

## **HIGHLIGHTS OF THIS ISSUE**

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

### **INCOME TAX**

#### **Rev. Rul. 2012-20, page 1.**

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2012.

#### **REG-134042-07, page 5.**

Proposed regulations under section 1366 of the Code relate to basis of indebtedness of S corporations to their shareholders. The proposed regulations provide that S corporation shareholders increase their basis of indebtedness of the S corporation to the shareholder only if the indebtedness is *bona fide*. The proposed regulations affect shareholders of S corporations. A public hearing is scheduled for October 9, 2012.

#### **Rev. Proc. 2012-28, page 4.**

This procedure provides a safe harbor for determining whether a publicly traded partnership's (PTP's) income from discharge of indebtedness (COD income) is qualifying income under section 7704(d) of the Code for the purpose of meeting the qualifying income exception in section 7704(c). The safe harbor treats COD income attributable to debt incurred in direct connection with the PTP's activities that generate qualifying income (qualifying activities) as qualifying income.

#### **Announcement 2012-27, page 10.**

This announcement withdraws (REG-100276-97) relating to financial asset securitization trusts (FASITs) under sections 860H through 860L of the Code. The FASIT provisions were repealed by PL 108-357, effective January 1, 2005, with limited exception for existing FASITs.

### **TAX CONVENTIONS**

#### **Announcement 2012-26, page 8.**

The following is a copy of the Competent Authority Agreement ("the Agreement") entered into on May 21, 2012, by the Competent Authorities of the United States and the Netherlands regarding the eligibility of a besloten fonds voor gemene rekening (limited fund for mutual account) ("LFMA") and its participants for treaty-reduced rates of withholding on U.S. source dividends and interest under the Convention between the Kingdom of the Netherlands and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed on December 18, 1992, and amended by Protocols signed on October 13, 1993 and March 8, 2004.

Announcements of Disbarments and Suspensions begin on page 10.  
Finding Lists begin on page ii.



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force the law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

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

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

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

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

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

The adjusted applicable federal long-term rate is set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

## Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

## Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

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

Federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

## Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

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

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

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of

sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for July 2012.

## Rev. Rul. 2012-20

This revenue ruling provides various prescribed rates for federal income tax purposes for July 2012 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520. Finally, Table 6 contains the blended annual rate for 2012 for purposes of section 7872.

REV. RUL. 2012-20 TABLE 1  
Applicable Federal Rates (AFR) for July 2012

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.24%	.24%	.24%	.24%
110% AFR	.26%	.26%	.26%	.26%
120% AFR	.29%	.29%	.29%	.29%
130% AFR	.31%	.31%	.31%	.31%
<i>Mid-term</i>				
AFR	.92%	.92%	.92%	.92%
110% AFR	1.01%	1.01%	1.01%	1.01%
120% AFR	1.10%	1.10%	1.10%	1.10%
130% AFR	1.20%	1.20%	1.20%	1.20%
150% AFR	1.38%	1.38%	1.38%	1.38%
175% AFR	1.62%	1.61%	1.61%	1.60%
<i>Long-term</i>				
AFR	2.30%	2.29%	2.28%	2.28%
110% AFR	2.54%	2.52%	2.51%	2.51%
120% AFR	2.77%	2.75%	2.74%	2.73%
130% AFR	3.00%	2.98%	2.97%	2.96%

REV. RUL. 2012-20 TABLE 2  
Adjusted AFR for July 2012

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.27%	.27%	.27%	.27%
Mid-term adjusted AFR	1.05%	1.05%	1.05%	1.05%
Long-term adjusted AFR	3.02%	3.00%	2.99%	2.98%

REV. RUL. 2012-20 TABLE 3  
Rates Under Section 382 for July 2012

Adjusted federal long-term rate for the current month	3.02%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	3.26%

REV. RUL. 2012-20 TABLE 4  
Appropriate Percentages Under Section 42(b)(1) for July 2012

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.37%
Appropriate percentage for the 30% present value low-income housing credit	3.16%

REV. RUL. 2012-20 TABLE 5  
Rate Under Section 7520 for July 2012

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years,  
or a remainder or reversionary interest 1.2%

REV. RUL. 2012-20 TABLE 6  
Blended Annual Rate for 2012

Section 7872(e)(2) blended annual rate for 2012 .22%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

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**Section 7520.—Valuation  
Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of July 2012. See Rev. Rul. 2012-20, page 1.

# Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.  
(Also: Part 1, § 7704.)

## Rev. Proc. 2012-28

### SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under which the Internal Revenue Service (IRS) will not challenge a determination by a publicly traded partnership (PTP) that income from discharge of indebtedness (COD income) is qualifying income under section 7704(d) of the Internal Revenue Code.

### SECTION 2. BACKGROUND

.01 Section 61(a) provides generally that gross income means all income from whatever source derived. Section 61(a)(12) provides that gross income includes COD income.

.02 Section 7704(a) provides generally that, except as provided in section 7704(c), a PTP is treated as a corporation.

.03 Section 7704(b) provides that the term “publicly traded partnership” means any partnership if either (1) interests in such partnership are traded on an established securities market, or (2) interests in such partnership are readily tradable on a secondary market (or the substantial equivalent thereof).

.04 Section 7704(c)(1) provides that section 7704(a) shall not apply to any PTP for any taxable year if such partnership met the gross income requirements of section 7704(c)(2) for such taxable year and each preceding taxable year beginning after December 31, 1987, during which the partnership (or any predecessor) was in existence (qualifying income exception). Section 7704(c)(2) provides that a partnership meets the gross income requirements of section 7704(c) for any taxable year if 90 percent or more of the gross income of such partnership for such taxable year consists of qualifying income. Section 7704(c)(3) provides that section 7704(c) does not apply to any partnership that would be described in section 851(a) if such partnership were a domestic corporation.

.05 Section 7704(d)(1) provides in general that the term “qualifying income” means: (A) interest, (B) dividends, (C) real property rents, (D) gain from the sale or other disposition of real property (including property described in section 1221(a)(1)), (E) income and gains derived from the exploration, development, mining or production, processing, refining, transportation (including pipelines transporting gas, oil, or products thereof), or the marketing of any mineral or natural resource (including fertilizer, geothermal energy, and timber), or industrial source carbon dioxide, or the transportation or storage of any fuel described in subsection (b), (c), (d), or (e) of section 6426, or any alcohol fuel defined in section 6426(b)(4)(A) or any biodiesel fuel as defined in section 40A(d)(1), (F) any gain from the sale or disposition of a capital asset (or property described in section 1231(b)) held for the production of income described in any of the foregoing subparagraphs, and (G) in the case of a partnership described in the second sentence of section 7704(c)(3), income and gains from commodities (not described in section 1221(a)(1)) or futures, forwards, and options with respect to commodities. Section 7704(d)(4) provides that “qualifying income” also includes any income that would qualify under section 851(b)(2)(A) or section 856(c)(2).

.06 The legislative history to section 7704 provides that the purpose of the section 7704(c) exception for PTPs with qualifying income is to except from entity level tax those partnerships that engage in activities that are commonly considered as essentially no more than investing or that have traditionally been conducted in partnership form. See H.R. Rep. No. 391 (Part 2), 100th Cong., 1st Sess. 1066–69.

.07 Section 1.163-8T of the temporary Income Tax Regulations prescribes rules for allocating interest expense for purposes of applying the passive loss limitation of section 469 and the nonbusiness interest limitations of section 163(d) and (h). Under these rules, interest expense is generally allocated in the same manner as the debt to which the interest expense relates. Debt is allocated by tracing disbursements of the debt proceeds to specific expenditures.

### SECTION 3. SCOPE

This revenue procedure applies to PTPs with COD income that use the qualifying income exception in section 7704(c) to avoid corporate treatment under section 7704(a).

### SECTION 4. SAFE HARBOR

The IRS will not challenge a PTP’s determination that COD income is qualifying income under section 7704(d) if COD income is attributable to debt incurred in direct connection with activities of the PTP that generate qualifying income (qualifying activities). The PTP may demonstrate that COD income is attributable to debt incurred in direct connection with the PTP’s qualifying activities by any reasonable method. One reasonable method for demonstrating that COD income is attributable to debt incurred in direct connection with the PTP’s qualifying activities is to trace the proceeds of the debt generating COD income to qualifying activities under an approach similar to the one used in section 1.163-8T. Ordinarily, a method that allocates COD income based solely on the ratio of qualifying gross income to total gross income will not be considered reasonable. The IRS may consider a request for a private letter ruling on whether a method is reasonable.

### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective for COD income of a PTP attributable to debt discharged on or after June 15, 2012. PTPs may apply this revenue procedure for COD income attributable to debt discharged in any taxable year for which the statute of limitations has not expired.

### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Wendy L. Kribell of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Wendy L. Kribell at (202) 622-3050 (not a toll-free call).

## Part IV. Items of General Interest

### Notice of Proposed Rulemaking and Notice of Public Hearing

### Basis of Indebtedness of S Corporations to their Shareholders

#### REG-134042-07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to basis of indebtedness of S corporations to their shareholders. These proposed regulations provide that S corporation shareholders increase their basis of indebtedness of the S corporation to the shareholder only if the indebtedness is *bona fide*. The proposed regulations affect shareholders of S corporations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 10, 2012. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for **October 9, 2012**, must be received by September 10, 2010.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-134042-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-134042-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-134042-07). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the pro-

posed regulations, Caroline E. Hay at (202) 622-3070; concerning the submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) P. Taylor at (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document proposes amendments to §1.1366-2 of the Income Tax Regulations. In addition, this document proposes conforming changes to the effective date rules provided in §1.1366-5.

Under section 1366(d)(1) of the Internal Revenue Code (Code), the aggregate amount of losses and deductions that a shareholder takes into account for any taxable year cannot exceed the sum of that shareholder's adjusted basis in stock and adjusted basis of any indebtedness of the S corporation to that shareholder. The Senate Report discussing section 1374 (the predecessor statute to section 1366) illustrates Congress's intent to limit the loss that a shareholder takes into account to that shareholder's investment in the corporation; that is, to the adjusted basis of the stock in the corporation owned by the shareholder and the adjusted basis of any indebtedness of the corporation to the shareholder. S. Rept. 1983, 85th Cong., 2d Sess. 219-220 (1958) (1958-3 C.B. 922, 1141).

Section 1.1366-2 provides rules relating to limitations on deduction of passthrough items of an S corporation to its shareholder. Under §1.1366-2(a)(1), a shareholder's aggregate amount of losses and deductions taken into account under §1.1366-1(a)(2), (3), and (4) for any taxable year of the S corporation cannot exceed that shareholder's adjusted basis in stock in the corporation and adjusted basis of any indebtedness of the corporation to that shareholder. These proposed amendments to the regulations provide that, in order to increase a shareholder's basis of indebtedness, a loan must represent *bona fide* indebtedness of the S corporation that runs directly to the shareholder. These proposed regulations also reaffirm that a shareholder acting as guarantor of S cor-

poration indebtedness does not create or increase basis of indebtedness simply by becoming a guarantor.

##### Explanation of Provisions

Section 1366(d)(1) provides that a shareholder can take into account losses and deductions to the extent of the adjusted basis of the shareholder's stock and the adjusted basis of any indebtedness of the S corporation to the shareholder (basis of indebtedness). The Code does not define basis of indebtedness, but several court cases involving passthrough losses from an S corporation interpret section 1366 to require an investment in the S corporation that constitutes "an actual economic outlay" by the shareholder to create basis of indebtedness. See, for example, *Maloolf v. Comm'r*, 456 F.3d 645, 649-650 (6th Cir. 2006); *Spencer v. Comm'r*, 110 T.C. 62, 78-79 (1998), aff'd without published opinion, 194 F.3d 1324 (11th Cir. 1999); *Hitchins v. Comm'r*, 103 T.C. 711, 715 (1994); *Perry v. Comm'r*, 54 T.C. 1293, 1296 (1970). Often, the cases involve attempts by an S corporation shareholder to obtain basis of indebtedness by borrowing from another person—typically, a related entity—and then lending the proceeds to the S corporation (a back-to-back loan transaction). Alternatively, an S corporation shareholder might seek to restructure an existing loan of the S corporation into a back-to-back loan by assuming the S corporation's liability on the loan and creating a commensurate obligation from the S corporation to the shareholder. Disputes continue to arise concerning when a back-to-back loan gives rise to an actual economic outlay, in particular whether a shareholder has been made "poorer in a material sense" as a result of the loan. See, for example, *Oren v. Comm'r*, 357 F.3d 854, 857-859 (8th Cir. 2004); *Bergman v. U.S.*, 174 F.3d 928, 932 (8th Cir. 1999).

The frequency of disputes between S corporation shareholders and the government regarding whether certain loan transactions involving multiple parties, including back-to-back loan transactions, create shareholder basis of indebtedness demonstrates the complexity of and uncertainty about this issue for

both shareholders and the government. The Treasury Department and the IRS propose these regulations to clarify the requirements for increasing basis of indebtedness and to assist S corporation shareholders in determining with greater certainty whether their particular arrangement creates basis of indebtedness. These proposed regulations require that loan transactions represent *bona fide* indebtedness of the S corporation to the shareholder in order to increase basis of indebtedness; therefore, an S corporation shareholder need not otherwise satisfy the “actual economic outlay” doctrine for purposes of section 1366(d)(1)(B).

The key requirement of these proposed regulations is that purported indebtedness of the S corporation to a shareholder must be *bona fide* indebtedness to the shareholder. These proposed regulations do not attempt to provide a different standard for purposes of section 1366 as to what constitutes *bona fide* indebtedness. Rather, general Federal tax principles—many of which have developed outside of section 1366—determine whether indebtedness is *bona fide*. See, for example, *Knetsch v. U.S.*, 364 U.S. 361 (1960) (disallowing interest deductions for lack of actual indebtedness); *Geftman v. Comm’r*, 154 F.3d 61, 68–75 (3d Cir. 1998) (based on the objective attributes and the economic realities of the transaction, holding that the transaction at issue was not a *bona fide* debt); *Estate of Mixon v. U.S.*, 464 F.2d 394, 402 (5th Cir. 1972) (discussion of factors indicative that debt is *bona fide*); *Litton Business Systems, Inc. v. Comm’r*, 61 T.C. 367, 376–77 (1973).

By contrast, shareholder guarantees of S corporation debt do not result in basis of indebtedness. An overwhelming majority of courts considering whether shareholders may increase basis of indebtedness from their guarantees of S corporation debt determined that the shareholders’ guarantees did not create basis of indebtedness. Where an S corporation shareholder acts merely as a guarantor of a loan made by another party directly to the S corporation, or acts in a capacity similar to a guarantor (for example, as a surety or accommodation party), then the courts have held that the shareholder adjusts basis of indebtedness only to the extent the shareholder actually performs under the guarantee. See, for example, *Estate of Leavitt v.*

*Comm’r*, 875 F.2d 420 (4th Cir. 1989); *Frankel v. Comm’r*, 61 T.C. 343 (1973), aff’d without published opinion, 506 F.2d 1051 (3d Cir. 1974); *Raynor v. Comm’r*, 50 T.C. 762 (1968); *Weisberg v. Comm’r*, T.C. Memo. 2010–55; *Maloof v. Comm’r*, T.C. Memo. 2005–75, aff’d, 456 F.3d 645 (6th Cir. 2006); *Wise v. Comm’r*, T.C. Memo. 1997–135. But see *Selfe v. U.S.*, 778 F.2d 769 (11th Cir. 1985) (holding that under unique and limited circumstances, a shareholder who guarantees a loan to an S corporation may increase basis of indebtedness where, in substance, that shareholder has borrowed funds and subsequently advanced them to the S corporation). These proposed regulations provide that an S corporation shareholder who merely acts as a guarantor or in a similar capacity has not created basis of indebtedness unless the shareholder actually makes a payment, and then only to the extent of such payment. See also Rev. Rul. 70–50, 1970–1 C.B. 178, (see §601.601(d)(2)).

Additionally, some taxpayers have relied on an “incorporated pocketbook” theory to claim an increase in basis of indebtedness in circumstances that involve a loan directly to the S corporation from an entity related to the S corporation shareholder. In these transactions, an S corporation shareholder claims that a transfer from the related entity directly to the shareholder’s S corporation was made on the shareholder’s behalf and is, in substance, a loan from the related entity to the shareholder, followed by a loan from the shareholder to the S corporation. A limited number of court decisions have allowed shareholders to increase basis of indebtedness as a result of incorporated pocketbook transactions. See *Yates v. Comm’r*, T.C. Memo. 2001–280; *Culnen v. Comm’r*, T.C. Memo. 2000–139. Under these proposed regulations, an incorporated pocketbook transaction increases basis of indebtedness only where the transaction creates a *bona fide* creditor-debtor relationship between the shareholder and the borrowing S corporation.

These proposed regulations only address whether a shareholder has basis of indebtedness for purposes of section 1366(d)(1)(B) and do not address how to determine the basis of the shareholder’s stock in the S corporation for purposes of section 1366(d)(1)(A). Therefore, these

proposed regulations leave unchanged the conclusion found in published guidance that a shareholder of an S corporation does not increase basis in stock for purposes of section 1366(d)(1)(A) upon the contribution of the shareholder’s own unsecured demand promissory note to the corporation. Rev. Rul. 81–187, 1981–2 C.B. 167. This conclusion is consistent with published guidance and case law in the partnership context that the contribution of the partner’s own note will not increase such partner’s basis in its partnership interest under section 722. Rev. Rul. 80–235, 1980–2 C.B. 229; *Oden v. Comm’r*, T.C. Memo. 1981–184, aff’d without published opinion, 679 F.2d 885 (4th Cir. 1982) (because the partner incurred no cost in making the note, the partner’s basis in the note to him was zero). In developing this project, the Treasury Department and the IRS have considered whether the principal holding of Rev. Rul. 81–187, and the holding of Rev. Rul. 80–235 as it relates to a partner’s basis in its partnership interest upon the contribution of the partner’s own note, should be promulgated as regulations. The Treasury Department and the IRS have considered alternatives to the discussion of the applicable law in those revenue rulings. As one model, the Treasury Department and the IRS have, with respect to basis calculations in the S corporation and partnership context, considered adopting a rule similar to the one currently in §1.704–1(b)(2)(iv)(d)(2), which provides that a partner’s capital account is increased with respect to non-readily tradable partner notes only (i) when there is a taxable disposition of such note by the partnership, or (ii) when the partner makes principal payments on such note. The Treasury Department and the IRS request comments concerning the propriety of this model in the S corporation and the partnership context.

### Proposed Effective Date

The regulations, as proposed, apply to loan transactions entered into on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register**.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant



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

### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available for public inspection and copying.

A public hearing has been scheduled for **October 9, 2012**, beginning at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 10, 2012. A period of 10 minutes is allotted to each person for making comments. An agenda showing the scheduling of the speakers

will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal authors of these proposed regulations are Caroline E. Hay, Michael H. Beker, and Stacy L. Short, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

### Proposed Amendments to the Regulations

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

#### PART 1—INCOME TAXES

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

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

#### §1.108-7 [Amended]

Par. 2. Section 1.108-7 is amended by:

1. Removing the language "§1.1366-2(a)(5)" in paragraph (d)(2)(iii) and adding "§1.1366-2(a)(6)" in its place.

2. Adding a sentence to the end of paragraph (f)(2).

The addition reads as follows:

§1.108-7 *Reduction of attributes.*

\* \* \* \* \*

(f) *Effective/applicability date.*

(2) \* \* \* The revision to the citation to §1.1366-2(a) in paragraph (d)(2)(iii) of this section is applicable on and after the date these proposed regulations are published as final in the **Federal Register**.

\* \* \* \* \*

#### §1.1366-0 [Amended]

Par. 3. Section 1.1366-0 is amended by:

1. Redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) as paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) in the table of contents for §1.1366-2, respectively, and adding a new paragraph (a)(2).

2. Revising the title of §1.1366-5 in the table of contents.

The additions read as follows:

§1.1366-0 *Table of contents.*

\* \* \* \* \*

§1.1366-2 *Limitations on deduction of passthrough items of an S corporation to its shareholders.*

(a) \* \* \*

(2) Basis of indebtedness.

(i) In general.

(ii) Guarantees.

(iii) Examples.

\* \* \* \* \*

§1.1366-5 *Effective/Applicability date.*

#### §1.1366-2 [Amended]

Par. 4. Section 1.1366-2 is amended by:

1. Redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) as paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) respectively, and adding a new paragraph (a)(2).

2. Removing the language "(a)(3)(i)" in paragraph (a)(1)(i), and adding the language "(a)(4)(i)" in its place.

3. Removing the language "paragraph (a)(3)(ii)" in paragraph (a)(1)(ii), and adding the language "paragraphs (a)(2) and (a)(4)(ii)" in its place.

4. Removing the language "(a)(3)(i) and (ii)" in newly redesignated paragraph (a)(3), and adding the language "(a)(4)(i) and (ii)" in its place.

5. Removing the language "paragraphs (a)(1)(i) and (2)" in newly redesignated paragraph (a)(4)(i), and adding the language "paragraphs (a)(1)(i) and (3)" in its place.

6. Removing the language "paragraphs (a)(1)(ii) and (2)" in newly redesignated paragraph (a)(4)(ii), and adding the language "paragraphs (a)(1)(ii) and (3)" in its place.

7. Removing the language "(a)(3)(i)" and "(a)(3)(ii)" in newly redesignated paragraph (a)(5), and adding the language "(a)(4)(i)" and "(a)(4)(ii)", respectively, in their place.

8. Removing the language "(a)(5)(ii)" in newly redesignated paragraph (a)(6)(i)

and (a)(6)(iii), and adding the language “(a)(6)(ii)” in its place.

9. Removing the language “(a)(4)” in newly redesignated paragraph (a)(6)(ii), and adding the language “(a)(5)” in its place.

10. Removing the language “paragraphs (a)(1)(i) and (2)” in newly redesignated paragraph (a)(7), and adding the language “paragraphs (a)(1)(i) and (3)” in its place.

The additions read as follows:

*§1.1366–2 Limitations on deduction of passthrough items of an S corporation to its shareholders.*

(a) \* \* \*

(2) *Basis of indebtedness*—(i) *In general.* The term *basis of any indebtedness of the S corporation to the shareholder* means the shareholder’s adjusted basis (as defined in §1.1011–1 and as specifically provided in section 1367(b)(2)) in any *bona fide* indebtedness of the S corporation that runs directly to the shareholder. Whether indebtedness is *bona fide* indebtedness to a shareholder is determined under general Federal tax principles and depends upon all of the facts and circumstances.

(ii) *Guarantees.* A shareholder does not obtain basis of indebtedness in the S corporation merely by guaranteeing a loan or acting as a surety, accommodation party, or in any similar capacity relating to a loan. When a shareholder makes a payment on *bona fide* indebtedness for which the shareholder has acted as guarantor or in a similar capacity, based on the facts and circumstances, the shareholder may increase its basis of indebtedness to the extent of that payment.

(iii) *Examples.* The following examples illustrate the provisions of paragraph (a)(2)(i) and (ii) of this section:

*Example 1. Shareholder loan transaction.* A is the sole shareholder of S, an S corporation. S received a loan from A. Whether the loan from A to S constitutes *bona fide* indebtedness from S to A is determined under general Federal tax principles and depends upon all of the facts and circumstances. See paragraph (a)(2)(i) of this section. If the loan constitutes *bona fide* indebtedness from S to A, A’s loan to S increases A’s basis of indebtedness under paragraph (a)(2)(i) of this section. The result is the same if A made the loan to S through an entity that is disregarded as an entity separate from A under §301.7701–3.

*Example 2. Guarantee.* A is a shareholder of S, an S corporation. In 2013, S received a loan from Bank. Bank required A’s guarantee as a condition of making the loan to S. Beginning in 2014, S could no longer make payments on the loan and A made payments directly to Bank from A’s personal funds until the loan obligation was satisfied. For each payment A made on the note, A obtains basis of indebtedness under paragraph (a)(2)(ii) of this section. Thus, A’s basis of indebtedness is increased during 2014 under paragraph (a)(2)(ii) of this section to the extent of A’s payments to Bank pursuant to the guarantee agreement.

*Example 3. Back-to-back loan transaction.* A is the sole shareholder of two S corporations, S1 and S2. S1 loaned \$200,000 to A. A then loaned \$200,000 to S2. Whether the loan from A to S2 constitutes *bona fide* indebtedness from S2 to A is determined under general Federal tax principles and depends upon all of the facts and circumstances. See paragraph (a)(2)(i) of this section. If A’s loan to S2 constitutes *bona fide* indebtedness from S2 to A, A’s back-to-back loan increases A’s basis of indebtedness in S2 under paragraph (a)(2)(i) of this section.

*Example 4. Loan restructuring through distributions.* A is the sole shareholder of two S corporations, S1 and S2. In March 2013, S1 made a loan to S2. In December 2013, S1 assigned its creditor position in the note to A by making a distribution to A of the note. Under local law, after S1 distributed the note to A, S2 was relieved of its liability to S1 and was directly liable to A. Whether S2 is indebted to A rather than S1 is determined under general Federal tax principles and depends upon all of the facts and circumstances. See paragraph (a)(2)(i) of this section. If the note constitutes *bona fide* indebtedness from S2 to A, the note increases A’s basis of indebtedness in S2 under paragraph (a)(2)(i) of this section.

\* \* \* \* \*

**§1.1366–5 [Amended]**

Par. 5. Section 1.1366–5 is amended by:

1. Removing the language “Sections 1.1366–2(a)(5)(i), (ii) and (iii)”, and adding the language “Sections 1.1366–2(a)(6)(i), (ii) and (iii)” in its place.

2. Adding two sentences to the end of the paragraph.

The additions read as follows:

*§1.1366–5 Effective/Applicability date.*

\* \* \* Upon the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**, §1.1366–2(a)(2) will apply to transactions entered into on or after the date these proposed regulations are published as final in the **Federal Register**. In addition, the revisions to §§1.1366–0, 1.1366–2, and this

section are applicable on and after the date these proposed regulations are published as final in the **Federal Register**.

**§1.1367–1 [Amended]**

Par. 6. Section 1.1367–1(h) *Example 5(iii)* is amended by removing the language “§1.1366–2(a)(2)” in the third and fourth sentences and adding the language “§1.1366–2(a)(3)” in its place.

**§1.1367–3 [Amended]**

Par. 7. Section 1.1367–3 is amended by adding one sentence to the end of the paragraph to read as follows:

*§1.1367–3 Effective/Applicability date.*

\* \* \* The revisions to citations to §1.1366–2(a) in §1.1367–1(h) *Example 5(iii)* are applicable on and after the date these proposed regulations are published as final in the **Federal Register**.

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

(Filed by the Office of the Federal Register on June 11, 2012, 8:45 a.m., and published in the issue of the Federal Register for June 12, 2012, 77 F.R. 34884)

## U.S.-Netherlands Agreement on Dutch Limited Funds for Mutual Account

### Announcement 2012–26

The following is a copy of the Competent Authority Agreement (“the Agreement”) entered into on May 21, 2012, by the Competent Authorities of the United States and the Netherlands regarding the eligibility of a besloten fonds voor gemene rekening (limited fund for mutual account) (“LFMA”) and its participants for treaty-reduced rates of withholding on U.S. source dividends and interest under the Convention between the Kingdom of the Netherlands and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed on December 18, 1992, and amended by Protocols signed on October 13, 1993 and March 8, 2004.

The text of the Agreement is as follows:

### COMPETENT AUTHORITY AGREEMENT

The Competent Authorities of the Netherlands and the United States enter into the following agreement (the "Agreement") to clarify the application of the Convention between the Kingdom of the Netherlands and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed on December 18, 1992, and amended by Protocols signed on October 13, 1993 and March 8, 2004 (the "Treaty") with respect to U.S. source dividends and interest paid to a besloten fonds voor gemene rekening (limited fund for mutual account) ("LFMA"). The Agreement is entered into under Article 29 (Mutual Agreement Procedure) of the Treaty.

A LFMA is a Dutch arrangement whereby participants in the LFMA agree to pool their capital to invest collectively in a variety of assets and to share in the proceeds of the investment. A LFMA is not a legal entity, but is an aggregate of the LFMA's assets and obligations. Each participant in a LFMA is entitled to a *pro rata* share, based on the size of the investor's interest in the LFMA, of the LFMA's assets and any income generated by the LFMA's assets. A participant's interest in a LFMA is based on the amount of participations held by the participant. Participations are recorded in registered form and no certificates are issued. Each participation represents an equal interest in the net asset value of the LFMA.

Under Dutch law, a LFMA is treated as a fiscally transparent entity and the partici-

pants in the LFMA, wherever resident, are required to take into account separately, on a current basis, the participant's respective share of an item of income paid to the LFMA, whether or not distributed to the participant. In addition, the character and source of the item of income in the hands of the participant are determined as if such item of income were realized directly from the source from which realized by the LFMA. Accordingly, participants in a LFMA are subject to tax on their proportionate share of the LFMA's income in the same manner as if they had received the income or assets directly.

It is understood that a LFMA organized under Dutch law is not a "resident" of the Netherlands within the meaning of Article 4 (Resident) of the Treaty because it is not a person that is liable to tax in the Netherlands. Therefore, a LFMA is not eligible to claim benefits in its own right under the Treaty.

Paragraph 4 of Article 24 (Basis of Taxation) of the Treaty provides that:

In the case of an item of income, profit or gain derived through a person that is fiscally transparent under the laws of either State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the Income, profit or gain of a resident.

Pursuant to Article 24(4), the Competent Authorities agree that U.S. source dividends and interest received by a LFMA will be treated as income derived by a resident of the Netherlands to the extent that such income is subject to tax as the income of a resident of the Netherlands. Thus, a person who is a resident of the Netherlands that derives dividends or interest Income

through a LFMA may be entitled to treaty benefits if such person otherwise meets all applicable requirements under the Treaty.

#### *Procedures for claiming treaty benefits*

A LFMA may claim treaty benefits on behalf of its participants by filing a Form W-8IMY (*Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding*), in accordance with all applicable U.S. procedures, as either a withholding foreign partnership or a non-withholding foreign partnership.

Notwithstanding the previous paragraph, a LFMA whose participants are exclusively Netherlands resident tax-exempt companies referred to in points 1) or 2) of Chapter IV of the mutual agreement entered into on August 6, 2007 with respect to the qualification of certain Netherlands entities for benefits under Article 35 (Exempt Pension Trusts) of the Treaty may continue to follow the procedures set forth in Chapter V of that agreement with respect to claims for benefits under Article 35 of the Treaty.

#### *Publication*

The Agreement will be published in the Dutch Government Gazette (in Dutch: "Staatscourant") and in the Internal Revenue Bulletin. The Agreement will enter into force from the date of signing the Agreement by the competent authorities of the United States of America and the Netherlands and shall be subject to regular review.

Agreed to by the undersigned competent authorities:

Washington D.C.  
Date: 21/05/2012

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Michael Danilack  
U.S. Competent Authority

The Hague  
Date: 15/05/2012

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H.G.(Harry) Roodbeen  
Netherlands Competent Authority

## Financial Asset Securitization Investment Trusts; Withdrawal

### Announcement 2012-27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws a notice of proposed rulemaking relating to financial asset securitization trusts (FASITs). The FASIT provisions (sections 860H through 860L) of the Internal Revenue Code (Code) were repealed by Public Law 108-357, effective January 1, 2005, with a limited exception for existing FASITs.

FOR FURTHER INFORMATION CONTACT: Julianne Allen at (202) 622-3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

Section 1621(a) of the Small Business Job Protection Act of 1996, Public Law 104-188 (110 Stat. 1755 (1996)), amended the Code by adding part V (sections 860H through 860L) (the FASIT provisions) to subchapter M of chapter 1. Part V, which was effective September 1, 1997, authorized a securitization vehicle called a Financial Asset Securitization Investment Trust (FASIT). FASITs

were meant to facilitate the securitization of debt instruments, such as credit card receivables, home equity loans, and auto loans.

Proposed regulations providing guidance with respect to the application of the FASIT provisions were published in the **Federal Register** on February 7, 2000 (65 FR 5807). (Section 1.860E-1(c) of the proposed regulations, governing the transfer of non-economic REMIC residual interests, was finalized on July 18, 2002, in T.D. 9004, 2002-2 C.B. 331.) In general, the proposed regulations pertaining to FASITs are proposed to be applicable on the date final regulations are filed with the **Federal Register**. The portion of the proposed regulations containing an anti-abuse rule and the portion of the proposed regulations implementing special transition rules for securitization entities in existence on August 31, 1997, were proposed to apply on February 4, 2000.

The FASIT provisions were repealed by section 835(a) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418 (2004)), effective January 1, 2005. During the period of legislative consideration of the FASIT provisions and subsequently, other structures for loan securitizations were developed. In its discussion of the reasons for the repeal of the FASIT provisions, the Ways and Means Committee stated:

The Committee is aware that FASITs are not being used widely in the manner envisioned by the Congress and, consequently, the FASIT rules have not

served the purposes for which they originally were intended. Moreover, the Joint Committee staff's report [on its investigation of Enron Corporation and related entities] and other information indicate that FASITs are particularly prone to abuse and likely are being used to facilitate tax avoidance transactions. H. R. Rep. No. 108-548, Pt. 1, at 295 (2004) (footnote omitted).

In light of the repeal of the FASIT provisions and their limited use, the Treasury Department and the IRS have decided to withdraw the proposed regulations.

#### Drafting Information

The principal authors of this withdrawal announcement are Richard LaFalce and Julianne Allen of the Office of the Associate Chief Counsel (Financial Institutions and Products).

\* \* \* \* \*

#### Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-100276-97) published in the **Federal Register** on February 7, 2000 (65 FR 5807) is withdrawn.

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

(Filed by the Office of the Federal Register on June 15, 2012, 8:45 a.m., and published in the issue of the Federal Register for June 18, 2012, 77 F.R. 36228)

## Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

### Announcement 2012-28

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, enrolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Service (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as

Treasury Department Circular No. 230. The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

**Disbarred from practice before the IRS**—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

**Suspended from practice before the IRS**—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

**Censured in practice before the IRS**—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future

representations to conditions designed to promote high standards of conduct.

**Monetary penalty**—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual’s conduct.

**Disqualification of appraiser**—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

**Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing**—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR’s complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ’s decision became the final agency decision.

**Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision**—An ALJ, after finding that no answer to OPR’s complaint had been filed, granted OPR’s motion for a default judgment and issued a decision imposing one of these sanctions.

**Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal**—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

**Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent**—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual’s opportunity, after a stated number of months, to file with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status). An enrolled agent or an enrolled retirement

plan agent may also offer to resign in order to avoid a disciplinary proceeding.

**Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding**—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary’s delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR’s “consent to sanction” form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual’s own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (*e.g.*, § 10.51) refer to the regulations.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
<b>Alabama</b>				
Auburn	Douglas Jr., James B.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from February 2, 2012
<b>California</b>				
Palo Alto	Gonzales, Juanita A.	Enrolled Agent		Reinstated to practice before the IRS, January 29, 2012

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>California (Continued)</b>				
Santa Ana	Ortega, Manuel	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from February 2, 2012
Newport Beach	Wolfe, Gerald L.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from March 14, 2012
<b>Colorado</b>				
Colorado Springs	Anderson, Edwin G.	Enrolled Agent		Reinstated to practice before the IRS, February 2, 2012
<b>Connecticut</b>				
Weston	Kingsley, Steven T.	CPA		Reinstated to practice before the IRS, July 13, 2004
<b>Florida</b>				
Clearwater	Schmautz, Emil N.	CPA	Suspended by decision in expedited proceeding under § 10.82 (convicted in state court, scheme to defraud)	Indefinite from March 6, 2012
<b>Georgia</b>				
Austell	Black, Charles C.	Attorney		Reinstated to practice before the IRS, January 29, 2012
Athens	Bonner, Charles B.	CPA		Reinstated to practice before the IRS, January 29, 2012
Leesburg	Mathis, Craig S.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from March 13, 2012
Fayetteville	Pesanto, Wilfredo	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from February 6, 2012

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Iowa</b>				
Osceola	Murphy, Richard J.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from February 2, 2012
<b>Kansas</b>				
Leawood	Poppe, Thomas V.	CPA	Suspended by decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 1027, false statement on form required by ERISA)	Indefinite from April 4, 2012
<b>Kentucky</b>				
Crestview Hills	Robison, Jean P.	CPA		Reinstated to practice before the IRS, February 8, 2012
<b>Louisiana</b>				
Mandeville	Tallon, Melissa H.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from February 3, 2012
<b>Maryland</b>				
Harwood	Venuti, John J.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 26 U.S.C. § 7203, failure to file income tax return)	Indefinite from April 10, 2012
<b>Michigan</b>				
Livonia	Matusz, Mark M.	CPA		Reinstated to practice before the IRS, February 2, 2012
<b>Nevada</b>				
Las Vegas	Salas, Richard J.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from February 2, 2012

<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>New Jersey</b>				
Freehold	Davis, Richard B.	CPA		Reinstated to practice before the IRS, March 16, 2012
West Long Branch	Needle, Leonard S.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from February 6, 2012
<b>New York</b>				
Bronx	Engram, Jimmie L.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from February 6, 2012
Airmont	Kingoff, Stuart N.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from February 6, 2012
	Pesanto, Wilfredo, See Georgia			
<b>North Carolina</b>				
Graham	Drumwright Jr., Robert G.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (revocation of CPA license)	Indefinite from February 2, 2012
<b>Ohio</b>				
Columbus	Merrelli Jr., Joseph J.	CPA		Reinstated to practice before the IRS, February 2, 2012
<b>Oregon</b>				
Portland	Bohn, Morton D.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 1344, bank fraud and 18 U.S.C. § 1957, money laundering)	Indefinite from March 16, 2012
<b>Pennsylvania</b>				
Ambler	Breznicky, David M.	CPA		Reinstated to practice before the IRS, November 30, 2011



<b>City &amp; State</b>	<b>Name</b>	<b>Professional Designation</b>	<b>Disciplinary Sanction</b>	<b>Effective Date(s)</b>
<b>Texas</b>				
San Antonio	Burt, Charles E.	CPA	Suspended by decision in expedited proceeding under § 10.82 (revocation of CPA license)	Indefinite from February 8, 2012
<b>Virginia</b>				
Alexandria	Hadeed Jr., Michael M.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 371, conspiracy to commit immigration fraud and to defraud the U.S. and 18 U.S.C. § 1001, material false statements, aiding and abetting)	Indefinite from February 6, 2012

# Definition of Terms

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

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

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

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

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

# Abbreviations

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

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.  
E.O.—Executive Order.

ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign corporation.  
G.C.M.—Chief Counsel’s Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.

PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statement of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.

## **Numerical Finding List<sup>1</sup>**

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2012–1 through 2012–26 is in Internal Revenue Bulletin 2012–26, dated June 25, 2012.

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Withdrawn by

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2012–1 through 2012–26 is in Internal Revenue Bulletin 2012–26, dated June 25, 2012.







# Internal Revenue Service

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