, 2008, and before July 17, 2009, will be considered to satisfy the deadline in § 51(d)(13)(A)(ii)(II) if the employer submits the pre-screening notice to the designated local agency to request certification not later than August 17, 2009.

DRAFTING INFORMATION

The principal author of this notice is Robin Ehrenberg of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other individuals participated in its development. For further information regarding this notice, contact Ms. Ehrenberg at (202) 622–6080 (not a toll-free call).

Application of Sections 7702 and 7702A to Life Insurance Contracts that Mature After Age 100

Notice 2009–47

SECTION 1. PURPOSE

The purpose of this notice is to request comments on a proposed safe harbor addressing the application of §§ 7702 and 7702A of the Internal Revenue Code to life insurance contracts that mature after the insured individual ("the insured") attains age 100. This notice also requests comments on the treatment of amounts received under a life insurance contract after it has matured.

SECTION 2. BACKGROUND

.01 Section 7702 of the Code defines the term "life insurance contract" for purposes of the Code. Section 7702(a) provides that a "life insurance contract" is any contract that is a life insurance contract under the applicable law, but only if such contract either (1) meets the cash value accumulation test of § 7702(b), or (2) both meets the guideline premium requirements of § 7702(c) and falls within the cash value corridor of § 7702(d). Section 7702 was added to the Code by the Deficit Reduction Act of 1984, P.L. 98–369.

.02 A contract meets the cash value accumulation test of § 7702(b) if, by the terms of the contract, the cash surrender value of the contract may not at any time exceed the net single premium that would have to be paid at that time to fund future benefits under the contract.

.03 A contract meets the guideline premium requirements of § 7702(c) if the sum of the premiums paid under the contract does not at any time exceed the guideline premium limitation as of that time. The guideline premium limitation as of any date is the greater of the guideline single premium, or the sum of the guideline level premiums to that date. The guideline single premium is the premium that would be required on the date the contract is issued to fund the future benefits under the contract.

.04 A contract falls within the cash value corridor of § 7702(d) if the death benefit under the contract at any time is not less than the applicable percentage of the cash surrender value, as determined under the table set forth in § 7702(d)(2). Under that table, the applicable percentage for an insured with an attained age of 95 is 100 percent.

.05 Section 7702(e) provides computational rules that must be used for purposes of § 7702, other than for purposes of applying the cash value corridor. In particular, under § 7702(e)(1)(B) the maturity date (including the date on which any death benefit is payable) under a contract is deemed to be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100. Section 1.7702–2 of the Income Tax Regulations provides guidance on determining the attained age of the insured for this purpose.

.06 Section 7702A(a) provides that a life insurance contract is a modified endowment contract (MEC) if the contract is entered into on or after June 21, 1988, and fails to meet the 7-pay test, or is received in exchange for a contract which is a MEC. A contract fails to meet the 7-pay test if the accumulated amount paid under the contract at any time during the first 7 contract years exceeds the sum of the net level premiums that would have to be paid on or before such time if the contract were to provide for paid-up future benefits (including death benefits) after the payment of 7 level annual premiums. Under § 7702A(c)(1)(B), the determination of the 7 level annual premiums generally is made by applying the computational rules of § 7702(e), including the rule requiring a deemed maturity date no earlier than the day on which the insured attains age 95 and no later than the day on which the insured attains age 100.

.07 The 2001 Commissioners' Standard Ordinary mortality and morbidity tables (2001 CSO tables) prescribed by the NAIC became the prevailing commissioners' standard tables within the meaning of § 807(d)(5) during calendar year 2004, and have been adopted by all 50 states. For tax purposes, the 2001 CSO mortality tables generally must be used for purposes of applying the reasonable mortality charge requirements of § 7702(c)(3)(B)(i) with regard to contracts issued after December 31, 2008. *See* Notice 2006–95, 2006–2 C.B. 848, *modifying and superseding* Notice 2004–61, 2004–2 C.B. 596, *supplementing* Notice 88–128, 88–2 C.B. 540.

.08 Unlike the 1958 Commissioners Standard Ordinary Mortality Tables (1958 CSO Tables) and the 1980 Commissioners Standard Ordinary Mortality Tables (1980 CSO Tables), the 2001 CSO tables extend to age 121. As a result, an increasing number of issuers now develop contracts with maturity dates beyond age 100, even though the qualification of the contracts as life insurance contracts (and as MECs) is tested using computational rules that deem the contracts to mature between the

date the insured attains age 95 and the date the insured attains age 100. The 2001 Maturity Age Task Force of the Taxation Section of the Society of Actuaries has proposed a series of recommendations to comply with the requirements of §§ 7702 and 7702A in a manner that is actuarially sound. *See 2001 CSO Implementation Under IRC Sections 7702 and 7702A*, 2 Taxing Times 23 (May 2006). The proposed safe harbor in section 3 of this notice is drawn from that proposal, with modifications. Section 4 of this notice requests comments on the proposed safe harbor.

.09 In addition to the application of the definitional rules of §§ 7702 and 7702A, other issues arise with regard to contracts that, by their terms, mature while the insured is still alive. For example, a contract that matures at age 100 may have a cash value equal to the contract's death benefit. Pre–1984 federal tax case law, however, requires that a life insurance contract involve "risk shifting" in order to qualify as such for federal income tax purposes. *See, e.g.*, *Helvering v. Le Gierse*, 312 U.S. 531 (1941) (even though a contract is in the form of a life insurance contract, it is not treated as such for federal income tax purposes unless the requirements of risk shifting and risk distribution are met); *Evans v. Commissioner*, 56 T.C. 1142 (1971) (contracts that previously qualified as life insurance contracts were not so treated where the cash surrender value of the contracts exceeded their face amount). Moreover, even if such a contract were to satisfy the definition of a life insurance contract under the literal terms of § 7702, the fact that the contract has fully matured may affect the treatment of the holder of the contract under the doctrine of constructive receipt, or may affect the treatment of a beneficiary under the contract if amounts are received not by reason of the death of the insured, but by reason of the insured's attainment of age 100. Section 4 requests comments on these issues as well.

SECTION 3. PROPOSED SAFE HARBOR

.01 *In general.* Under the proposed safe harbor, the Service would not challenge the qualification of a contract as a life insurance contract under § 7702, or assert that a contract is a MEC under § 7702A, provided the contract satisfies the requirements of those provisions using all of the Age 100 Testing Methodologies of section 3.02 of this notice.

.02 *Age 100 Testing Methodologies.* The Age 100 Testing Methodologies of this section 3.02 are as follows:

(a) All determinations under §§ 7702 and 7702A (other than the cash value corridor) would assume that the contract will mature by the date the insured attains age 100, notwithstanding a later contractual maturity date (such as by reason of using the 2001 CSO mortality tables).

(b) The net single premium determined for purposes of the cash value accumulation test under § 7702(b), and the necessary premiums determined for purposes of § 7702A(c)(3)(B)(i), would assume an endowment on the date the insured attains age 100.

(c) The guideline level premium determined under § 7702(c)(4) would assume premium payments through the date the insured attains age 99.

(d) Under § 7702(c)(2)(B), the sum of the guideline level premiums would increase through a date no earlier than the date the insured attains age 95 and no later than the date the insured attains age 99. Thereafter, premium payments would be allowed and would be tested against this limit, but the sum of the guideline level premiums would not change.

(e) In the case of a contract issued or materially changed within fewer than 7 years of the insured's attaining age 100, the net level premium under § 7702A(b) would be computed assuming level annual premium payments over the number of years between the date the contract is issued or materially changed and the date the insured attains age 100.

(f) If the net level premium under § 7702A(b) is computed over a period of less than 7 years by reason of an issuance or material change within fewer than 7 years of the insured's attaining age 100, the sum of the net level premiums would increase through attained age 100. Thereafter, the sum of the net level premiums would not increase, but premium payments would be allowed and would be tested against this limit for the remainder of the 7-year period.

(g) The rules of § 7702A(c)(2) and (6) concerning reductions in benefits within the first 7 contract years would apply whether or not a contract is issued or materially changed fewer than 7 years before the date the insured attains age 100.

(h) A change in benefits under (or in other terms of) a life insurance contract that occurs on or after the date the insured attains age 100 would not be treated as a material change for purposes of § 7702A(c)(3) or as an adjustment event for purposes of § 7702(f)(7).

(i) Notwithstanding the methodologies of this section 3.02(a)-(h), a contract that remains in force would additionally be required to provide at all times a death benefit equal to or greater than 105 percent of the cash value.

.03 *Effective date.* The proposed safe harbor would be effective as of the date of publication in the Internal Revenue Bulletin.

.04 *Status as administrative guidance.* Until the proposed safe harbor is formally adopted by the Service, the proposed safe harbor is not an "administrative pronouncement" as that term is used in § 1.6662–4(d)(3)(iii) of the regulations; it may not be relied upon as an official interpretation of §§ 7702 or 7702A.

SECTION 4. REQUEST FOR COMMENTS

.01 *In general.* The Service requests comments on the proposed safe harbor described in Section 3 of this notice.

.02 *Other matters.* Comments are requested concerning additional issues that may arise in situations where a life insurance contract matures after the insured has attained age 100. For example—

(a) If an individual who already has attained age 100 purchases a contract that is a life insurance contract under the applicable state or foreign law, do the computational rules of § 7702(e) prevent the contract from qualifying as a life insurance contract for federal income tax purposes?

(b) If a preexisting contract actually matures at age 100, such that the cash surrender value and death benefit under the contract are the same, is the insured taxed at that time on the maturity value of the contract under the doctrine of constructive receipt?

(c) If a preexisting contract actually matures at age 100, such that the cash surrender value and the death benefit are the same, is an amount later received under the

contract by a beneficiary upon the death of the insured ineligible for exclusion under § 101 because, in the absence of any amount at risk, the payment is not received "by reason of" the insured's death?

(d) In addition to the maturity age issues discussed in this notice, do other issues arise as a result of implementation of the 2001 CSO tables that would appropriately be addressed by published guidance?

.03 Comments should be submitted in writing on or before October 13, 2009 and should contain a reference to this Notice 2009–47. Comments may be submitted to CC:PA:LPD:PR (Notice 2009–47), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically to *Notice.Comments@irscounsel.treas.gov*. Please include "Notice 2009–47" in the subject line of any electronic communications.

.04 Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2009–47), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this notice is Donald J. Drees of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Mr. Drees at (202) 622–3970 (not a toll-free call).

Treatment of Certain Employer-Owned Life Insurance Contracts

Notice 2009–48

PURPOSE

This notice provides guidance concerning the treatment of employer-owned life insurance contracts under §§ 101(j) and 6039I of the Code in a question and answer format. Sections 101(j) and 6039I were added to the Code by § 863 of the Pension Protection Act of 2006 ("PPA"), Pub. L. No. 109–280, 120 Stat. 780.

BACKGROUND

Section 101(j)(1) provides that, in the case of an employer-owned life insurance contract, the amount excluded from gross income of an applicable policyholder under § 101(a)(1) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract. In general, an employer-owned life insurance contract is a life insurance contract that is owned by a person engaged in a trade or business and under which that person is a beneficiary under the contract, and that covers the life of an insured who is an employee on the date the contract is issued. An applicable policyholder is a person who owns an employer-owned life insurance contract, or a related person as described in § 101(j)(3).

Section 101(j)(2) provides exceptions to the general rule of § 101(j)(1) in the case of certain employer-owned life insurance contracts with respect to which certain notice and consent requirements are met. Those exceptions are based either on (i) the insured's status as an employee at any time during the 12-month period before the insured's death or as a director, a highly compensated employee or highly compensated individual at the time the contract is issued, or (ii) the extent to which death benefits are paid to (or used to purchase an equity interest in the applicable policyholder from) a family member, trust, or estate of the insured employee.

Section 6039I provides that every applicable policyholder that owns one or more employer-owned life insurance contracts issued after August 17, 2006, must file a return, at such time and in such manner as the Secretary prescribes, setting forth specific information for each year the contracts are owned. In order to satisfy this requirement, a taxpayer must file Form 8925. *See* § 1.6039I–1 of the regulations.

QUESTIONS AND ANSWERS

Definition of Employer-Owned Life Insurance Contract

Section 101(j)(3) provides that the term "employer-owned life insurance contract" means a life insurance contract that (1) is owned by a person engaged in a trade or business, and under which such person (or a related person) is directly or indirectly a beneficiary under the contract, and (2) covers the life of an insured who is an employee of the applicable policyholder on the date the contract is issued. The term "applicable policyholder" with respect to an employer-owned life insurance contract generally means the person who owns the contract. The term "applicable policyholder" also includes any person who bears a relationship specified in § 267(b) or § 707(b)(1) to the owner of the contract, or who is engaged in trades or businesses with the owner of the contract which are under common control within the meaning of § 52(a) or (b).

Q–1. Can a contract be an employer-owned life insurance contract if it is owned not by a person engaged in a trade or business, but by a related person who is not engaged in a trade or business?

A–1. No. A contract is an employer-owned life insurance contract only if it is owned by a person engaged in a trade or business and is otherwise described in § 101(j)(3). Thus, a contract that is owned by the owner of an entity engaged in a trade or business (such as for purposes of financing the purchase of an equity interest of another owner), or by a qualified plan or VEBA that is sponsored by an entity engaged in a trade or business, is not an employer-owned life insurance contract. A contract, however, that is owned by a grantor trust (such as a rabbi trust), assets of which are treated as assets of a grantor that is engaged in a trade or business, is an employer-owned life insurance contract if the contract is otherwise described in § 101(j)(3).

Q–2. Can a contract be an employer-owned life insurance contract if it is subject to a split dollar arrangement?

A–2. Yes. A contract that is subject to a split dollar arrangement is an employer-owned life insurance contract if the contract is owned by a person engaged in a trade or business and is otherwise described in § 101(j)(3). *See* § 1.61–22(c)(1) (defining the owner of a contract subject to a split dollar arrangement to be the person named as the policy owner of the contract). Under § 101(j)(2)(B), however, the general rule of § 101(j)(1) does not apply to the extent any amount received by reason of the death of the insured is paid to a family member of the insured, an individual who is a designated beneficiary, a trust established for the benefit of a family member or designated beneficiary.

Q–3. Is a contract an employer-owned life insurance contract if it is owned by a partnership or sole proprietorship that is engaged in a trade or business; the partnership or sole proprietorship is directly or indirectly a beneficiary under the contract; and, the contract covers the life of an insured who is an employee with respect to the trade or business on the date the contract is issued?

A–3. Yes. If a life insurance contract is otherwise described in § 101(j)(3), ownership of the contract by a partnership or sole proprietorship does not prevent the contract from being treated as an employer-owned life insurance contract. A life insurance contract that is owned by a sole proprietor on his or her own life is not, however, an employer-owned life insurance contract.

Exceptions to the Application of § 101(j)(1)

Section 101(j)(2) provides several exceptions to the application of § 101(j)(1), provided the notice and consent requirements of § 101(j)(4) are met. Specifically, under § 101(j)(2)(A), § 101(j)(1) does not apply if the insured either was an employee at any time during the 12-month period before death, or was a director, highly compensated employee or highly compensated individual, as defined, at the time the contract was issued. Under § 101(j)(2)(B), § 101(j)(1) does not apply to any amount received by reason of the death of an insured to the extent the amount is paid to or used to purchase an equity (or capital or profits) interest from a family member of the insured, an individual who is a designated beneficiary, a trust established for the benefit of a family member or designated beneficiary, or the estate of the insured.

Q–4. Under § 101(j)(2)(A) and (j)(4), when is a contract treated as "issued" for purposes of determining whether the notice and consent are timely, or whether the insured is a director, a highly compensated employee, or a highly compensated individual at the time the contract is issued?

A–4. Generally, the issue date of a contract is the date on the policy assigned by the insurance company, which is on or after the date the application was signed. Solely for purposes of § 101(j)(2)(A) and (j)(4), an employer-owned life insurance contract is treated as "issued" on the later of (1) the date of application for coverage, (2) the effective date of coverage, or (3) the formal issuance of the contract. Thus, if an employer-owned life insurance contract is effective for a limited period of time before formal issuance of the contract (such as to complete underwriting), the notice and consent requirements may be satisfied during the period between the effective date of coverage and formal issuance of the contract. In addition, an employer-owned life insurance contract may be treated as a new contract, and thus newly "issued," by reason of a material increase in death benefit or other material change in the contract. See A–14, this notice.

Q–5. For purposes of § 101(j), is the term "employee" limited to common law employees?

A–5. No. Section 101(j)(5)(A) provides that the term "employee" includes an officer, director, and highly compensated employee (within the meaning of § 414(q)). A director is an independent contractor in his or her capacity as a director.

Section 414(q) contains special rules relating to certain former employees and self-employed individuals. For example, a former employee is treated as a highly compensated employee (within the meaning of § 414(q)) if the individual was a highly compensated employee when he separated from service, or was a highly compensated employee at any time after attaining age 55. In addition, the term "employee" for purposes of § 414(q) includes an individual who is a self-employed individual who is treated as an employee pursuant to § 401(c)(1).

Q–6. How soon after the death of an employee must an amount be used to purchase an equity (or capital or profits) interest in the applicable policyholder, in order to qualify for the exception set forth in § 101(j)(2)(B)(ii)?

A–6. In order to know whether an amount received as a death benefit under an employer-owned life insurance contract is eligible for exclusion from gross income under § 101(a), or is ineligible for exclusion under the general rule of § 101(j)(1), it is necessary to determine the availability of the exception for amounts used to purchase an equity (or capital or profits) interest in the applicable policyholder. Accordingly, an amount must be so paid or used by the due date, including extensions, of the tax return for the taxable year of the applicable policyholder in which the applicable policyholder is treated as receiving a death benefit under the contract.

Satisfaction of Notice and Consent Requirement

Even if an exception described in § 101(j)(2)(A) or (B) is otherwise satisfied, § 101(j)(2) requires that the notice and consent requirements of § 101(j)(4) be met in order for the general rule of § 101(j)(1) not to apply. The notice and consent requirements of § 101(j)(4) are met if, before the issuance of the policy, the employee (1) is notified in writing that the applicable policyholder intends to insure the employee's life and of the maximum face amount for which the employee could be insured at the time the contract was issued; (2) provides written consent to being insured under the contract and that such coverage may continue after the insured terminates employment; and (3) is informed in writing that an applicable policyholder will be a beneficiary of any proceeds payable upon the death of the employee.

Q–7. Is notice and consent required of an owner-employee of a wholly-owned corporation?

A–7. Yes. Section 101(j)(4) provides no exception that would excuse a wholly-owned corporation and its employee-owner from the notice and consent requirements that otherwise apply, nor can actual knowledge alone substitute for the statutory requirement that notice and consent be "written." Moreover, the requirement that notice and consent be written avoids factual controversies that otherwise could result where, for example, the sole owner of a corporation delegates financial matters to an employee.

Q–8. Is notice and consent required with regard to an existing life insurance contract that an employee irrevocably transfers to an employer?

A–8. No. The actual transfer of an existing life insurance contract by an employee to an employer is sufficient to satisfy the requirements that the employee be notified in writing of the intention to insure and the maximum face amount of insurance, that written consent be secured, and that the employee be notified that the

employer will be a beneficiary upon his or her death. In the event the employer subsequently increases the face amount of the contract, however, written notice and consent must be secured to establish the requisite notice to the employee and consent to the new face amount.

Q–9. How soon after an employee provides written consent must a contract be issued in order for the consent to be valid for purposes of § 101(j)(4) with regard to the contract?

A–9. In order for the employee's consent to satisfy the requirements of §101(j)(4) with regard to a contract, the contract must be issued before the earlier of (1) the expiration of the one-year period beginning on the date the consent was executed, or (2) termination of the employee's employment with respect to the trade or business of the applicable policyholder. It is not necessary to provide further notice or renew an employee's consent with regard to an existing contract unless, for example, the total face amount of the employer-owned life insurance contracts with regard to the employee exceeds the amount of which the employee was notified and to which the employee consented as described in § 101(j)(4).

Q–10. May a single consent apply to more than one employer-owned life insurance contract?

A–10. Yes. As long as the notice and consent requirements of § 101(j)(4) are otherwise met, the fact that more than one contract is acquired with regard to an employee who executed a single consent does not prevent an exception under § 101(j)(2) from applying. Thus, for example, if an employee is appropriately notified that an applicable policyholder intends to insure the employee's life for a maximum $1 million face amount and the employee consents in writing, the applicable policyholder may purchase two employer-owned life insurance contracts, each with a face amount of $500,000, and satisfy the requirements of § 101(j)(4).

Q–11. May the notice and consent requirements of § 101(j)(4) be satisfied electronically?

A–11. Yes. Although § 101(j)(4)(A) and (C) require that notification be "in writing," and § 101(j)(4)(B) requires that consent be "written," this requirement may be satisfied electronically so long as the system for electronic notification and consent includes the elements set forth in § 101(j)(4) (notification of intention to insure and maximum face amount, consent to insurance and continuation after termination of employment, and notification that an applicable policyholder will be a beneficiary of any proceeds payable upon the employee's death). In addition, the system must (1) ensure that the information received by the employee is the same as the information sent by the employer; (2) make it reasonably certain that the person accessing the system is the employee for whom notice and consent is required; (3) include a process for electronic signature or other means of formally recording the employee's consent to being insured; and (4) permit the production of a hardcopy of the electronic notice and consent upon request by the Internal Revenue Service (Service) and a statement that, to the best of the employer's knowledge, the required notice was provided to the employee and the employee consented to being insured. *Compare* § 31.3402(f)(5)–1(c)(2) (providing administrative requirements in the case of electronically filed Forms W–4).

Q–12. Are the notice and consent requirements of § 101(j)(4) met by advising an employee that the face amount of life insurance may be "the maximum face amount for which the employee could be insured" at the time the contract is issued?

A–12. No. The requirement of § 101(j)(4)(A) that the employee be notified in writing of the maximum face amount of life insurance requires the disclosure of a face amount of life insurance, either in dollars or as a multiple of salary, that the applicable policyholder reasonably expects to purchase with regard to the employee during the course of the employee's tenure. Additional notice and consent are required if the aggregate face amount of the employer-owned life insurance contracts with regard to an employee exceeds the amount of which the employee was given notice and to which the employee consented.

Q–13. How can an inadvertent failure to satisfy the notice and consent requirements of § 101(j)(4) be corrected?

A–13. Section 101(j) does not contain a provision for correcting an inadvertent failure to satisfy the notice and consent requirements of § 101(j)(4). The Service will not, however, challenge the applicability of an exception under § 101(j)(2) based on an inadvertent failure to satisfy the notice and consent requirements if the following conditions are met: (1) the applicable policyholder made a good faith effort to satisfy those requirements, such as by maintaining a formal system for providing notice and securing consents from new employees; (2) the failure to satisfy the requirements was inadvertent; and (3) the failure to obtain the requisite notice and consent was discovered and corrected no later than the due date of the tax return for the taxable year of the applicable policyholder in which the employer-owned life insurance contract was issued. Because § 101(j)(4)(B) requires that the employee's consent be written, failure to obtain such consent cannot be corrected after the insured employee has died.

Transition Rule and Section 1035 Exchanges

Pursuant to § 863(d) of the PPA, § 101(j) applies to life insurance contracts issued after August 17, 2006, except for a contract issued after that date pursuant to a § 1035 exchange for a contract issued on or before that date. For this purpose, any material increase in the death benefit or other material change causes the contract to be treated as a new contract and thus subject to § 101(j). (In the case of a master contract within the meaning of § 264(f)(4)(E), however, the addition of covered lives is treated as a new contract only with respect to the additional covered lives.)

Q–14. If there is no actual exchange of an existing employer-owned life insurance contract for a new contract, what changes to the contract are nevertheless sufficiently material to cause the contract to be treated as a new contract and thus subject to § 101(j)?

A–14. The following changes are not treated as material changes for purposes of determining whether an existing contract is treated as a new contract for purposes of § 101(j): (1) increases in death benefit that occur as a result of either the operation of § 7702 or the terms of the existing contract (provided the insurer's consent to the increase is not required); (2) administrative changes; (3) changes from general account to separate account or from separate account to general account; or (4) changes as a result of the exercise of an option or right

granted under the contract as originally issued. Thus, for example, a death benefit increase does not cause a contract to be treated as a new contract if the increase is necessary to keep the contract in compliance with § 7702, or if the increase results from the application of policyholder dividends to purchase paid-up additions, or if the increase is the result of market performance or contract design with regard to a variable contract. Notice and consent are required if a contract is treated as a new contract by reason of a material increase in death benefit or other material change, unless a valid consent remains in effect with regard to the insured.

Q–15. Under what circumstances does § 101(j) apply to a contract that is received after August 17, 2006, in an exchange for an employer-owned life insurance contract issued on or before that date?

A–15. Section 863(d) of the PPA provides that § 101(j) generally does not apply to a contract issued after August 17, 2006 in an exchange described in § 1035 for a contract issued on or before that date. Section 863(d) also provides that, for purposes of determining when a contract is issued, a material increase in the death benefit or other material change generally causes the contract to be treated as a new contract. A § 1035 exchange that results in a material increase in death benefit or other material change (other than a change in issuer) is treated as the issuance of a new contract after August 17, 2006 for purposes of determining whether § 101(j) applies to the contract. See A–14, this Notice.

Q–16. Under what circumstances is notice and consent required with regard to a contract received in a § 1035 exchange for an employer-owned life insurance contract issued after August 17, 2006, for which the notice and consent requirements were previously satisfied?

A–16. No further notice and consent are required if either (1) the existing consent remains valid (see A–9, this Notice), or (2) the exchange does not result in a material change in the death benefit or other material change in the contract. The same standards apply to determine whether a change is "material" for this purpose as apply to determine whether an exchange results in a material increase in death benefit or other material change under the transition rule for purposes of determining whether § 101(j) applies to a contract. See A–14, this Notice.

Information Reporting under Section 6039I and Form 8925

Section 6039I and Form 8925 require that every applicable policyholder owning 1 or more employer-owned life insurance contracts issued after August 17, 2006, provide the following information showing for each year the contracts are owned: (1) the number of employees of the applicable policyholder at the end of the year; (2) the number of such employees insured under such contracts; (3) the total amount of insurance in force at the end of the year under such contracts; (4) the name, address, and identifying number of the applicable policyholder and the type of business in which the policyholder is engaged; and (5) that the applicable policyholder has a valid consent for each insured employee (or, if all such consents are not obtained, the number of employees for whom such consent was not obtained).

Q–17. Are there circumstances under which more than one taxpayer may be required to file Form 8925 by reason of the same employer-owned life insurance contract?

A–17. Section 6039I requires that a return be filed by "every applicable policyholder owning 1 or more employer-owned life insurance contracts issued after the date of enactment." Section 6039I(c) provides that any term used in § 6039I that is also used in § 101(j) has the same meaning given the term by § 101(j). Under § 101(j)(3)(B)(i), the term "applicable policyholder" is generally the owner of the employer-owned life insurance contract. Although § 101(j)(3)(B)(ii) also includes certain related persons in the definition of "applicable policyholder," those related persons are not the applicable policyholders who own the contracts. Only the applicable policyholder "owning 1 or more employer-owned life insurance contracts" is required to file Form 8925.

EFFECTIVE DATE

This Notice is effective June 15, 2009. The Service will not challenge a taxpayer who made a good faith effort to comply with § 101(j) based on a reasonable interpretation of that provision before that date.

DRAFTING INFORMATION

The principal author of this Notice is Linda K. Boyd of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this Notice, contact Linda K. Boyd at (202) 622–3970 (not a toll-free call).

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26 CFR 601.201: Rulings and determination letters. (Also: Part 1, § 355.)

Rev. Proc. 2009–25

SECTION 1. PURPOSE

This revenue procedure describes a new pilot program for letter rulings for certain transactions under the jurisdiction of the Associate Chief Counsel (Corporate). The new program does not diminish the availability of letter rulings under existing programs.

SECTION 2. CHANGES

This revenue procedure amplifies Rev. Proc. 2009–1, 2009–1 I.R.B. 1, which explains how the Internal Revenue Service (Service) provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate). This revenue procedure also amplifies Rev. Proc. 2009–3, 2009–1 I.R.B. 107, which sets forth the areas of the Internal Revenue Code (Code) under the jurisdiction of the Associate Chief Counsel (Corporate) relating to issues on which the Service will not issue letter rulings.

SECTION 3. BACKGROUND

.01 Current Procedures

Ordinarily, the Service will not issue a letter ruling on only part of an integrated transaction. Section 6.03 of Rev. Proc. 2009–1; Section 4.02(2) of Rev. Proc. 2009–3. If, however, a part of a transaction falls under a no-rule area, a letter ruling on other parts of the transaction may be issued. Where it is impossible for the Service to determine the tax consequences of a larger transaction without knowing the resolution of an issue on which the Service will not issue rulings under Rev. Proc. 2009–3, and the Service nevertheless rules on the larger transaction, then the taxpayer

must state in the request to the best of the taxpayer's knowledge and belief the tax consequences of the no-rule issue. Section 2.03 of Rev. Proc. 2009–3. The Service's ruling letter will state that the Service did not consider, and no opinion is expressed upon, the no-rule issue. In appropriate cases, the Service may decline to issue rulings on such larger transactions due to the relevance of the no-rule issue, despite the taxpayer's representation.

In addition, the Service generally does not issue letter rulings with respect to an issue that is clearly and adequately addressed by statute, regulations, decisions of a court, or authorities published in the Internal Revenue Bulletin. Section 6.11 of Rev. Proc. 2009–1 and section 4.02(9) of Rev. Proc. 2009–3. Similarly, unless the Service determines that there is a significant issue (as defined in section 3.01(38) of Rev. Proc. 2009–3), the Service will not issue a ruling on whether a transaction qualifies for nonrecognition treatment under § 332, § 351 (except for certain transfers undertaken before § 355 distributions) or § 1036. Likewise, absent a significant issue, the Service will not issue a ruling as to whether a transaction constitutes a corporate reorganization within the meaning of § 368(a)(1)(A) (including a transaction that qualifies under § 368(a)(1)(A) by reason of § 368(a)(2)(D) or § 368(a)(2)(E)), § 368(a)(1)(B), § 368(a)(1)(C), § 368(a)(1)(E) or § 368(a)(1)(F), or as to the various consequences (such as nonrecognition and basis adjustments) that arise as a result of a transaction constituting a corporate reorganization. If the Service determines that there is a significant issue, and to the extent the transaction is not described in another no-rule section, the Service will rule on the entire transaction, and not just the significant issue. Section 3.01(38) of Rev. Proc. 2009–3.

.02 New Procedures

In order to use Service resources more efficiently and to increase the availability of private letter rulings, this revenue procedure allows taxpayers to request rulings on one or more issues that: (1) are solely under the jurisdiction of the Associate Chief Counsel (Corporate), (2) are significant (as defined in section 3.01(38) of Rev. Proc. 2009–3), and (3) involve the tax consequences or characterization of a transaction (or part of a transaction) that occurs in the context of a § 355 distribution. Under this program, taxpayers may request and the Service may issue a ruling on part of a transaction rather than on the larger transaction. In addition, taxpayers may request and the Service may issue a ruling on a particular legal issue under a Code section or a section of the Income Tax Regulations (Regulations) rather than a ruling that addresses all aspects of that Code or Regulations section (or any other section). For example, the Service may rule on whether the acquisition of the assets of one corporation by another corporation meets the continuity of business enterprise requirement of § 1.368–1(d) or is described in § 355(b)(2)(C) even though the ruling does not address overall qualification of the transaction under § 368 or § 355, respectively, as long as the acquisition occurs in the context of a § 355 distribution. Accordingly, section 6.03 of Rev. Proc. 2009–1 and sections 3.01(38) and 4.02(2) of Rev. Proc. 2009–3 are amplified to provide that the Service will issue letter rulings regarding such significant issues under the conditions specified herein.

Ruling requests under this revenue procedure must comply with the relevant requirements of any other applicable revenue procedures. *See, e.g.*, Appendix E of Rev. Proc. 2009–1. For example, a request for a § 351 ruling on a transaction that occurs in the context of a § 355 distribution must provide all of the information required by Rev. Proc. 83–59, 1983–2 C.B. 575. However, if the request is solely for a ruling on a significant issue under § 351, the request must provide the information and representations required by Rev. Proc. 83–59 that pertain only to that significant issue. Further, where a taxpayer is requesting a ruling regarding a significant issue under a Code or Regulations section (*e.g.*, § 368(a)(2)(C)), the taxpayer must provide a representation regarding qualification or characterization of the transaction under such Code or Regulations section (*e.g.*, § 368(a)(1)(A)) assuming that the Service rules as requested. The Service reserves the right to rule on any other issue in, or part of, the transaction (including ruling adversely) if the Service believes it is in the best interests of tax administration. *Cf.* section 2.01 of Rev. Proc 2009–3.

All pertinent no-rule policies governing the Service's ruling practice will govern requests for rulings made pursuant to this revenue procedure. *See*, for example, Rev. Proc. 2003–48, 2003–2 C.B. 86 (no-rule policy regarding business purpose and device issues under § 355, and § 355(e) plan issues). In addition, the Service will not grant a ruling on a significant non-plan issue or issues under § 355(e) unless an adverse ruling on such non-plan issue or issues would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e). With respect to ruling requests regarding the effect of a redemption under section 355(e), the Service will entertain such requests under the conditions described in sections 5.09 and 5.10 of this revenue procedure. Rev. Proc. 2009–3 is amplified to reflect these policies.

The Service will, if requested, endeavor to issue letter rulings requested pursuant to this revenue procedure within ten weeks from receipt of the request, provided that the request meets the requirements of sections 7.02(4) and 8.05(1) of Rev. Proc. 2009–1 as amplified by this revenue procedure.

The ruling program under this revenue procedure is a pilot program that applies to ruling requests postmarked or, if not mailed, received after May 4, 2009. This pilot program will be evaluated by the Service periodically.

SECTION 4. REQUEST FOR COMMENTS

The Service requests comments regarding the pilot program. Comments should refer to Rev. Proc. 2009–25, and should be submitted to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attn: CC:PA:RU
Room 5226

or electronically via the Service internet site at:

Notice.Comments@irscounsel.treas.gov (the Service comments e-mail address). All comments will be available for public inspection and copying.

SECTION 5. PROCEDURE

.01 Rev. Proc. 2009–1 is amplified by adding the following paragraphs to section 6.03:

In addition, the Office of the Associate Chief Counsel (Corporate) may issue a letter ruling on part of an integrated transaction without ruling on the larger transaction if the requested ruling addresses one or more issues that: (1) are under the jurisdiction of the Associate Chief Counsel (Corporate), (2) are significant (as defined in section 3.01(38) of Rev. Proc. 2009–3, and (3) involve the tax consequences or characterization of a transaction (or part of a transaction) that occurs in the context of a § 355 distribution. The Service may also rule on a particular legal issue under a Code or Regulations section without ruling on all aspects of such Code or Regulations section if the issue meets the three conditions of the preceding sentence.

Before preparing the letter ruling request under this section 6.03, a taxpayer should call the Office of the Associate Chief Counsel (Corporate) at the telephone number provided in section 10.07(1)(a) of this revenue procedure for pre-submission conferences to discuss with one of the branches whether the Office of the Associate Chief Counsel (Corporate) will issue a letter ruling under this section 6.03. The Service reserves the right to rule on any other aspect of the transaction (including ruling adversely) if the Service believes it is in the best interests of tax administration. *Cf.* section 2.01 of Rev. Proc. 2009–3.

All requests for a ruling under this section 6.03 must contain the following:

(1) A narrative description of the transaction that puts the issue in context;

(2) An explanation concerning why the issue is significant within the meaning of section 3.01(38) of Rev. Proc. 2009–3;

(3) Applicable information from relevant revenue procedures with respect to the significant issue. *See* Appendix E of this revenue procedure (referring to, *inter alia*, Rev. Proc. 96–30, 1996–1 C.B. 696, as modified and amplified by Rev. Proc. 2003–48, 2003–2 C.B. 86);

(4) The precise ruling being requested;

(5) Where the taxpayer is requesting a ruling on the tax treatment of part of an integrated transaction, a representation regarding the relevant tax consequences of the larger transaction (to the best knowledge and belief of the taxpayer), assuming that the Service issues the requested ruling; additionally, where the taxpayer is requesting a ruling on a particular legal issue under a Code section or section of the Regulations (*e.g.*, § 1.368–2(k)), a representation (to the best knowledge and belief of the taxpayer) regarding qualification or characterization of the transaction under such Code or Regulations section (*e.g.*, § 368(a)(1)(A)), assuming that the Service issues the requested ruling; and

(6) A statement that no rulings outside the jurisdiction of the Associate Chief Counsel (Corporate) are requested.

If the Service issues a ruling on a significant issue under this procedure, then the letter ruling will state that no opinion is expressed as to the overall tax consequences of the transactions described in the letter ruling or as to any issue or step not specifically addressed by the letter. In addition, letter rulings under this procedure will contain the following (or similar) language at the beginning of the letter:

This Office expresses no opinion as to the overall tax consequences of the transaction(s) described in this letter. Rather, the ruling(s) contained in this letter only address one or more discrete legal issues involved in the transaction.

.02 Rev. Proc. 2009–1 is amplified by replacing the last sentence of the first paragraph of section 7.02(4) with the following:

Notwithstanding the previous sentence, expedited handling may be available for certain issues under the jurisdiction of the Associate Chief Counsel (Corporate), as provided below.

.03 Rev. Proc. 2009–1 is amplified by replacing the heading and the first sentence of the seventh paragraph of section 7.02(4) with the following:

EXPEDITED LETTER RULING PROCESS FOR CERTAIN REQUESTS UNDER THE JURISDICTION OF THE ASSOCIATE CHIEF COUNSEL (CORPORATE): If a taxpayer requests a letter ruling on whether a transaction constitutes a reorganization under § 368 or a distribution under § 355, or a letter ruling involving certain significant issues under the jurisdiction of the Associate Chief Counsel (Corporate) as described in section 6.03 of this revenue procedure, and the taxpayer asks for expedited handling pursuant to this provision, the Service will grant expedited handling.

.04 Rev. Proc. 2009–1 is amplified by replacing the last sentence of section 7.02(4) with the following:

For further information regarding this EXPEDITED LETTER RULING PROCESS FOR CERTAIN REQUESTS UNDER THE JURISDICTION OF THE ASSOCIATE CHIEF COUNSEL (CORPORATE), call the telephone number provided in section 10.07(1)(a) of this revenue procedure for pre-submission conferences with the Office of Associate Chief Counsel (Corporate).

.05 Rev. Proc. 2009–1 is amplified by replacing the first sentence of the last paragraph of section 8.05(1) with the following:

The Service will not endeavor to process on an expedited basis a ruling request regarding reorganizations under § 368, distributions under § 355, or certain significant issues under the jurisdiction of the Associate Chief Counsel (Corporate) as described in section 6.03 of this revenue procedure unless the branch representative in the Office of Associate Chief Counsel (Corporate) receives all requested additional information within 10 calendar days from the date of the request for such additional information, unless an extension of time is granted.

.06 Rev. Proc. 2009–1 is amplified by replacing the first sentence of the third paragraph of section 19 with the following:

The collections of information in this revenue procedure are in sections 5.06, 6.03, 7.01, 7.02, 7.03, 7.04, 7.05, 7.07, 8.02, 8.05, 10.01, 10.06, 10.07, 11.11, 13.02, 15.02, 15.07, 15.08, 15.09, 15.11, paragraph (B)(1) of Appendix A, Appendix C, and Appendix E (subject matter-rate orders; regulatory agency; normalization).

.07 Rev. Proc. 2009–1 is amplified by replacing the second sentence of Appendix C, Item 35 with the following sentence:

Note that certain requests under the jurisdiction of the Associate Chief Counsel (Corporate) may receive expedited treatment without stating a compelling need.

.08 Rev. Proc. 2009–3 is amplified by starting a new paragraph immediately before the last sentence of the first paragraph of section 3.01(38) and by adding the following sentences at the end of the revised first paragraph in section 3.01(38):

However, the Service may rule on a significant issue in a transaction that occurs in the context of a § 355 distribution without ruling on the entire transaction. *See* section 6.03 of Rev. Proc. 2009–1. Before preparing the letter ruling request, a taxpayer should call the Office of the Associate Chief Counsel (Corporate) at (202) 622–7700 to discuss with one of the branches whether the Office of the Associate Chief Counsel (Corporate) will issue a letter ruling only involving that significant issue. The Service reserves the right to rule on any other issue in the transaction (including ruling adversely) if the Service believes it is in the best interests of tax administration. *Cf.* section 2.01 of this revenue procedure.

.09 Rev. Proc. 2009–3 is amplified by adding the following paragraph to section 3.01:

Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Whether the distribution of the stock of a controlled corporation is being carried out for one or more corporate business purposes, whether the transaction is used principally as a device, and whether the distribution and an acquisition are part of a plan under § 355(e). *See* Rev. Proc. 2003–48, 2003–2 C.B. 86. Notwithstanding the preceding sentence, the Service may issue a ruling regarding the effect of redemptions under § 355(e) pending the issuance of temporary or final regulations regarding redemptions under § 355(e) if an adverse ruling on such question would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

.10 Rev. Proc. 2009–3 is amplified by adding the following paragraph to section 4.01:

Section 355.—Distribution of Stock and Securities of a Controlled Corporation.—Any issue under § 355(e) other than whether a distribution and an acquisition are part of a plan (*i.e.*, any non-plan issue). Notwithstanding the preceding sentence, the Service generally will rule on a non-plan issue or issues (*e.g.*, whether a corporation constitutes a predecessor of distributing) if an adverse ruling on such non-plan issue or issues would result in there being a direct or indirect acquisition by one or more persons of stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation that is part of a plan under § 355(e).

.11 Rev. Proc. 2009–3 is amplified by adding the following paragraph to section 4.02(2):

Notwithstanding the previous paragraph, the Office of the Associate Chief Counsel (Corporate) may issue a letter ruling on part of an integrated transaction without ruling on the larger transaction if such transaction occurs in the context of a § 355 distribution. *See* section 6.03 of Rev. Proc. 2009–1. Before preparing the letter ruling request, a taxpayer should call the Office of the Associate Chief Counsel (Corporate) at (202) 622–7700 to discuss with one of the branches whether the Office of the Associate Chief Counsel (Corporate) will issue a letter ruling only involving part of the transaction. The Service reserves the right to rule on any other part of the transaction (including ruling adversely) if the Service believes it is in the best interests of tax administration. *Cf.* section 2.01 of this revenue procedure.

SECTION 6. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2009–1, 2009–1 I.R.B. 1, and Rev. Proc. 2009–3, 2009–1 I.R.B. 107, are amplified.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective May 4, 2009.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have 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 1545–1522.

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

The collections of information in this revenue procedure are in section 5. This information is required and will be used to determine whether a taxpayer would qualify for a letter ruling on part of an integrated transaction without the Service ruling on the larger transaction. The collections of information are required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden under Rev. Proc. 2009–1 is 513,150 hours.

The estimated annual burden per respondent varies from 1 hour to 200 hours, depending on individual circumstances, with an estimated average of 90.1054 hours. The estimated number of respondents is 5,695.

The estimated annual frequency of responses is on occasion.

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

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Russell P. Subin of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure, contact Russell P. Subin at (202)–622–7790 (not a toll-free call).

Part IV. Items of General Interest

Tax Avoidance Transactions; Hearing Cancellation

Announcement 2009–49

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking (REG–138326–07, 2009–9 I.R.B. 638) under section 6231 of the Internal Revenue Code that allow the IRS to convert partnership items to nonpartnership items when the application of the unified partnership audit and litigation procedures of sections 6221 through 6234 (TEFRA partnership procedures) with respect to certain tax avoidance transactions interferes with the effective and efficient enforcement of the internal revenue laws.

DATE: The public hearing, originally scheduled for June 4, 2009, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION:

A notice of public hearing that appeared in the **Federal Register** on Friday, February 13, 2009 (74 FR 7205), announced that a public hearing was scheduled for June 4, 2009, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is under section 6231 of the Internal Revenue Code.

The public comment period for these regulations expired on May 14, 2009. Outlines of topics to be discussed at the hearing were due on May 15, 2009. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Wednesday, May 20, 2009, no one has requested to speak. Therefore, the public hearing scheduled for June 4, 2009, is cancelled.

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

(Filed by the Office of the Federal Register on May 26, 2009, 8:45 a.m., and published in the issue of the Federal Register for May 27, 2009, 74 F.R. 25177)

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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