Internal Revenue bulletin

Bulletin No. 2009-40
October 5, 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

Rev. Rul. 2009–33, page 447.

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 October 2009.

T.D. 9463, page 442.

Final regulations under section 860G of the Code expand the list of permitted modifications to include certain modifications that are often made to commercial mortgages. Changes to the regulations are necessary to better accommodate evolving practices in the commercial-mortgage industry. These changes will affect lenders, borrowers, servicers, and sponsors of securitizations of mortgages in REMICs.

Notice 2009–78, page 452.

This notice announces rules that will be included in regulations identifying stock that is not taken into account for purposes of the ownership test of section 7874 of the Code. Stock generally will not be taken into account for this purpose if, subject to certain exceptions, it is issued in exchange for: (1) cash or cash equivalents; (2) marketable securities; and (3) any other property in a transaction with a principal purpose of avoiding section 7874. This notice also includes provisions regarding stock that is sold in a public offering.

Notice 2009–79, page 454.

This notice requests comments about whether additional guidance related to modifications of commercial loans held by investment trusts similar to the changes permitted under regulations section 1.860G–2(b)(3) of the Code is appropriate and the extent to which the requested changes are consistent with the Service position under section 301.7701–4(c) as related to fixed investment trusts. Additional comments must be submitted by November 14, 2009.

Notice 2009–81, page 455.

Extension of replacement period for livestock sold on account of drought. This notice explains the circumstances under which the 4-year replacement period under section 1033(e)(2) of the Code is extended for livestock sold on account of drought. The Appendix to this notice contains a list of the counties that experienced exceptional, extreme, or severe drought during the preceding 12-month period ending August 31, 2009. Taxpayers may use this list to determine if an extension is available.

Rev. Proc. 2009–42, page 459.

This procedure describes the conditions under which a Regulated Investment Company (RIC) that invests in a public-private investment partnership (PPIP) is treated for purposes of the asset diversification test of section 851(b)(3) of the Code, as if it directly invested in the assets held by the PPIP.

Rev. Proc. 2009–45, page 471.

This procedure describes the conditions under which modifications to the terms of certain commercial mortgage loans that are at risk of default will not cause the Service to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifications give rise to prohibited transactions.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 475.
Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

Announcement 2009–69, page 475.
This announcement includes changes to Revenue Procedure 2007–65. Specifically, the announcement expands the rights of developers, investors, and related parties to enter into agreements for the purchase of the wind farm, any property included in the wind farm, or an interest in the project company to permit a purchase price determined prior to exercise if the parties reasonably believe that the price will not be less than the fair market value of the property at the time the right may be exercised. The announcement also clarifies how section 469 of the Code applies to credits generated by wind energy facilities, clarifies that the revenue procedure only provides safe harbor requirements, and makes conforming changes to the revenue procedure to reflect these three changes. Rev. Proc. 2007–65 modified.

EMPLOYEE PLANS

Notice 2009–77, page 449.
Weighted average interest rate update; corporate bond indices; 30–year Treasury securities; segment rates. This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in September 2009; the 24–month average segment rates; the funding transitional segment rates applicable for September 2009; and the minimum present value transitional rates for August 2009.

Rev. Proc. 2009–43, page 460.
Revocation of elections by multiemployer defined benefit pension plans to freeze funded status under section 204 of WRERA. Section 204 of WRERA permits a plan to revoke the election to treat the plan as being funded at the prior year's certified level with the approval of the Service. This procedure provides that the Service will automatically approve a revocation request if certain requirements are met, including a deadline for making a decision to revoke; notice to employees and other interested parties; and consistent treatment of participating employers during the plan year. The revenue procedure provides special rules for the automatic approval of revocation requests that are made pursuant to the resolution of arbitration. The revenue procedure also states that the Service will consider revocation requests that do not satisfy the standard for automatic approval if the requests are submitted in accordance with our usual ruling letter procedures. Notices 2009–31 and 2009–42 amplified.

ADMINISTRATIVE

Rev. Proc. 2009–44, page 462.
This procedure updates Revenue Procedure 2002–44, which formally established a mediation procedure for cases in the Appeals administrative process. This procedures expands and clarifies the types of cases that may be mediated in Appeals. Generally, this program is available for cases in which a limited number of legal and factual issues remain unresolved following discussions in Appeals. Rev. Proc. 2002–44 superseded.

The IRS Mission

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

Introduction

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

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2009. See Rev. Rul. 2009-33, page 447.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2009. See Rev. Rul. 2009-33, page 447.

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 October 2009. See Rev. Rul. 2009-33, page 447.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2009. See Rev. Rul. 2009-33, page 447.

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 October 2009. See Rev. Rul. 2009-33, page 447.

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 October 2009. See Rev. Rul. 2009-33, page 447.

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 October 2009. See Rev. Rul. 2009-33, page 447.

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 October 2009. See Rev. Rul. 2009-33, page 447.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of October 2009. See Rev. Rul. 2009-33, page 447.

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 October 2009. See Rev. Rul. 2009-33, page 447.

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 October 2009. See Rev. Rul. 2009-33, page 447.

Section 860.—Deduction of Deficiency Dividends

26 CFR 1.860A–1: Effective dates and transition rules.

T.D. 9463

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1 and 602

Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit (REMIC)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulation.

SUMMARY: This document contains final regulations that expand the list of permitted loan modifications to include certain modifications that are often made to commercial mortgages. Changes to the regulations are necessary to better accommodate evolving practices in the commercial-mortgage industry. These changes will affect lenders, borrowers, servicers, and sponsors of securitizations of mortgages in REMICs.

DATES: *Effective Date:* These regulations are effective on or after September 16, 2009.

Applicability Date: For date of applicability, see §1.860A–1(b).

FOR FURTHER INFORMATION CONTACT: Diana Imholtz or Susan Thompson Baker at (202) 622–3930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2110. The collection of information in this final regulation is in §1.860G–2(b)(7). This information is required in order to show that certain modifications to mortgages permitted by this final regulation will not cause the modified mortgage to cease to be a qualified mortgage. The collection of information is voluntary to obtain a benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid 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 tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under section 860G of the Internal Revenue Code (Code). In Notice 2007–17, 2007–1 C.B. 748 (March 19, 2007), the IRS and the Treasury Department requested input on whether the present REMIC regulations should be amended to permit additional types of modifications incurred in connection with commercial mortgage loans. See §601.601(d)(2)(ii)(*b*). The IRS and the Treasury Department received several comments in response to this request (the Notice 2007–17 Comments). After consideration of the Notice 2007–17 Comments, the IRS and the Treasury Department published in the **Federal Register** (72 FR 63523) on November 9, 2007, proposed regulations (REG–127770–07, 2007–2 C.B. 1171) that would expand the list of permitted loan modifications to include certain modifications that are often made to commercial mortgages. The IRS and the Treasury Department received additional comments in response to the proposed regulations (the Proposed Regulation Comments). A public hearing was requested and was held on April 4, 2008 (Announcement 2008–24 I.R.B. 692 [73 FR 12041]). After consideration of the Proposed Regulation Comments, the proposed regulations are adopted as revised by this Treasury decision.

Summary of Comments and Explanation of Provisions

Except as specifically provided in §1.860G–2(b)(3), if there is a significant modification of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. See §1.860G–2(b)(1). For this purpose, the rules in §1.1001–3(e) determine whether a modification is "significant." See §1.860G–2(b)(2). Because of when it is treated as having been acquired in the deemed exchange, a significantly modified obligation generally fails to be a qualified mortgage. Section 1.860G–2(b)(3), however, contains a list of modifications that are expressly permitted without regard to the section 1001 modification rules.

The final regulations expand this list of permitted exceptions to include changes in collateral, guarantees, and credit enhancement of an obligation and changes to the recourse nature of an obligation. These changes are permitted so long as the obligation continues to be principally secured by an interest in real property. The final regulations also clarify when a release of a lien on real property securing a qualified mortgage does not disqualify the mortgage.

The Proposed Regulation Comments included requests for clarification and recommendations relating to the following: (i) the lien release rule; (ii) the requirement to retest the collateral value; (iii) the appraisal requirement; (iv) changes in the nature of an obligation from nonrecourse to recourse; (v) investment trusts; and (vi) other proposals set forth in the Notice 2007–17 Comments that were not included in the proposed regulations.

1. *The Lien Release Rule*

The proposed regulations would provide that a lien release pursuant to certain changes in collateral would not cause a qualified mortgage to cease to be a qualified mortgage on the date the lien is released. Commentators indicated that, as drafted, the proposed regulations could be interpreted to prohibit other types of lien releases, including lien releases that are occasioned by a default or reasonably foreseeable default under §1.860G–2(b)(3)(i) and lien releases that are permitted pursuant to the terms of the mortgage loan and are not modifications for purposes of §1.1001–3. In response to these comments, the final regulations clarify that a release of a lien on real property that does not result in a significant modification under §1.1001–3 (for example, a release or substitution of collateral pursuant to the borrower's unilateral option under the terms of the mortgage loan) is not a release that disqualifies a mortgage loan, so long as the mortgage continues to be principally secured by real property after giving effect to any releases, substitutions, additions, or other alterations to the collateral. Similarly, the final regulations clarify that a lien release occasioned by a default or a reasonably foreseeable default is not a release that disqualifies the mortgage, so long as the principally-secured test continues to be satisfied.

2. *The Requirement to Retest the Collateral Value*

Section 1.860G–2(a)(1) of the regulations provides that an obligation is principally secured by an interest in real property if the fair market value of the real property that secures the obligation equals at least 80 percent of the adjusted issue price of the obligation. The regulations require the 80-percent test to be satisfied either at the time the obligation was originated or at the time the sponsor contributes the obligation to the REMIC. After the startup day, the regulations do not require ongoing satisfaction of the 80-percent test.

Because certain types of modifications permitted by the proposed regulations could affect the value of the collateral securing the mortgage loan, the proposed regulations would require the 80-percent test to be satisfied at the time the mortgage loan is modified with respect to changes in collateral, guarantees, and credit enhancement of an obligation or with respect to changes to the recourse nature of an obligation. Commentators indicated that retesting should be required only when the modification could cause a decrease in the value of real property collateral relative to the mortgage loan amount. For this reason, commentators further indicated that changes in guarantees, credit enhancements or the recourse nature of an obligation, as well as the addition of collateral, do not have the effect of decreasing the value of the real property securing the mortgage loan and, therefore, these types of changes should not require retesting.

To ensure that a modified mortgage loan continues to be principally secured by an interest in real property, the IRS and the Treasury Department continue to believe that it is appropriate to retest at the time of the modification. Accordingly, the final regulations retain the retesting requirement, but amend the proposed standards for satisfying the principally secured test as described in section 3 in this preamble. In addition, to provide a more flexible standard for changes that do not decrease the value of real property securing the mortgage loan, the final regulations provide an alternative method for satisfying the principally secured test.

For these types of changes (for example, a change from recourse to nonrecourse, or vice versa), the final regulations provide that a modified mortgage loan continues to be principally secured by real property if the fair market value of the interest in real property that secures the loan immediately after the modification equals or exceeds the fair market value of the interest in real property that secured the loan immediately before the modification. This alternative test is consistent with the general rule that a decline in the value of collateral does not cause a mortgage loan to cease to be principally secured by real property. The final regulations provide an example to illustrate the application of this alternative method for satisfying the principally secured test.

The final regulations also require retesting with respect to a lien release that is not a significant modification for purposes of §1.1001–3 (for example, a release of real property collateral pursuant to the borrower's unilateral option under the terms of the mortgage loan). Here as well, the principally secured test is satisfied if either the 80-percent test is satisfied based on the current value of the real property securing the mortgage or the value of the real property collateral after the modification is no less than the value of the real property collateral immediately before.

For purposes of retesting with respect to alterations to real property collateral, the transaction causing the alteration is looked at in its entirety in determining the value of the real property collateral. For example, if, as part of an overall plan to make improvements to real property collateral that secures a mortgage loan, a borrower demolishes an existing building and constructs a new building on that real property, the fair market value of the real property collateral is determined by taking into account both the demolition of the existing building and the construction of the new building.

3. *The Appraisal Requirement*

For purposes of retesting as of the date of modification, the proposed regulations would require a current appraisal determined by an independent appraiser. Several commentators indicated that requiring a formal appraisal in connection with a loan modification is a stricter standard than is currently required for satisfying the 80-percent test at the startup day. See §1.860G–2(a)(3). For a number of business reasons, commentators indicated that servicers need more flexibility in complying with this retesting requirement and, therefore, requested that the proposed regulations be amended to permit servicers to use other types of reasonable valuation methods.

In response to these comments and to make the retesting requirement more consistent with the current rules for satisfying the 80-percent test at the startup day, the final regulations provide that the principally-secured test will be satisfied if the servicer reasonably believes that the modified mortgage loan satisfies the 80-percent test at the time of the modification. The final regulations provide that a servicer must base a reasonable belief upon a commercially reasonable valuation method. The final regulations set forth a nonexclusive list of commercially reasonable valuation methods that can be used by servicers for retesting purposes. These same commercially reasonable methods can be used under the alternative test to establish that the value of the real property collateral immediately after the modification is no less than the value of the real property collateral immediately before it.

4. *Changes in the Nature of an Obligation from Nonrecourse to Recourse*

The final regulations clarify that changes in the nature of an obligation from nonrecourse (or substantially all nonrecourse) to recourse (or substantially all recourse) are permitted so long as the obligation continues to be principally secured by an interest in real property.

5. *Investment Trusts*

Section 301.7701–4(c) of the Procedure and Administration Regulations provides that an investment trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. The IRS and the Treasury Department understand that changes to the terms of commercial mortgage loans held by investment trusts may raise issues as to whether a "power to vary" is present, and commentators recommended that the scope of the regulation project be expanded to permit investment trusts to modify commercial mortgage loans in the same manner as REMICs. To avoid a significant delay in the publication of these final regulations, their scope has not been expanded to include modifications of mortgage loans held by investment trusts. In a separate notice to be published in the Internal Revenue Bulletin contemporaneously with these final regulations, the IRS and the Treasury Department intend to request comments on this issue.

6. *Other Proposals Set Forth in the Notice 2007–17 Comments*

In the Proposed Regulation Comments, commentators requested that the IRS and the Treasury Department reconsider other proposed loan modifications that were set forth in the Notice 2007–17 Comments but that were not included in the proposed regulations. For the reasons indicated in the preamble to the proposed regulations, the IRS and the Treasury Department determined that the remaining changes requested by commentators should not be included in the final regulations.

Special Analysis

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 this regulation.

It is hereby certified that the collection of information requirement in this regulation will not have a significant economic impact on a substantial number of small business entities. This certification is based on the fact that the REMICs affected by this regulation will not be classified as small business entities. According to the Small Business Administration definition of a "small business," 13 C.F.R. 121.201, a REMIC is classified under Sector 52 (Finance and Insurance), Subsector

525 (Funds, Trusts and Other Financial Vehicles) under the category "Other Financial Vehicle", NAICS code 525990, and is only considered a small business entity if it accumulates less than 6.5 million dollars in annual receipts. REMICs affected by this regulation generally hold pools of commercial mortgage loans with an average loan size of 18.1 million dollars, and have greater than 6.5 million dollars in annual receipts. 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 Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Diana Imholtz of the Office of Associate Chief Counsel (Financial Institutions and Products). Other personnel from the IRS and the Treasury Department participated, however, in their development.

* * * * *

Adoption of the Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

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

Section 1.860A–0 also issued under 26 U.S.C. 860G(e).

Section 1.860G–2 also issued under 26 U.S.C. 860G(e). * * *

Par. 2. Section 1.860A–0 is amended by revising the entry for §1.860G–2(a)(8) and adding an entry for §1.860G–2(b)(7) to read as follows:

§1.860A–0 Outline of REMIC provisions.

* * * * *

§1.860G–2 Other rules.

(a) * * *

(8) Release of a lien on an interest in real property securing a qualified mortgage; defeasance.

* * * * *

(b) * * *

(7) Test for determining whether an obligation continues to be principally secured following certain types of modifications.

* * * * *

Par. 3. Section 1.860A–1 is amended by adding paragraph (b)(6) to read as follows:

§1.860A–1 Effective dates and transition rules.

* * * * *

(b) * * *

(6) *Exceptions for certain modified obligations*. Paragraphs (a)(8)(i), (b)(3)(v), (b)(3)(vi), and (b)(7) of §1.860G–2 apply to modifications made to the terms of an obligation on or after September 16, 2009.

Par. 4. Section 1.860G–2 is amended by:

1. Revising paragraphs (a)(8), (b)(3)(iii) and (b)(3)(iv).

2. Adding paragraphs (b)(3)(v), (b)(3)(vi) and (b)(7).

The additions and revisions read as follows:

§1.860G–2 Other rules.

(a) * * *

(8) *Release of a lien on an interest in real property securing a qualified mortgage; defeasance*. If a REMIC releases its lien on an interest in real property that secures a qualified mortgage, that mortgage ceases to be a qualified mortgage on the date the lien is released unless—

(i) The REMIC releases its lien in a modification that—

(A) Either is not a significant modification as defined in paragraph (b)(2) of this section or is one of the listed exceptions set forth in paragraph (b)(3) of this section; and

(B) Following that modification, the obligation continues to be principally secured by an interest in real property as determined by paragraph (b)(7) of this section; or

(ii) The mortgage is defeased in the following manner—

(A) The mortgagor pledges substitute collateral that consists solely of government securities (as defined in section 2(a)(16) of the Investment Company Act of 1940 as amended *(15 U.S.C. 80a–1)*);

(B) The mortgage documents allow such a substitution;

(C) The lien is released to facilitate the disposition of the property or any other customary commercial transaction, and not as part of an arrangement to collateralize a REMIC offering with obligations that are not real estate mortgages; and

(D) The release is not within 2 years of the startup day.

* * * * *

(b) * * *

(3) * * *

(iii) Waiver of a due-on-sale clause or a due-on-encumbrance clause;

(iv) Conversion of an interest rate by a mortgagor pursuant to the terms of a convertible mortgage;

(v) A modification that releases, substitutes, adds, or otherwise alters a substantial amount of the collateral for, a guarantee on, or other form of credit enhancement for, a recourse or nonrecourse obligation, so long as the obligation continues to be principally secured by an interest in real property following the release, substitution, addition, or other alteration as determined by paragraph (b)(7) of this section; and

(vi) A change in the nature of the obligation from recourse (or substantially all recourse) to nonrecourse (or substantially all nonrecourse), or from nonrecourse (or substantially all nonrecourse) to recourse (or substantially all recourse), so long as the obligation continues to be principally secured by an interest in real property following such a change as determined by paragraph (b)(7) of this section.

* * * * *

(7) *Test for determining whether an obligation continues to be principally secured following certain types of modifications*. (i) For purposes of paragraphs (a)(8)(i), (b)(3)(v), and (b)(3)(vi) of this section, the obligation continues to be principally secured by an interest in real property following the modification only if, as of the date of the modification, the obligation satisfies either paragraph (b)(7)(ii) or paragraph (b)(7)(iii) of this section.

(ii) The fair market value of the interest in real property securing the obligation, determined as of the date of the modification, must be at least 80 percent of the adjusted issue price of the modified obligation, determined as of the date of the modification. If, as of the date of the modification, the servicer reasonably believes that the obligation satisfies the criterion in the preceding sentence, then the obligation is deemed to do so. A reasonable belief does not exist if the servicer actually knows, or has reason to know, that the criterion is not satisfied. For purposes of this paragraph (b)(7)(ii), a servicer must base a reasonable belief on—

(A) A current appraisal performed by an independent appraiser;

(B) An appraisal that was obtained in connection with the origination of the obligation and, if appropriate, that has been updated for the passage of time and for any other changes that might affect the value of the interest in real property;

(C) The sales price of the interest in real property in the case of a substantially contemporary sale in which the buyer assumes the seller's obligations under the mortgage; or

(D) Some other commercially reasonable valuation method.

(iii) If paragraph (b)(7)(ii) of this section is not satisfied, the fair market value of the interest in real property that secures the obligation immediately after the modification must equal or exceed the fair market value of the interest in real property that secured the obligation immediately before the modification. The criterion in the preceding sentence must be established by a current appraisal, an original (and updated) appraisal, or some other commercially reasonable valuation method; and the servicer must not actually know, or have reason to know, that the criterion in the preceding sentence is not satisfied.

(iv) *Example*. The following example illustrates the rules of this paragraph (b)(7).

Example. (i) S services mortgage loans that are held by R, a REMIC. Borrower B is the issuer of one of the mortgage loans held by R. The original amount of B's mortgage loan was $100,000, and the loan was secured by real property X. At the time the loan was contributed to R, property X had a fair market value of $90,000. Sometime after the loan was contributed to R, B experienced financial difficulties such that it was reasonably foreseeable that B might default on the loan if the loan was not modified. Accordingly, S altered various terms of B's loan to substantially reduce the risk of default. The alterations included the release of the lien on property X and the substitution of real property Y for property X as collateral for the loan. At the time the loan was modified, its adjusted issue price was $100,000. The fair market value of property X immediately before the modification (as determined by a commercially reasonable valuation method) was $70,000, and the fair market value of property Y immediately after the modification (as determined by a commercially reasonable valuation method) was $75,000.

(ii) The alterations to B's loan are a significant modification within the meaning of §1.1001–3(e). The modification, however, is described in paragraphs (a)(8)(i) and (b)(3) of this section. Accordingly, the modified loan continues to be a qualified mortgage if, immediately after the modification, the modified loan continues to be principally secured by an interest in real property, as determined by paragraph (b)(7) of this section.

(iii) Because the modification includes the release of the lien on property X and substitution of property Y for property X, the modified loan must satisfy paragraph (b)(7)(i) of this section (which requires satisfaction of either paragraph (b)(7)(ii) or paragraph (b)(7)(iii) of this section). The modified loan does not satisfy paragraph (b)(7)(ii) of this section because property Y is worth less than $80,000 (the amount equal to 80 percent of the adjusted issue price of the modified mortgage loan). The modified loan, however, satisfies paragraph (b)(7)(iii) of this section because the fair market value of the interest in real estate (real property Y) that secures the obligation immediately after the modification ($75,000) exceeds the fair market value of the interest in real estate (real property X) that secured the obligation immediately before the modification ($70,000). Accordingly, the modified loan satisfies paragraph (b)(7)(i) of this section and continues to be principally secured by an interest in real property.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101, paragraph (b) is amended by adding the entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.860G–2	1545–2110
* * * * *	

Linda M. Kroening,
Acting Deputy Commissioner for Services and Enforcement.

Approved September 9, 2009.

Michael Mundaca,,
Acting Assistant Secretary of the Treasury (Tax Policy).

Section 860G.—Other Definitions and Special Rules

Whether additional guidance related to modifications of commercial loans held by investment trusts similar to the changes permitted under §1.860G–2(b)(3) is appropriate and the extent to which the requested changes are consistent with Service position under §301.7701–4(c), relating to fixed investment trusts. See T.D. 9463, page 442. See Notice 2009-79, page 454.

Section 1001.—Determination of Amount and Recognition of Gain or Loss

26 CFR 1.1001–3: Modifications of debt instruments.

This revenue procedure describes the conditions under which modifications to the terms of certain commercial mortgage loans that are at risk of default will not cause the IRS to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifications give rise to prohibited transactions. See Rev. Proc. 2009-45, page 471.

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 October 2009.

Rev. Rul. 2009–33

This revenue ruling provides various prescribed rates for federal income tax purposes for October 2009 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2009–33 TABLE 1

Applicable Federal Rates (AFR) for October 2009

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term				
AFR	.75%	.75%	.75%	.75%
110% AFR	.83%	.83%	.83%	.83%
120% AFR	.90%	.90%	.90%	.90%
130% AFR	.98%	.98%	.98%	.98%
Mid-term				
AFR	2.66%	2.64%	2.63%	2.63%
110% AFR	2.92%	2.90%	2.89%	2.88%
120% AFR	3.20%	3.17%	3.16%	3.15%
130% AFR	3.46%	3.43%	3.42%	3.41%
150% AFR	4.00%	3.96%	3.94%	3.93%
175% AFR	4.67%	4.62%	4.59%	4.58%
Long-term				
AFR	4.10%	4.06%	4.04%	4.03%
110% AFR	4.52%	4.47%	4.45%	4.43%
120% AFR	4.93%	4.87%	4.84%	4.82%
130% AFR	5.35%	5.28%	5.25%	5.22%

REV. RUL. 2009–33 TABLE 2

Adjusted AFR for October 2009

Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	.82%	.82%	.82%	.82%
Mid-term adjusted AFR	2.04%	2.03%	2.02%	2.02%
Long-term adjusted AFR	4.16%	4.12%	4.10%	4.09%

REV. RUL. 2009–33 TABLE 3 Rates Under Section 382 for October 2009	
Adjusted federal long-term rate for the current month	4.16%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.48%

REV. RUL. 2009–33 TABLE 4 Appropriate Percentages Under Section 42(b)(1) for October 2009	
Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.	
Appropriate percentage for the 70% present value low-income housing credit	7.78%
Appropriate percentage for the 30% present value low-income housing credit	3.33%

REV. RUL. 2009–33 TABLE 5 Rate Under Section 7520 for October 2009	
Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	3.2%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2009. See Rev. Rul. 2009-33, page 447.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of October 2009. See Rev. Rul. 2009-33, page 447.

Section 7701.—Definitions

26 CFR 301.7701–4: Trusts.

This revenue procedure describes the conditions under which modifications to the terms of certain commercial mortgage loans that are at risk of default will not cause the IRS to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifications give rise to prohibited transactions. See Rev. Proc. 2009-45, page 471.

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 October 2009. See Rev. Rul. 2009-33, page 447.

Part III. Administrative, Procedural, and Miscellaneous

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2009–77

This notice provides guidance as to the corporate bond weighted average interest rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, the 30-year Treasury weighted average rate under § 431(c)(6)(E)(ii)(I), and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning in 2004 through 2007 must be within a permissible range based on the weighted average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004–34, 2004–1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004–34 continues to apply in determining that rate. See Notice 2006–75, 2006–2 C.B. 366.

The composite corporate bond rate for August 2009 is 6.03 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

For Plan Years Beginning in		Corporate Bond Weighted	Permissible Range		
Month	*Year*	Average	90%	to	100%
September	2009	6.47	5.83		6.47

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates ("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007–81, 2007–2 C.B. 899, provides guidelines for determining the monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from August 2009 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of August 2009 are, respectively, 3.08, 5.94, and 6.21. The three 24-month average corporate bond segment rates applicable for September 2009 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
5.03	6.73	6.82

The transitional segment rates under § 430(h)(2)(G) applicable for September 2009, taking into account the corporate bond weighted average of 6.47 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	5.99	6.56	6.59
2009	5.51	6.64	6.70

The transitional rule of § 430(h)(2)(G) does not apply to plan years starting in 2010. Therefore, for a plan year starting in 2010 using a lookback month of September 2009, the funding segment rates are the three 24-month average corporate bond segment rates applicable for September 2009, listed above without blending for the transitional period.

30-YEAR TREASURY SECURITIES INTEREST RATES

Section 417(e)(3)(A)(ii)(II) (prior to amendment by PPA) defines the applicable interest rate, which must be used for purposes of determining the minimum present value of a participant's benefit under § 417(e)(1) and (2), as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. Section 1.417(e)–1(d)(3) of the Income Tax Regulations provides that the applicable interest rate for a month is the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for August 2009 is 4.37 percent. The Service has determined this rate as the average of the yield on the 30-year Treasury bond maturing in May 2039 determined each day through August 12, 2009, and the yield on the 30-year Treasury bond maturing in August 2039 determined each day for the balance of the month.

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount for the full-funding limitation described in section 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the month shown below.

For Plan Years Beginning in		30-Year Treasury Weighted Average	Permissible Range	
Month	*Year*		90% to	105%
September	2009	4.39	3.95	4.61

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24-month average. For plan years beginning in 2008 through 2011, the applicable interest rates are the monthly spot segment rates blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007–81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for August 2009, taking into account the August 2009 30-year Treasury rate of 4.37 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	4.11	4.68	4.74
2009	3.85	5.00	5.11
2010	3.60	5.31	5.47

DRAFTING INFORMATION

The principal author of this notice is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.

Table I

Monthly Yield Curve for August 2009

Maturity	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*	*Maturity*	*Yield*
0.5	1.48	20.5	6.30	40.5	6.20	60.5	6.18	80.5	6.16
1.0	1.91	21.0	6.29	41.0	6.20	61.0	6.17	81.0	6.16
1.5	2.32	21.5	6.28	41.5	6.20	61.5	6.17	81.5	6.16
2.0	2.70	22.0	6.28	42.0	6.19	62.0	6.17	82.0	6.16
2.5	3.04	22.5	6.27	42.5	6.19	62.5	6.17	82.5	6.16
3.0	3.35	23.0	6.27	43.0	6.19	63.0	6.17	83.0	6.16
3.5	3.63	23.5	6.26	43.5	6.19	63.5	6.17	83.5	6.16
4.0	3.90	24.0	6.25	44.0	6.19	64.0	6.17	84.0	6.16
4.5	4.14	24.5	6.25	44.5	6.19	64.5	6.17	84.5	6.16
5.0	4.37	25.0	6.25	45.0	6.19	65.0	6.17	85.0	6.16
5.5	4.58	25.5	6.24	45.5	6.19	65.5	6.17	85.5	6.16
6.0	4.78	26.0	6.24	46.0	6.19	66.0	6.17	86.0	6.16
6.5	4.96	26.5	6.23	46.5	6.19	66.5	6.17	86.5	6.16
7.0	5.13	27.0	6.23	47.0	6.19	67.0	6.17	87.0	6.16
7.5	5.29	27.5	6.23	47.5	6.19	67.5	6.17	87.5	6.16
8.0	5.43	28.0	6.23	48.0	6.19	68.0	6.17	88.0	6.16
8.5	5.56	28.5	6.23	48.5	6.19	68.5	6.17	88.5	6.16
9.0	5.68	29.0	6.22	49.0	6.19	69.0	6.17	89.0	6.16
9.5	5.78	29.5	6.22	49.5	6.19	69.5	6.17	89.5	6.16
10.0	5.88	30.0	6.22	50.0	6.18	70.0	6.17	90.0	6.16
10.5	5.96	30.5	6.22	50.5	6.18	70.5	6.17	90.5	6.16
11.0	6.03	31.0	6.22	51.0	6.18	71.0	6.17	91.0	6.16
11.5	6.09	31.5	6.22	51.5	6.18	71.5	6.17	91.5	6.16
12.0	6.15	32.0	6.21	52.0	6.18	72.0	6.17	92.0	6.16
12.5	6.19	32.5	6.21	52.5	6.18	72.5	6.17	92.5	6.16
13.0	6.23	33.0	6.21	53.0	6.18	73.0	6.17	93.0	6.16
13.5	6.26	33.5	6.21	53.5	6.18	73.5	6.17	93.5	6.16
14.0	6.28	34.0	6.21	54.0	6.18	74.0	6.17	94.0	6.16
14.5	6.30	34.5	6.21	54.5	6.18	74.5	6.17	94.5	6.16
15.0	6.31	35.0	6.21	55.0	6.18	75.0	6.17	95.0	6.16
15.5	6.32	35.5	6.21	55.5	6.18	75.5	6.17	95.5	6.16
16.0	6.32	36.0	6.21	56.0	6.18	76.0	6.17	96.0	6.16
16.5	6.33	36.5	6.20	56.5	6.18	76.5	6.17	96.5	6.16
17.0	6.33	37.0	6.20	57.0	6.18	77.0	6.17	97.0	6.16
17.5	6.33	37.5	6.20	57.5	6.18	77.5	6.17	97.5	6.16
18.0	6.32	38.0	6.20	58.0	6.18	78.0	6.17	98.0	6.16
18.5	6.32	38.5	6.20	58.5	6.18	78.5	6.17	98.5	6.16
19.0	6.31	39.0	6.20	59.0	6.18	79.0	6.16	99.0	6.16
19.5	6.31	39.5	6.20	59.5	6.18	79.5	6.16	99.5	6.16
20.0	6.30	40.0	6.20	60.0	6.18	80.0	6.16	100.0	6.16

Treatment of Certain Stock of the Foreign Acquiring Corporation — Section 7874

Notice 2009–78

SECTION 1. OVERVIEW

The Internal Revenue Service (IRS) and the Treasury Department (Treasury) intend to issue regulations under section 7874 of the Internal Revenue Code (Code) incorporating the rules described in this notice that will identify certain stock of a foreign corporation that is disregarded for determining ownership of the foreign corporation for purposes of section 7874(a)(2)(B)(ii). In general, and as described below, the regulations to be issued pursuant to this notice shall apply to acquisitions completed on or after September 17, 2009.

SECTION 2. BACKGROUND

Section 7874 provides rules for expatriated entities and their surrogate foreign corporations. An expatriated entity is a domestic corporation (or domestic partnership) with respect to which a foreign corporation (which includes certain publicly traded foreign partnerships) is a surrogate foreign corporation, and any United States person related to such domestic corporation (or domestic partnership) (within the meaning of sections 267(b) or 707(b)(1)). Section 7874(a)(2)(A).

A foreign corporation constitutes a surrogate foreign corporation if three conditions are satisfied. First, the foreign corporation completes, after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation. Section 7874(a)(2)(B)(i). Second, after the acquisition at least 60 percent of the stock of the foreign corporation (by vote or value) is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation (the Ownership Condition). Section 7874(a)(2)(B)(ii). Third, after the acquisition the expanded affiliated group (defined in section 7874(c)(1)) that includes the foreign corporation does not have substantial business activities in the foreign country in which, or under the law of which, the foreign corporation is created or organized, when compared to the total business activities of the expanded affiliated group. Section 7874(a)(2)(B)(iii). Similar provisions apply if a foreign corporation acquires substantially all of the properties constituting a trade or business of a domestic partnership.

Under section 7874(c)(2), certain stock of the foreign corporation is not taken into account in determining whether the Ownership Condition is satisfied: (1) stock of the foreign corporation held by members of the expanded affiliated group that includes the foreign corporation, and (2) stock of the foreign corporation sold in a public offering related to the acquisition described in section 7874(a)(2)(B)(i).

Regulations addressing the Ownership Condition were published in the Federal Register on May 20, 2008, and June 12, 2009 (T.D. 9399, 2008–1 C.B. 1157 [73 FR 29054]; T.D. 9453, 2009–28 I.R.B. 114 [74 FR 27920]).

Under section 7874(c)(4) a transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfer is part of a plan a principal purpose of which is to avoid the purposes of section 7874.

Section 7874(g) grants the Secretary broad authority to provide regulations necessary to carry out section 7874, including regulations adjusting the application of section 7874 as necessary to prevent the avoidance of the purposes of section 7874. More specifically, section 7874(c)(6) grants the Secretary authority to prescribe regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations to treat stock as not stock.

In T.D. 9453, the IRS and Treasury modified §1.7874–2T(e)(5), *Example 3*, to eliminate an unintended implication as to the scope or application of the public offering rule of section 7874(c)(2)(B). The T.D. 9453 preamble states that the IRS and Treasury are considering issuing guidance concerning the scope and application of the public offering rule and request comments in this regard.

SECTION 3. TRANSACTIONS AT ISSUE

The IRS and Treasury have become aware of transactions intended to avoid the application of section 7874 that involve a transfer of cash (or certain other assets) to the foreign corporation in a transaction related to the acquisition described in section 7874(a)(2)(B)(i), thereby minimizing the former shareholders' ownership in the foreign corporation for purposes of the Ownership Condition. In one such transaction, for example, the shareholders of a domestic corporation (DC) transfer all their DC stock to a newly-formed foreign corporation (New FCo) in exchange for 79 percent of the stock of New FCo and, in a related transaction, an investor transfers cash to New FCo in exchange for the remaining 21 percent of the New FCo stock. The parties to the transaction take the position that the New FCo stock issued to the investor is not "sold in a public offering" and thus not subject to section 7874(c)(2)(B). The parties also assert that the transfer of cash from the investor to New FCo was not part of a plan a principal purpose of which is to avoid the purposes of section 7874 such that section 7874(c)(4) does not apply to disregard the investor's transfer of cash to New FCo in exchange for New FCo stock.

Under these positions, the parties assert that the investor's New FCo stock would be taken into account for purposes of the Ownership Condition. Thus, the former shareholders of DC would hold only 79 percent of the stock of New FCo by reason of holding stock of DC, in which case section 7874(a)(1) would apply to DC (and any other expatriated entity) but section 7874(b) would not apply to treat New FCo as a domestic corporation for purposes of the Code. The IRS and Treasury understand that similar transactions may be structured with respect to the acquisition of a domestic corporation in a title 11 or similar case (as defined in section 368(a)(3)) or a domestic partnership. These transactions are inconsistent with the purposes of section 7874.

The IRS and Treasury also understand that taxpayers are concerned the public offering rule of section 7874(c)(2)(B) applies to all public issuances of stock by a foreign corporation, regardless of the property exchanged for the stock. For example, assume that, pursuant to a business combination, the shareholders of a publicly-traded foreign corporation (FT) and a publicly-traded domestic corporation (DT) intend to transfer their FT and DT stock, respectively, to a newly-formed foreign corporation (FA) that will be publicly-traded. To effectuate the transaction, as part of a plan FA acquires all of the FT and the DT stock, respectively, from the FT and DT shareholders in exchange solely for newly-issued FA stock. If the FA stock issued to the FT shareholders is considered "sold in a public offering" and thus subject to section 7874(c)(2)(B), the former shareholders of DT would be treated as owning 100 percent of the stock of FA for purposes of the Ownership Condition, and FA would therefore be treated as a domestic corporation for purposes of the Code under section 7874(b). A similar result would occur if instead FT merged with and into FA and the FT shareholders exchanged their FT stock for FA stock pursuant to the merger. The IRS and Treasury believe that such a result could be inappropriate in certain cases.

SECTION 4. REGULATIONS TO BE ISSUED

To address certain transactions, including those described in Section 3 of this notice, the IRS and Treasury intend to issue regulations identifying stock of the foreign corporation that is not taken into account for purposes of the Ownership Condition. The regulations will identify stock of the foreign corporation that shall not be taken into account for purposes of the Ownership Condition, even if such stock may not otherwise be described in section 7874(c)(2)(B). The regulations will also clarify that certain stock, which may be described in section 7874(c)(2)(B), shall nonetheless be taken into account for purposes of the Ownership Condition.

The regulations issued pursuant to this notice shall provide that stock of the foreign corporation issued in exchange for "nonqualified property" in a transaction related to the acquisition described in section 7874(a)(2)(B)(i) is not taken into account for purposes of the Ownership Condition, without regard to whether such stock is publicly traded on the date of issuance or otherwise. Subject to certain exceptions, the term "nonqualified property" shall generally mean: (1) cash or cash equivalents; (2) marketable securities as defined in section 453(f)(2); and (3) any other property acquired in a transaction with a principal purpose of avoiding the purposes of section 7874.

For this purpose, however, marketable securities generally shall not include stock (or a partnership interest) issued by a member of the expanded affiliated group (as defined in section 7874(c)(1)) that after the acquisition includes the foreign corporation, unless a principal purpose of the issuance of the stock of the foreign corporation in exchange for such property was the avoidance of the purposes of section 7874. For this purpose, a partnership shall be treated as a member of an expanded affiliated group if the partnership would be a member of the expanded affiliated group if it were a corporation.

The regulations shall provide similar rules to address acquisitions of property by one or more members of the expanded affiliated group (that includes the foreign corporation after the acquisition) in exchange for stock of the foreign corporation, including, for example, pursuant to a triangular reorganization. For this purpose, a partnership shall be treated as a member of an expanded affiliated group if the partnership would be a member of the expanded affiliated group if it were a corporation.

The rules described in this notice are not intended to affect the application of section 7874(c)(2)(A), §1.7874–1, or section 7874(c)(4).

The following examples illustrate the rules concerning the Ownership Condition that are intended to be included in the regulations described in this notice. For purposes of the examples, unless otherwise indicated, FA, FMS and FT are foreign corporations, DMS and DT are domestic corporations, PRS is a partnership, all entities are unrelated, and section 7874(c)(4) may apply to disregard certain transfers.

Example 1. Stock issued in exchange for marketable securities. (i) *Facts.* Individual A wholly owns DT. FA, a newly formed corporation, acquires all the DT stock from individual A in exchange solely for FA stock. In a transaction related to FA's acquisition of the DT stock, PRS transfers marketable securities (within the meaning of section 453(f)(2)) to FA solely in exchange for FA stock.

(ii) *Analysis.* The FA stock issued to PRS in exchange for the marketable securities is not taken into account for purposes of the Ownership Condition.

Example 2. Stock issued with a principal purpose of avoiding section 7874. (i) *Facts.* FA acquires all the DT stock in exchange solely for FA stock. In a transaction related to FA's acquisition of the DT stock, PRS transfers marketable securities (within the meaning of section 453(f)(2)) to FT, a newly formed corporation, solely in exchange for FT stock and then transfers the FT stock to FA in exchange solely for FA stock. The shares of FT stock do not constitute marketable securities within the meaning of section 453(f)(2).

(ii) *Analysis.* The FA stock issued to PRS in exchange for the FT stock is not taken into account for purposes of the Ownership Condition because a principal purpose of such issuance is the avoidance of the purposes of section 7874.

Example 3. Stock issued or exchanged for stock of a foreign corporation. (i) *Facts.* The stock of DT and FT is publicly traded. The following transactions are completed pursuant to a plan: FT forms FA, and FA forms DMS and FMS. FMS merges with and into FT, with FT surviving the merger. Pursuant to the FMS-FT merger, the FT shareholders exchange their FT stock solely for FA stock. Following the FMS-FT merger, DMS merges with and into DT, with DT surviving the merger. Pursuant to the DMS-DT merger, the DT shareholders exchange their DT stock solely for FA stock. After completion of the plan, FA wholly owns FT and DT.

(ii) *Analysis.* After the FMS-FT merger, FT is a member of the expanded affiliated group that includes FA. Therefore, the shares of FT stock are not treated as marketable securities and therefore do not constitute nonqualified property. Thus, the FA stock issued or exchanged for the FT stock is taken into account for purposes of the Ownership Condition.

(iii) *Alternative facts.* Assume the same facts as in paragraph (i) of this example except that, instead, FT merges with and into FA with FA surviving the merger. At the time of the merger, FT does not hold nonqualified property. Pursuant to the FT-FA merger, the FT shareholders exchange their FT stock solely for FA stock. Because the properties transferred by FT to FA pursuant to the FT-FA merger do not constitute nonqualified property, the FA stock issued in exchange for such properties pursuant to the merger will be taken into account for purposes of the Ownership Condition.

SECTION 5. EFFECTIVE DATE

The regulations described in this notice shall apply to acquisitions completed on or after September 17, 2009. Taxpayers may apply the rules described in this notice in their entirety to acquisitions completed on or after September 17, 2009, and before publication of the regulations described in this notice if the rules are applied consistently to all such acquisitions.

No inference is intended as to the treatment of transactions described in this notice under current law and the IRS may, where appropriate, challenge such transactions under applicable provisions, including under section 7874(c)(4) or judicial doctrines (such as the substance-over-form doctrine).

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is S. James Hawes of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in its development. For further information regarding this notice, contact Mr. Hawes or Milton M. Cahn at (202) 622–3860 (not a toll-free call).

Modifications of Commercial Mortgage Loans Held by an Investment Trust

Notice 2009–79

In T.D. 9463, the Internal Revenue Service (IRS) and the Treasury Department issued final regulations relating to permitted modifications of commercial mortgage loans held by a real estate mortgage investment conduit (REMIC). *See* T.D. 9463, 2009–40 I.R.B. 442, 74 FR 47436 (No. 178, September 16, 2009), (amending § 1.860G–2(b)(3) of the Income Tax Regulations). In response to a request for comments in Notice 2007–17, 2007–1 C.B. 748 (March 19, 2007), and in response to proposed regulations published in the Federal Register (72 FR 63523) on November 9, 2007, several commentators recommended that the scope of the regulations project be expanded to include a rule that would permit investment trusts to modify commercial mortgage loans to the same extent that REMICs can modify those loans under § 1.860G–2(b)(3) (taking into account the anticipated amendments to that rule). The commentators, however, did not provide detailed explanations for why those changes were needed or whether there are alternative ways of dealing with investment trust interests held by REMICs.

The scope of the final regulations remained focused on § 1.860G–2(b)(3) and was not expanded to include modifications of commercial mortgage loans held by investment trusts. The IRS and the Treasury Department note that, although REMICs and investment trusts are often used to securitize mortgages, the requirements for classification as a REMIC are not identical to the requirements for classification as a trust. The IRS and the Treasury Department continue to study the commentators' recommendation and in this notice solicit input concerning whether additional guidance may be appropriate.

Background

Section 301.7701–1(b) of the Procedure and Administration Regulations provides that the classification of organizations that are recognized as separate entities is determined under §§ 301.7701–2, 301.7701–3, and 301.7701–4, unless a provision of the Internal Revenue Code (Code) (such as section 860A addressing Real Estate Mortgage Investment Conduits (REMICs)) provides for special treatment of that organization.

Section 301.7701–2(a) provides that a "business entity" is an entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701–4 or otherwise subject to special treatment under the Code.

Section 301.7701–4(a) provides that, in general, an arrangement is treated as a trust if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

Section 301.7701–4(b) provides that there are arrangements that are known as trusts, because legal title to property is conveyed to trustees for the benefit of beneficiaries, but that are not classified as trusts for purposes of the Code because they are not simply arrangements to protect or conserve the property for the beneficiaries. The beneficiaries generally create these trusts, which are often known as business or commercial trusts, simply as a device to carry on a profit-making business. Such a business normally would have been carried on through business organizations that the Code classifies as corporations or partnerships (business entities).

Section 301.7701–4(c) provides that an "investment" trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders. *See Comm'r v. North American Bond Trust*, 122 F.2d 545 (2d Cir. 1941), *cert. denied*, 314 U.S. 701 (1942). An investment trust with a single class of ownership interests representing undivided beneficial interests in the assets of the trust is classified as a trust if there is no power to vary the investment of the certificate holders.

A power to vary the investment of the certificate holders exists where there is a managerial power, under the trust instrument, that enables a trust to take advantage of variations in the market to improve the investment of the investors. *See North American Bond Trust*, 122 F.2d at 546.

In previous published guidance, the IRS and the Treasury Department have identified situations in which a power to vary is determined not to be present. For example, in Rev. Rul. 73–460, 1973–2 C.B. 424, a sponsor establishes an investment trust to hold municipal bonds. The sponsor has the power, under certain conditions, such as a default by a bond issuer or substantial decline in the market value of certain bonds, to direct the trustee to sell the affected bonds to preserve the sound investment character of the trust. Except in case of default or probable default, the trustee is not permitted to accept any new or substitute bonds from an obligor who is refunding or refinancing bonds held by the investment trust. The trust agreement also requires that moneys in the interest and principal accounts must be distributed to certificate holders. Rev. Rul. 73–460 concludes that a power to vary is not necessarily present if there is a power to dispose of trust assets to preserve the value of the trust in situations where, for example default has occurred or there is a substantial decline in the value of the assets provided that the proceeds of the sale are distributed to certificate holders and are not reinvested in additional assets. Rev. Rul. 73–460 also concludes that a power to accept an issuer's offer to exchange or substitute existing obligations held by the investment trust pursuant to a plan for the refunding or refinancing of such obligations in situations where the issuer has already defaulted or the occurrence of default is probable is not a power to vary.

In Rev. Rul. 90–63, 1990–2 C.B. 270, a trustee has the power to consent to changes in the credit support of debt obligations held by the trust, but the power is exercisable only if the trustee reasonably believes that the changes are needed to maintain the value of the trust assets by preserving the credit rating of the obligations. Rev. Rul. 90–63 concludes that this power to change the credit support, exercisable only if needed to preserve the value of the trust assets, is not a power to vary.

A "power to vary" was found to be present, however, in Rev. Rul. 78–149, 1978–1 C.B. 448. Rev. Rul. 78–149 involves a municipal bond trust in which the trustee has a limited power to reinvest in certain types of municipal bonds. The trust agreement provides that in the case of early redemption by a bond issuer, the trustee is permitted to reinvest the proceeds in similarly rated bonds that mature no later than the last maturity date of municipal bonds originally deposited in the trust. The trustee may also choose to distribute the proceeds to the trust certificate holders. In holding that the trust is an association taxable as a corporation for federal tax purposes, Rev. Rul. 78–149 concludes that "the power in the trust agreement permitting reinvestment of the proceeds of obligations redeemed prior to maturity, even though limited to reinvestment of the proceeds of redemptions over which the trust has no control, is a managerial power that enables the trust to take advantage of variations in the market to improve the investment of the investors."

A power to vary does not exist as a result of reinvestments that occur outside of the original investment trust. In Rev. Rul. 81–238, 1981–2 C.B. 248, the sponsor of the initial investment trust, prior to each semiannual distribution, creates a new investment trust in which certificate holders can invest their distributions. With regard to each specific investment trust, neither the trustee nor any other person has a power to vary the investments of the trust. Certificate holders in the original investment trust may choose to have all of their distributions invested in the newly-created investment trusts under an automatic reinvestment plan or may choose to receive cash. Further, certificate holders may choose to participate in or terminate the reinvestment plan at any time, may withdraw from the reinvestment plan with respect to particular distributions, or may withdraw from the reinvestment plan with respect to only some of the certificates they own. Rev. Rul. 81–238 concludes that the reinvestment plan does not create a power to vary, because there is no change in, or addition to, the assets of the original trust and the investment of each certificate holder in the original trust remains fixed.

Request for Comments

The IRS and the Treasury Department welcome further comments regarding what additional guidance, if any, is needed regarding modifications of commercial mortgage loans held by investment trusts. To be most useful, the comments should also analyze the extent to which the modifications at issue are consistent with existing case law and administrative pronouncements that govern whether an investment trust is classified as a trust for federal income tax purposes. Answers to the following questions would be particularly helpful:

1. Is it common business practice to hold commercial mortgage loans through an investment trust? If so, please describe the structure of an investment trust that holds commercial mortgage loans. Also, if commercial mortgages are held by a REMIC through an investment trust, please explain the utility of this structure and its business purpose.
2. Are there fact patterns which are not described in § 1.860G–2(b)(3)(i) and in which one or more modifications permitted to REMICs under § 1.860G–2(b)(3)(ii) through (vi) would be consistent with the case law and prior administrative pronouncements if carried out by an investment trust?
3. Are there alternative structures that would be consistent with the case law and prior administrative pronouncements and would allow the modified mortgage loans to be held by an investment trust? Are there any changes or additions to the REMIC rules that would be needed to facilitate these alternative structures?

Interested parties are invited to submit comments on this notice by November 14, 2009. Comments should be submitted in writing, and should include a reference to Notice 2009–79. Send submissions to: CC:PA:LPD:PR (Notice 2009–79), 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 (Notice 2009–79), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, comments may be submitted electronically directly to the IRS via the following e-mail address: *Notice.comments@irscounsel.treas.gov.* Please include "Notice 2009–79" in the subject line of any electronic communication. All materials submitted will be available for public inspection and copying.

Drafting Information

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

Extension of Replacement Period for Livestock Sold on Account of Drought in Specified Counties

Notice 2009–81

SECTION 1. PURPOSE

This notice provides guidance regarding an extension of the replacement period under § 1033(e) of the Internal Revenue Code for livestock sold on account of drought in specified counties.

SECTION 2. BACKGROUND

.01 *Nonrecognition of Gain on Involuntary Conversion of Livestock.* Section 1033(a) generally provides for nonrecognition of gain when property is involuntarily converted and replaced with property that is similar or related in service or use. Section 1033(e)(1) provides that a sale or exchange of livestock (other than poultry) held by a taxpayer for draft, breeding, or dairy purposes in excess of the number that would be sold following the taxpayer's usual business practices is treated as an involuntary conversion if the livestock is sold or exchanged solely on account of drought, flood, or other weather-related conditions.

.02 *Replacement Period.* Section 1033(a)(2)(A) generally provides that gain from an involuntary conversion is recognized only to the extent the amount realized on the conversion exceeds the cost of replacement property purchased during the replacement period. If a sale or exchange of livestock is treated as an involuntary conversion under § 1033(e)(1) and is solely on account of drought, flood, or other weather-related conditions that result in the area being designated as eligible for assistance by the federal government, § 1033(e)(2)(A) provides that the replacement period ends four years after the close of the first taxable year in which any part of the gain from the conversion is realized. Section 1033(e)(2)(B) provides that the Secretary may extend this replacement period on a regional basis for such additional time as the Secretary determines appropriate if the weather-related conditions that resulted in the area being designated as eligible for assistance by the federal government continue for more than three years. Section 1033(e)(2) is effective for any taxable year with respect to which the due date (without regard to extensions) for a taxpayer's return is after December 31, 2002.

SECTION 3. EXTENSION OF REPLACEMENT PERIOD UNDER § 1033(e)(2)(B)

Notice 2006–82, 2006–2 C.B. 529, provides for extensions of the replacement period under § 1033(e)(2)(B). If a sale or exchange of livestock is treated as an involuntary conversion on account of drought and the taxpayer's replacement period is determined under § 1033(e)(2)(A), the replacement period will be extended under § 1033(e)(2)(B) and Notice 2006–82 until the end of the taxpayer's first taxable year ending after the first drought-free year for the applicable region. For this purpose, the first drought-free year for the applicable region is the first 12-month period that (1) ends August 31; (2) ends in or after the last year of the taxpayer's 4-year replacement period determined under § 1033(e)(2)(A); and (3) does not include any weekly period for which exceptional, extreme, or severe drought is reported for any location in the applicable region. The applicable region is the county that experienced the drought conditions on account of which the livestock was sold or exchanged and all counties that are contiguous to that county.

A taxpayer may determine whether exceptional, extreme, or severe drought is reported for any location in the applicable region by reference to U.S. Drought Monitor maps that are produced on a weekly basis by the National Drought Mitigation Center. U.S. Drought Monitor maps are archived at *www.drought.unl.edu/dm/archive.html.*

In addition, Notice 2006–82 provides that the Internal Revenue Service will publish in September of each year a list of counties, districts, cities, or parishes (hereinafter "counties") for which exceptional, extreme, or severe drought was reported during the preceding 12 months. Taxpayers may use this list instead of U.S. Drought Monitor maps to determine whether exceptional, extreme, or severe drought has been reported for any location in the applicable region.

The Appendix to this notice contains the list of counties for which exceptional, extreme, or severe drought was reported during the 12-month period ending August 31, 2009. Under Notice 2006–82, the 12-month period ending on August 31, 2009, is not a drought-free year for an applicable region that includes any county on this list. Accordingly, for a taxpayer who qualified for a four-year replacement period for livestock sold or exchanged on account of drought and whose replacement period is scheduled to expire at the end of 2009 (or, in the case of a fiscal year taxpayer, at the end of the taxable year that includes August 31, 2009), the replacement period will be extended under § 1033(e)(2) and Notice 2006–82 if the applicable region includes any county on this list. This extension will continue until the end of the taxpayer's first taxable year ending after a drought-free year for the applicable region.

SECTION 4. DRAFTING INFORMATION

The principal author of this notice is Seoyeon Park of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice, contact Ms. Park at (202) 622–4960 (not a toll-free call).

APPENDIX

Alabama

Counties of Calhoun, Chambers, Cherokee, Cleburne, DeKalb, Jackson, Lee, Madison, Randolph, Russell.

California

Counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Los Angeles, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Orange, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Diego, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Ventura, Yolo, Yuba.

Colorado

Counties of Baca, Bent, Las Animas, Prowers.

Florida

Counties of Alachua, Brevard, Broward, Charlotte, Citrus, Collier, DeSoto, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Marion, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, Volusia.

Georgia

Counties of Appling, Baldwin, Banks, Barrow, Bartow, Ben Hill, Bibb, Bleckley, Bulloch, Burke, Butts, Candler, Carroll, Catoosa, Chattahoochee, Chattooga, Cherokee, Clarke, Clayton, Cobb, Coffee, Columbia, Coweta, Crawford, Crisp, Dade, Dawson, DeKalb, Dodge, Dooly, Douglas, Elbert, Emanuel, Fannin, Fayette, Floyd, Forsyth, Franklin, Fulton, Gilmer, Glascock, Gordon, Greene, Gwinnett, Habersham, Hall, Hancock, Haralson, Harris, Hart, Heard, Henry, Houston, Irwin, Jackson, Jasper, Jeff Davis, Jefferson, Jenkins, Johnson, Jones, Lamar, Laurens, Lincoln, Lumpkin, McDuffie, Macon, Madison, Marion, Meriwether, Monroe, Montgomery, Morgan, Murray, Muscogee, Newton, Oconee, Oglethorpe, Paulding, Peach, Pickens, Pike, Polk, Pulaski, Putnam, Rabun, Richmond, Rockdale, Schley, Screven, Spalding, Stephens, Stewart, Sumter, Talbot, Taliaferro, Tattnall, Taylor, Telfair, Toombs, Towns, Treutlen, Troup, Twiggs, Union, Upson, Walker, Walton, Warren, Washington, Webster, Wheeler, White, Whitfield, Wilcox, Wilkes, Wilkinson.

Hawaii

Counties of Hawaii, Honolulu, Kauai, Maui.

Kansas

Counties of Barber, Clark, Comanche, Hamilton, Meade, Morton, Seward, Stanton, Stevens.

Kentucky

Counties of Adair, Allen, Anderson, Barren, Bath, Bell, Bourbon, Boyle, Breathitt, Butler, Calloway, Carter, Casey, Christian, Clark, Clay, Clinton, Cumberland, Edmonson, Elliott, Estill, Fayette, Fleming, Floyd, Franklin, Garrard, Grayson, Green, Hardin, Harlan, Harrison, Hart, Jackson, Jessamine, Johnson, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, Lincoln, Logan, McCreary, Madison, Magoffin, Marion, Martin, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Owsley, Perry, Pike, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Warren, Washington, Wayne, Whitley, Wolfe, Woodford.

Louisiana

Parishes of Assumption, Lafourche, St. Martin, St. Mary, Terrebonne.

Michigan

Counties of Delta, Dickinson, Gogebic, Houghton, Iron, Marquette, Menominee, Ontonagon.

Minnesota

Counties of Aitkin, Anoka, Blue Earth, Carlton, Carver, Cass, Chisago, Crow Wing, Dakota, Dodge, Faribault, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Isanti, Itasca, Kanabec, Le Sueur, Martin, Olmsted, Pine, Ramsey, Rice, Scott, Sherburne, Sibley, Wabasha, Waseca, Washington, Watonwan, Winona, Wright.

Montana

Counties of Cascade, Custer, Daniels, Dawson, Fallon, Flathead, Glacier, Lake, Lewis and Clark, Liberty, Lincoln, McCone, Pondera, Prairie, Richland, Roosevelt, Sanders, Sheridan, Teton, Toole, Valley, Wibaux.

Nevada

Carson City. Counties of Churchill, Douglas, Elko, Eureka, Humboldt, Lander, Lincoln, Lyon, Nye, Pershing, Storey, Washoe, White Pine.

New Mexico

Counties of Chaves, DeBaca, Dona Ana, Eddy, Guadalupe, Lea, Lincoln, Luna, Otero, Roosevelt, Sierra, Socorro, Torrance, Union.

North Carolina

Counties of Alexander, Alleghany, Ashe, Avery, Bertie, Buncombe, Burke, Cabarrus, Caldwell, Camden, Catawba, Cherokee, Chowan, Clay, Cleveland, Currituck, Dare, Edgecombe, Gaston, Gates, Graham, Greene, Halifax, Haywood, Henderson, Hertford, Iredell, Jackson, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Nash, Northampton, Pasquotank, Perquimans, Pitt, Polk, Rowan, Rutherford, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, Yancey.

North Dakota

Counties of Adams, Billings, Bowman, Burke, Divide, Dunn, Golden Valley, Grant, Hettinger, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Slope, Stark, Ward, Williams.

Oklahoma

Counties of Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Carter, Choctaw, Cimarron, Coal, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Garvin, Grady, Greer, Harmon, Harper, Hughes, Jackson, Jefferson, Johnston, Kingfisher, Kiowa, Love, McClain, Major, Marshall, Murray, Pittsburg, Pontotoc, Roger Mills, Stephens, Texas, Tillman, Washita, Woods, Woodward.

Oregon

Counties of Curry, Harney, Josephine, Lake.

South Carolina

Counties of Abbeville, Aiken, Allendale, Anderson, Bamberg, Barnwell, Cherokee, Chester, Edgefield, Fairfield, Greenville, Greenwood, Lancaster, Laurens, Lexington, McCormick, Newberry, Oconee, Orangeburg, Pickens, Richland, Saluda, Spartanburg, Union, York.

Tennessee

Counties of Anderson, Bedford, Benton, Bledsoe, Blount, Bradley, Campbell, Cannon, Carter, Cheatham, Claiborne, Clay, Cocke, Coffee, Cumberland, Davidson, DeKalb, Dickson, Fentress, Franklin, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Henry, Houston, Humphreys, Jackson, Jefferson, Johnson, Knox, Loudon, McMinn, Macon, Marion, Meigs, Monroe, Montgomery, Moore, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Robertson, Rutherford, Scott, Sequatchie, Sevier, Smith, Stewart, Sullivan, Sumner, Trousdale, Unicoi, Union, Van Buren, Warren, Washington, White, Williamson, Wilson.

Texas

Counties of Andrews, Aransas, Archer, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazoria, Brazos, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Chambers, Childress, Clay, Coke, Coleman, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Denton, DeWitt, Dickens, Dimmit, Duval, Eastland, Ector, Edwards, El Paso, Erath, Falls, Fayette, Fisher, Foard, Fort Bend, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Grayson, Grimes, Guadalupe, Hamilton, Hardeman, Harris, Haskell, Hays, Hidalgo, Hill, Houston, Howard, Hudspeth, Irion, Jack, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lampasas, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, McCulloch, McLennan, McMullen, Madison, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Motley, Navarro, Nolan, Nueces, Palo Pinto, Parker, Polk, Presidio, Reagan, Real, Reeves, Refugio, Robertson, Runnels, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Starr, Stephens, Sterling, Stonewall, Sutton, Taylor, Throckmorton, Tom Green, Travis, Trinity, Upton, Uvalde, Val Verde, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Young, Zapata, Zavala.

Utah

Counties of Juab, Millard, Tooele.

Virginia

Cities of Bristol, Chesapeake, Emporia, Franklin, Galax, Norton, Radford, Suffolk, Virginia Beach. Counties of Bland, Brunswick, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Greensville, Isle of Wight, Lee, Mecklenburg, Montgomery, Pulaski, Roanoke, Russell, Scott, Smyth, Southampton, Sussex, Tazewell, Washington, Wise, Wythe.

Washington

Counties of Chelan, Clallam, Douglas, Grant, Grays Harbor, Jefferson, Mason, Okanogan.

West Virginia

Counties of Boone, Lincoln, Logan, McDowell, Mercer, Mingo, Monroe, Raleigh, Summers, Wayne, Wyoming.

Wisconsin

Counties of Adams, Ashland, Barron, Bayfield, Buffalo, Burnett, Chippewa, Clark, Door, Douglas, Dunn, Eau Claire, Florence, Forest, Iron, Jackson, Juneau, La Crosse, Langlade, Lincoln, Marathon, Marinette, Menominee, Monroe, Oconto, Oneida, Outagamie, Pepin, Pierce, Polk, Portage, Price, Rusk, St. Croix, Sawyer, Shawano, Taylor, Trempealeau, Vilas, Washburn, Waupaca, Wood.

Wyoming

Counties of Fremont, Lincoln, Sublette, Sweetwater, Uinta.

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26 CFR 601.601: Rules and regulations.
(Also: Part 1, § 851; 1.851–2.)

Rev. Proc. 2009–42

SECTION 1. PURPOSE

This revenue procedure sets forth conditions under which a regulated investment company (RIC) that holds a partnership interest in a Public-Private Investment Partnership (PPIP) created under the Public-Private Investment Program (Program) is treated for purposes of section 851(b)(3) of the Internal Revenue Code as if it directly invested in the assets held by the PPIP.

SECTION 2. BACKGROUND — THE PROGRAM

.01 In response to the financial issues affecting the banking system and the financial markets due to the contraction in the economy, the Treasury Department, together with other governmental bodies, has implemented a series of initiatives as part of the Financial Stability Plan pursuant to the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110–343, 122 Stat. 3765 (EESA).

.02 One program established by the EESA is the Troubled Asset Relief Program (TARP). TARP authorizes the Treasury Department to purchase troubled assets, including mortgage-backed securities. Pursuant to TARP, on March 23, 2009, the Treasury Department, in conjunction with the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve System, announced the creation of the Program to help the financial system by stimulating the extension of new credit.

.03 The Program includes the Legacy Securities Program. Through the Legacy Securities Program, Treasury will partner with private investors to form PPIPs. A PPIP will acquire certain commercial mortgage-backed securities and certain non-agency residential mortgage-backed securities (collectively, Legacy Securities). *See* Rev. Proc. 2009–38, 2009–37 I.R.B. 360 (prescribing conditions under which the Internal Revenue Service will not assert that certain entities created in connection with the Program constitute taxable mortgage pools for purposes of section 7701(i)).

SECTION 3. BACKGROUND — RICS

.01 Section 851(b) provides that certain requirements must be satisfied in order for a domestic corporation to be taxed as a RIC under subchapter M, part 1, of the Code.

.02 Section 851(b)(3)(A) requires that, in order for a corporation to qualify as a RIC, at the close of each quarter of the taxable year, at least 50 percent of the value of the corporation's total assets must be represented by cash and cash items (including receivables), Government securities and securities of other RICs, and other securities generally limited in respect of any one issuer to an amount not greater in value than 5 percent of the value of the total assets of the corporation and to not more than 10 percent of the outstanding voting securities of such issuer.

.03 Section 851(b)(3)(B) requires that, in order for a corporation to qualify as a RIC, not more than 25 percent of the corporation's total assets may be invested in the securities (other than Government securities and the securities of other RICs) of any one issuer, or of two or more issuers that the corporation controls and which are determined, under regulations, to be engaged in the same or similar trades or businesses or related trades or businesses, or the securities of one or more publicly traded partnerships (as defined in section 851(h)).

.04 In certain situations, the Service treats a RIC that invests in certain partnerships as if it directly invested in the assets held by the partnership for purposes of the asset diversification tests of section 851(b)(3) (Look-Through Treatment). Rev. Proc. 2001–57, 2001–2 C.B. 577, extends Look-Through Treatment to certain RICs in a master-feeder structure. *See also* Rev. Proc. 2005–20, 2005–1 C.B. 990, *amplifying and superseding* Rev. Proc. 2003–32, 2003–1 C.B. 803 (extending Look-Through Treatment to certain RICs that invest in eligible tax-exempt bond partnerships).

SECTION 4. SCOPE

This revenue procedure applies to a RIC that meets the following requirements:

.01 It is registered as a management investment company under the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, as amended, and elects to be treated as a RIC under subchapter M, part 1, of the Code.

.02 It invests at least 70 percent of its original assets (including seed capital and net proceeds from an initial public offering) as a partner in one or more PPIPs that hold Legacy Securities pursuant to the Program and that are treated as partnerships for federal income tax purposes.

.03 Except for certain special allocations agreed to by the Treasury Department and those allocations required under section 704, its allocable share of each item of the PPIP's income, gain, loss, deduction, and credit is proportionate to its percentage of ownership of the capital interests in the PPIP.

SECTION 5. APPLICATION

For purposes of qualifying as a RIC under section 851(b)(3), a RIC meeting the requirements of Section 4 of this revenue procedure is treated as if it directly invested in the assets held by the PPIP in which it invests. For these purposes, its interest in PPIP assets is determined in accordance with its percentage of ownership of the capital interests in the PPIP.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for asset determinations that are made as of dates after September 9, 2009.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Andrea Hoffenson of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Andrea Hoffenson at (202) 622–3930 (not a toll free call).

Revocation of Elections by Multiemployer Defined Benefit Pension Plans to Freeze Funded Status Under Section 204 of WRERA

Rev. Proc. 2009–43

I. Background

Section 432 of the Internal Revenue Code (Code), which was added by the Pension Protection Act of 2006, P.L. 109–280 (PPA), prescribes rules for multiemployer defined benefit pension plans that are significantly underfunded. In particular, section 432(b)(3) provides that the plan actuary for any such multiemployer plan must, by the 90th day of each plan year, certify to the Secretary of the Treasury and to the plan sponsor as to the plan's "section 432 status" (*i.e.*, whether the plan is in endangered status, critical status, or neither status) for the plan year.

A number of actions are required for a plan that has been certified to be in endangered or critical status. In particular, section 432(b)(3)(D) requires that a sponsor provide, within 30 days following the certification, notice to participants and others of the certification and, if the plan has been certified to be in critical status, that adjustable benefits under section 432(e)(8) may be reduced. In addition, section 432(f)(2) requires, in the case of a plan certified to be in critical status, that payments of certain accelerated benefits must be suspended as of the date the notice is sent.

In the first plan year that a plan is in endangered status (including seriously endangered status), the plan sponsor must adopt a funding improvement plan that is reasonably expected to enable the multiemployer plan to achieve certain funding improvements by the end of its 10–year funding improvement period (with a possible substitution of a 15–year funding improvement period for a plan in seriously endangered status). Similarly, in the first year that a plan is in critical status, the plan sponsor must adopt a rehabilitation plan that generally is reasonably expected to enable the multiemployer plan to emerge from critical status by the end of its 10–year rehabilitation period (with alternative approaches available if the plan sponsor determines, as described in section 432(e)(3)(A)(ii), that the plan cannot reasonably be expected to emerge from critical status by the end of the rehabilitation period using all reasonable measures). A funding improvement plan or rehabilitation plan, as applicable, must be adopted by the 330th day of the plan year (*i.e.*, not later than 240 days after the due date for the certification of status, which is the 90th day of the plan year).

Section 432(d)(1) provides that, during the funding plan adoption period (described in section 432(d)(8) as the period beginning on the date of the plan's certification for the initial determination year and ending on the day before the first day of the funding improvement period), the sponsor of a plan that is in endangered status may not take certain actions that would adversely affect the plan's funded status, such as accepting a collective bargaining agreement that provides for a reduction in the level of contributions for any participants. Section 432(f)(4) provides similar rules for sponsors of critical status plans during the rehabilitation plan adoption period (described in section 432(e)(5) as the period beginning on the plan's certification for the initial critical year and ending on the day before the first day of the rehabilitation period). For plan years following the initial endangered or initial critical year, section 432(c)(6) and section 432(e)(3)(B) require that the funding improvement plan or rehabilitation plan, as applicable, be updated to reflect the experience of the plan.

The Worker, Retiree, and Employer Recovery Act of 2008, P.L. 110–458 (WRERA), provides, in part, funding relief for multiemployer plans in endangered or critical status. Section 204(a) of WRERA provides that a multiemployer plan sponsor may elect, notwithstanding the actuarial certification of the plan's section 432 status under section 432(b)(3) for the plan year for which the election is made ("election year"), to temporarily freeze the plan's section 432 status so that it is the same as the plan's section 432 status for the plan year immediately prior to the election year ("prior year"). Specifically, section 204(a)(1) of WRERA provides that a multiemployer plan sponsor may elect that the plan's section 432 status for the first plan year beginning on or after October 1, 2008, and not later than September 30, 2009, be the same as the plan's section 432 status for the prior year ("section 204 election"). If a section 204 election is made, no update of a funding improvement plan or rehabilitation plan is required for the election year.

Section 204(c)(1) of WRERA provides that a section 204 election must be made at the time and in the manner that the Secretary of the Treasury or the Secretary's delegate may prescribe and, once made, may be revoked only with the consent of the Secretary.

Section 204(c)(2) of WRERA provides special notice rules that apply when a section 204 election is made to freeze a plan's section 432 status and that modify the otherwise applicable notice requirements under section 432(b)(3)(D) of the Code. If a plan is in neither endangered nor critical status as a result of the election, the plan sponsor must provide the notice described in section 204(c)(2)(A) of WRERA. This notice applies in lieu of the notice that is otherwise required under section 432(b)(3)(D) of the Code in the case of a plan that has been certified to be in endangered or critical status. In addition, if a plan is certified to be in critical status for the election year but is in endangered status by reason of a section 204 election, the notice that must be provided is the notice that would have been provided under section 432(b)(3)(D) of the Code if the plan had been certified to be in endangered status for the election year.

On March 27, 2009, the Service issued Notice 2009–31, 2009–16 I.R.B. 856, which provided guidance to multiemployer plans making a section 204 election. Section IV of the notice described the election procedures. Under Notice 2009–31, as modified by Notice 2009–42, 2009–20 I.R.B. 1011, the due date for making the election was the later of June 30, 2009, and the date that is 30 days after the due date of the annual certification of section 432 status for the election year.

Notice 2009–42 further provides that the Service will automatically approve a request to revoke a section 204 election if (1) as of the otherwise applicable deadline for making a section 204 election, a plan sponsor has been unable to reach agreement as to whether to make the election so that the decision must be resolved through an arbitration process; (2) the plan sponsor makes an election by the otherwise applicable deadline that is contingent on the resolution of the arbitration; and (3) the resolution is to not make an election.

Section II of this revenue procedure sets forth additional circumstances in which the Service will automatically approve a request to revoke a section 204 election. Section III sets forth the procedures for submitting a request for automatic approval of revocation of a section 204 election. Section IV addresses other requests for approval to revoke a section 204 election.

II. Conditions for automatic approval of request for revocation of a section 204 election

Pursuant to section 204(c)(1) of WRERA, a request for revocation of an election under section 204 will be approved automatically by the Service, regardless of whether the election was the subject of arbitration, if the following requirements are met:

(1) The request for revocation of the election must be submitted to the Service by the due date for the adoption of a funding improvement plan, rehabilitation plan, or update, whichever is applicable for the election year after taking the revocation into account. In the case of a plan described in Notice 2009–42, where the decision to make a section 204 election is the subject of an arbitration process, the deadline for submitting the request for revocation is the later of the due date under the preceding sentence or 30 days following the resolution of the arbitration.

(2) Notice under section 432(b)(3)(D) of the plan's actual certified status for the election year must be provided no later than 30 days after the request for revocation is submitted. The notice is also required to include a statement that the election was revoked and to explain the consequences of the revocation.

(3) The plan sponsor must have complied with the requirements of section 432(d)(1)(A) and (B) or section 432(f)(4), as applicable, during the plan's funding plan adoption period or rehabilitation plan adoption period, determined as though a section 204 election had never been made. This requirement does not apply to a plan where revocation results from the resolution of arbitration as described in Notice 2009–42.

III. Submission of request for automatic approval of revocation

A request for revocation that is eligible for automatic approval under section II above must be signed by an authorized trustee who is a current member of the board of trustees that is the plan sponsor, and a copy of the plan's section 204 election must be attached. The request for revocation must be mailed to the Service at the following address (which is also the address to which a section 204 election is sent):

Internal Revenue Service
EPCU
Group 7602
SE:TEGE:EP
Room 1700 – 17th Floor
230 S. Dearborn Street
Chicago, IL 60604

The request for revocation may not be submitted electronically.

IV. Other requests for approval to revoke a section 204 election

The Service may approve requests for revocations in circumstances other than those set forth in section II above. Such requests are not eligible for automatic approval under this revenue procedure, but must instead be made in accordance with Rev. Proc. 2009–4, 2009–1 I.R.B. 118.

V. Effect on other guidance

Notice 2009–31 and Notice 2009–42 are hereby amplified.

VI. Paperwork Reduction Act

The collection of information described in section III of this revenue procedure modifies the collection of information described in section IV of Notice 2009–31. The collection of information required under section IV and other parts of that notice has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(c)). 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 OMB approval number for Notice 2009–31 and for this revenue procedure is 1545–2141.

Drafting information

The principal author of this revenue procedure is Diane S. Bloom of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1–877–829–5500 (a toll-free number) or e-mail Ms. Bloom at *RetirementPlanQuestions@irs.gov*.

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26 CFR 601.106: Appeals functions.
(Also: §§ 601.202, 601.203; and Part I, § 7123(b)(1).)

Rev. Proc. 2009–44

SECTION 1. PURPOSE

This revenue procedure updates Revenue Procedure 2002–44, which formally established a mediation procedure for cases in the Appeals administrative process. This revenue procedure expands and clarifies the types of cases that may be mediated in Appeals. Generally, this program is available for cases in which a limited number of legal and factual issues remain unresolved following settlement discussions in Appeals.

SECTION 2. BACKGROUND

Section 7123(b)(1) of the Internal Revenue Code, as enacted by section 3465 of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, 112 Stat. 685, provides the statutory authority for the Appeals mediation program. On July 1, 2002, Revenue Procedure 2002–44, 2002–2 C.B. 10, formally established the Appeals mediation procedure. Rev. Proc. 2002–44 modified and expanded the availability of mediation for cases that are already in the Appeals administrative process. This revenue procedure supersedes Rev. Proc. 2002–44.

SECTION 3. SIGNIFICANT CHANGES

This revenue procedure modifies the Appeals mediation program to expand the types of cases that are eligible for mediation while also clarifying the types of cases that are ineligible. Significant changes from Rev. Proc. 2002–44 in this revenue procedure include:

.01 Section 4.02 provides that mediation does not create any special settlement authority for Appeals.

.02 Section 4.03(7) provides that mediation may be available for certain offer in compromise and Trust Fund Recovery Penalty cases as provided for in Announcement 2008–111, 2008–48 I.R.B. 1224, or any subsequent guidance issued by the IRS;

.03 Section 9.02 provides that, for offer in compromise cases with liabilities of $50,000 or more, any settlement or agreement reached must be reviewed by the Office of Chief Counsel pursuant to section 7122(b).

SECTION 4. SCOPE OF MEDIATION

.01 *In general.* Mediation may be used to resolve issues in cases that qualify under this revenue procedure while they are under consideration by Appeals. This procedure may be used only after Appeals settlement discussions are unsuccessful and, generally, when all other issues are resolved but for the issue(s) for which mediation is being requested.

.02 *Authority*. The mediation procedure does not create any special authority for settlement by Appeals. During the mediation process, Appeals is still subject to the procedures that would be applicable if the issue were being considered via the standard Appeals process, including procedures in the Internal Revenue Manual and existing published guidance.

.03 *Applicability*. Mediation is available for:

(1) Legal issues;

(2) Factual issues;

(3) A Compliance Coordinated Issue (CCI) or an Appeals Coordinated Issue (ACI). (CCI and ACI issues are listed online at *www.irs.gov/appeals*.) However, a CCI or ACI issue will not be eligible for mediation when the taxpayer has declined the opportunity to discuss the CCI or ACI issue with the Appeals CCI or ACI coordinator during the course of regular Appeals settlement discussions;

(4) An early referral issue when an agreement is not reached, provided the early referral issue meets the requirements for mediation (*see* section 2.16 of Rev. Proc. 99–28, 1999–2 C.B. 109, or any subsequent revenue procedure);

(5) Issues for which a request for competent authority assistance has not yet been filed. Taxpayers are cautioned that if they enter into a settlement with Appeals (including an Appeals settlement through the mediation process) and then request competent authority assistance, the competent authority will endeavor only to obtain a correlative adjustment with the treaty country and will not take any actions that would otherwise change the settlement. *See* section 7.05 of Rev. Proc. 2006–54, 2006–2 C.B. 1035, or the corresponding provision of any successor guidance. If a taxpayer enters into the Appeals mediation program, the taxpayer may not request competent authority assistance until the mediation process is complete unless the taxpayer demonstrates that a request for competent authority assistance is necessary to keep open a period of limitations in the treaty country. If so, competent authority assistance may be requested while mediation is pending and the U.S. competent authority will suspend action on the case until mediation is completed;

(6) Unsuccessful attempts to enter into a closing agreement under section 7121; and

(7) Offer in compromise and Trust Fund Recovery Penalty cases as provided for in Announcement 2008–111, or any subsequent guidance issued by the IRS.

.04 *Inapplicability*. Mediation will not be available for:

(1) Cases in which mediation is not appropriate under either 5 U.S.C. § 572 or 5 U.S.C. § 575, which provide the general authority and guidelines for use of alternative dispute resolution in the administrative process;

(2) Issues designated for litigation;

(3) Issues docketed in any court (for the Chief Counsel mediation program involving issues in docketed cases, *see* Chief Counsel Directives Manual (CCDM 35.5.5.4));

(4) Collection cases, except for certain offer in compromise and Trust Fund Recovery Penalty cases as provided for in Announcement 2008–111 or any subsequent guidance issued by the IRS;

(5) Issues for which mediation would not be consistent with sound tax administration, such as, but not limited to, issues governed by closing agreements, by *res judicata*, or by controlling Supreme Court precedent;

(6) Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2009–2, 2009–1 I.R.B. 87, or any subsequent revenue procedure;

(7) "Whipsaw" issues, such as, but not limited to, issues for which resolution with respect to one party might result in inconsistent treatment in the absence of participation of another party;

(8) Cases in which the taxpayer did not act in good faith during settlement negotiations, such as, but not limited to, cases in which the taxpayer failed to timely respond to document requests or offers to settle, or failed to address arguments and precedents raised by Appeals; and

(9) Issues that have been otherwise identified in subsequent guidance issued by the IRS as excluded from the mediation program.

SECTION 5. APPLICATION PROCESS

.01 *Mediation is optional.* A taxpayer and Appeals may request mediation after consultation with each other.

.02 *Filing requirements.*

(1) *Where to file*. To request mediation, the taxpayer should send a written request to the appropriate Appeals Team Manager. The taxpayer should also send copies of the written request to the appropriate Appeals Area Director and to the Chief Appeals, 1099 14th Street, NW, Suite 4200E — East, Washington, DC 20005, Attn: AP:TS:TPP. (*See* Exhibit 1 of this revenue procedure for a listing of the addresses for each Appeals Area Director.)

(2) *Required information.* The mediation request should include:

(a) The taxpayer's name, taxpayer identification number, and address (and the name, title, address, and telephone number of a person to contact);

(b) The name of the Team Case Leader, Appeals Officer, or Settlement Officer;

(c) The taxable period(s) involved;

(d) A description of the issue for which mediation is being requested, including the dollar amount of the adjustment in dispute; and

(e) A representation that the issue is not an excluded issue listed in the "Scope of Mediation" section above.

.03 *Review of Mediation Request.* The Appeals Team Manager will confer with the Appeals Office of Tax Policy and Procedure before deciding to approve or deny a mediation request. Generally, the Appeals Team Manager will respond to the taxpayer and the Team Case Leader or Appeals Officer within two weeks after the Appeals Team Manager receives the request for mediation.

(1) *Request approved.* If Appeals approves the mediation request, the Appeals Team Manager will inform the taxpayer and the Team Case Leader or Appeals Officer and will schedule a conference or conference call that may include a representative from Appeals Tax Policy and Procedure Headquarters to discuss the mediation process.

(2) *Request denied.* If Appeals denies the mediation request, the Appeals Team Manager will promptly inform the taxpayer and the Team Case Leader or Appeals Officer. Although no formal appeal procedure exists for the denial of a mediation request, a taxpayer may request a conference with the Appeals Team Manager to discuss the denial. The denial of a mediation request is not subject to judicial review.

SECTION 6. AGREEMENT TO MEDIATE

.01 *Written agreement*. Upon approval of the request to mediate, the taxpayer and Appeals will enter into a written agreement to mediate. *See* Exhibit 2 of this revenue procedure for a model agreement to mediate. This agreement will be negotiated via a conference or conference call. A representative from the Appeals Office of Tax Policy and Procedure may participate in the negotiation. The agreement to mediate should:

(a) Be as concise as possible;

(b) Specify the issue(s) that the parties have agreed to mediate;

(c) Contain an initial list of witnesses, attorneys, representatives, and observers for each party;

(d) Identify the location and the proposed date of the mediation session; and

(e) Prohibit *ex parte* contacts between the mediator and the parties.

The Appeals Team Manager, in consultation with the Team Case Leader or Appeals Officer, will sign the agreement to mediate on behalf of Appeals.

Generally, it is expected that the parties will complete and execute the agreement to mediate within three weeks after being notified that Appeals approved the mediation request and will proceed to mediation within 60 days after signing the agreement to mediate. A taxpayer's inability to adhere to these timeframes, without reasonable cause, may result in Appeals' withdrawal from the mediation process.

.02 *Participants.* The parties to the mediation process will be the taxpayer and Appeals. Each party must have at least one participant with decision-making authority attending the mediation session. The agreement to mediate will set forth the procedures by which the parties inform each other and the mediator of the participants in the mediation, and will set forth any limitation on the number, identity, or participation of such participants. In general, the parties are encouraged to include, in addition to the required decision-makers, those persons with information and expertise that will be useful to the decision-makers and the mediator. In this regard, Appeals has the discretion to communicate *ex parte* with the IRS Office of Chief Counsel, the originating function, *e.g.*, Compliance, or both, in preparation for or during the mediation session. Appeals also has the discretion to have Counsel, the originating function, or both, participate in the mediation proceeding to present the position and views of the IRS, and to rebut representations and arguments made by the taxpayer. Counsel's participation in this regard is separate from the review function outlined in Section 9.02 of this revenue procedure. To minimize the possibility of a last minute disqualification of the mediator, each party must notify the mediator and the other party of the participants on the party's mediation team no later than two weeks before the mediation. *See* Exhibit 3 of this revenue procedure for a model participants list.

.03 *Disclosure.* To participate in mediation under this revenue procedure, the taxpayer must consent under section 6103(c) to the disclosure by the IRS of the taxpayer's returns and return information incident to the mediation to the mediator and any participant or observer identified in the initial list of participants and observers and to any subsequent participants and observers identified in writing by the parties. The taxpayer must execute a separate consent to disclose tax information. *See* Exhibit 4 of this revenue procedure for a model consent to disclose tax information. If the agreement to mediate and consent are executed by a person pursuant to a power of attorney executed by the taxpayer, that power of attorney must clearly express the taxpayer's grant of authority to consent to disclose the taxpayer's returns and return information by the IRS to third parties, and a copy of that power of attorney must be attached to the agreement.

SECTION 7. MEDIATION PROCESS

.01 *Selection of mediator and expenses.* An Appeals employee trained as a mediator will serve as the mediator under this revenue procedure. Appeals will pay all expenses associated with the use of an Appeals mediator. The taxpayer and the Appeals Team Manager will select the Appeals mediator from a list of trained employees who, generally, will be located in the same Appeals office or geographical area as the taxpayer, but will not be a member of the same team that was assigned to the case.

Additionally, at the taxpayer's expense, the taxpayer may elect to use a co-mediator who is not employed by the IRS. The taxpayer and the Appeals Team Manager will select the non-IRS co-mediator from any local or national organization that provides a roster of neutrals. A representative from the Appeals Office of Tax Policy and Procedure may participate in the negotiations to select a non-IRS co-mediator. Criteria for selecting a non-IRS co-mediator may include: completion of mediation training; previous mediation experience; substantive knowledge of tax law; or knowledge of industry practices. A mediator shall have no official, financial, or personal conflict of interest with respect to the parties, unless such interest is fully disclosed in writing to the taxpayer and the Appeals Team Manager and they agree that the mediator may serve. *See* 5 U.S.C. § 573.

.02 *Appeals personnel as mediators and conflict statement.* To address the inherent conflict arising from the Appeals mediator's status as an employee of the IRS, the Appeals mediator will provide to the taxpayer a statement confirming his or her proposed service as a mediator and stating that (i) he or she is a current employee of the IRS, (ii) a conflict results from his or her continued status as an IRS employee, and (iii) this conflict will not interfere in the mediator's ability to facilitate the case impartially. This statement will also be included in the written agreement to mediate.

SECTION 8. MEDIATION SESSION

.01 *Discussion summaries.* Each party will prepare a discussion summary of the issues (including the party's arguments in favor of the party's position) for consideration by the mediator. The discussion summaries should be submitted to the mediator and the other party no later than two weeks before the mediation session is scheduled to occur.

.02 *Confidentiality*. The mediation process is confidential. Therefore, all information concerning any dispute resolution communication is confidential and may not be disclosed by any party, participant, observer or mediator except as provided by statute, such as in section 6103 of the Internal Revenue Code and 5 U.S.C. § 574. A dispute resolution communication includes all oral or written communications prepared for the purposes of a dispute resolution proceeding. *See* 5 U.S.C. § 571(5).

.03 *Ex Parte Contacts Prohibited.* To ensure that one party is not in a position to exert undue influence on the mediator, there will be no *ex parte* contacts with the mediator outside the mediation session.

The prohibition against *ex parte* communications is intended to apply only to unsolicited contacts from one of the parties outside the mediation session. It ensures the mediator does not receive information or evidence the other party is unaware of and is unable to respond to or rebut. This provision does not prevent the mediator from contacting a party, or a party from answering a question or request posed by the mediator.

.04 *Withdrawal*. Either party may withdraw from the process anytime before reaching a settlement of the issue(s) being mediated by notifying the other party and the mediator in writing.

SECTION 9. POST-SESSION PROCEDURES

.01 *Mediator's report*. At the conclusion of the mediation process, the mediator will prepare a brief written report and submit a copy to each party. *See* Exhibit 5 of this revenue procedure for a model mediator's report.

.02 *Closing procedures*. If the parties reach an agreement on all or some issues through the mediation process, Appeals will use established procedures, including preparation of a Form 906, *Closing Agreement on Final Determination Covering Specific Matters*. *See* Statement of Procedural Rules, 26 C.F.R. § 601.106. Delegation Order 236 (Rev. 3) (addressing settlement authority for issues in a Coordinated Examination Program) may apply to settlements.

For offer in compromise cases with liabilities of $50,000 or more, any settlement or agreement reached through mediation must be reviewed by the Office of Chief Counsel pursuant to section 7122(b) before being finalized. When review is required, Appeals will forward the case to Area Counsel for an opinion concerning whether the case is subject to compromise. *See* IRM 5.8.8.5 and 8.23.4.2.2.

If the parties do not reach an agreement on an issue being mediated, they may request arbitration for the issue, provided the mediation issue meets the requirements for arbitration. *See* Rev. Proc. 2006–44, 2006–2 C.B. 800, or any subsequent procedure. If arbitration is not requested or approved, Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues (or the case will be processed using established closing procedures if there is no deficiency).

SECTION 10. GENERAL PROVISIONS

.01 *Employees.* IRS and Treasury employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to section 6103(n) that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including sections 6103, 7213, and 7431.

.02 *Section 7214(a)(8) disclosure*. Under section 7214(a)(8), IRS employees must report information concerning violations of any revenue law to the Secretary. The agreement to mediate will state this requirement and the parties will acknowledge this duty.

.03 *Disqualification of the non-IRS co-mediator*. The non-IRS co-mediator will be disqualified from representing the taxpayer in any pending or future action that involves the transactions or issues that are the particular subject matter of the mediation. This disqualification extends to representing any other parties involved in the transactions or issues that are the particular subject matter of the mediation. Moreover, the co-mediator's firm will be disqualified from representing the taxpayer or any other parties involved in the transactions or issues that are the particular subject matter of the mediation in any action that involves the transactions or issues that are the particular subject matter of the mediation.

The co-mediator's firm will not be disqualified from representing the taxpayer or any other parties in any future action that involves the same transactions or issues that are the particular subject matter of the mediation, provided that (i) the co-mediator disclosed the potential of such representation to the parties to the mediation conducted by the co-mediator prior to the parties' acceptance of the co-mediator, (ii) such action relates to a taxable year that is different from the taxable year that is the subject matter of the mediation, (iii) the firm's internal controls preclude the co-mediator from any form of participation in the matter, and (iv) the firm does not apportion to the co-mediator any part of the fee therefrom. In the event the co-mediator has been selected prior to the co-mediator learning of the identity of one or more of the parties involved in the mediation, requirement (i) will be deemed satisfied if the co-mediator promptly notifies the parties of the potential representation.

Although the co-mediator is prohibited from receiving a direct allocation of the fee from the taxpayer (or other party) in the matter for which the internal controls are in effect, the co-mediator will not be prohibited from receiving a salary, partnership share, or corporate distribution established by prior independent agreement. The co-mediator and his or her firm are not disqualified from representing the taxpayer or any other parties involved in the mediation in any matters unrelated to the transactions or issues that are the particular subject matter of the mediation.

This paragraph 3 only applies to representations on matters before the IRS.

The provisions of this paragraph 3 are in addition to any other applicable disqualification provisions, including, for example, the rules of the United States Tax Court and applicable canons of ethics.

.04 *Use as precedent.* A settlement reached by the parties through mediation will not be binding on the parties (or be otherwise controlling) for taxable years not covered by the agreement. Except as provided in the agreement, no party may use such settlement as precedent.

SECTION 11. EFFECTIVE DATE

This procedure is effective October 5, 2009, the date this revenue procedure is published in the Internal Revenue Bulletin.

SECTION 12. EFFECT ON OTHER DOCUMENTS

Revenue Procedure 2002–44 is superseded. This revenue procedure is subject to the requirements in Announcement 2008–111 for offer in compromise and Trust Fund Recovery Penalty cases.

DRAFTING INFORMATION

The principal author of this revenue procedure is Sarah Sheldon, Office of Chief Counsel, Procedure and Administration. For further information regarding this revenue procedure, contact Ms. Sheldon at (202) 622–7950 (not a toll-free call).

Exhibit 1:

Addresses for Appeals Area Directors

Director, Area 1
IRS Appeals
290 Broadway, 11^{th} Floor
New York, NY 10007

Director, Area 2 — Collection
IRS Appeals
1099 14^{th} Street, N.W.
Washington, DC 20005

Director, Area 3
IRS Appeals
810 Broadway, Suite 300
Nashville, TN 37203

Director, Area 4
IRS Appeals
701 Market St., Suite 2200
Philadelphia, PA 19106

Director, Area 7
IRS Appeals
4050 Alpha Road
Farmers Branch, TX 75244

Director, Area 8
IRS Appeals
160 Spear St. Suite 800
San Francisco, CA 94105

Director, Area 9
IRS Appeals
330 North Brand Blvd, Suite 600
Glendale, CA 91203

Director, Appeals Team Case Leaders
300 North Los Angeles Street, Federal Building
Los Angeles, CA 90012

Exhibit 2:

Model Agreement to Mediate

1. *The Mediation Process*.

The mediation will be an extension of the Appeals process to help **[NAME OF TAXPAYER]** and Internal Revenue Service (IRS)—Appeals (the PARTIES) reach a negotiated settlement of the issues to be mediated. *See* (2) below for the participants in the mediation process. To accomplish this goal, the mediator will act as a facilitator, assist in defining the issues, and promote settlement negotiations between the PARTIES. The mediator will inform and discuss with the PARTIES the rules and procedures pertaining to the mediation process. The mediator will not have settlement authority and will not render a decision regarding any issue in dispute. The PARTIES will continue to have settlement authority for all issues considered under the mediation process.

2. *Nature of Process, Participants, Withdrawal*.

(a) The mediation process is optional.

(b) Each PARTY must have at least one participant attending the mediation session with decision-making authority. No later than two weeks before the mediation, each PARTY will submit to the other PARTY and the mediator a list of the participants who will attend the mediation session on behalf of or at the request of the PARTY, including a designation of the person with decision-making authority who will represent the PARTY at the mediation session. Each PARTY's list of participants will contain the participant's name, the participant's position with the PARTY or other affiliation (*e.g.*, a member of XYZ law firm, counsel to the taxpayer), and the participant's address, [telephone number, and fax number]. All participants attending the mediation on behalf of or at the request of a PARTY will be listed on the PARTY's list of participants, including witnesses, consultants, and attorneys.

[Insert limitations on the number or types of participants, if any.]

(c) Either PARTY may withdraw from the process at any time prior to reaching a settlement of the issues to be mediated by notifying the other PARTY and the mediator in writing.

3. *Selection of Mediator and Costs.*

(a) Headquarters Appeals will pay the costs associated with the Appeals mediator. The taxpayer will pay the cost of a non-IRS co-mediator.

(b) The taxpayer, by signing this agreement, acknowledges that (i) the Appeals mediator is a current employee of the IRS, (ii) a conflict results from his or her continued status as an IRS employee, and (iii) this conflict will not interfere in the mediator's ability to facilitate the case impartially.

4. *Issues to be Mediated*.

The mediation session will encompass the following issues in the IRS audit of the federal tax returns of **[NAME OF TAXPAYER]** for tax year(s)________:

(a) Issue #1

(b) Issue #2

5. *Submission of Materials*.

Each PARTY will present to the mediator a separate written summation not to exceed 20 pages (exclusive of exhibits consisting of pre-existing documents and reports) regarding each issue. The mediator will have the right to ask either PARTY for additional information before the mediation session if deemed necessary for a full understanding of the issues to be mediated. Each PARTY will simultaneously submit to the other PARTY a copy of any submission to the mediator.

6. *Place of Mediation*.

The PARTIES will attempt to select a site at or near the mediator's office, **[NAME OF TAXPAYER]**'s office, or an Appeals office.

7. *Proposed Schedule*.

Subject to the approval of the mediator, the mediation session will be conducted according to the following schedule:

Submission of Materials to Mediator:	***A DATE NO LATER THAN TWO WEEKS BEFORE THE DATE OF MEDIATION SESSION***
Mediation Session:	***By MONTH DAY, YEAR and TIME***

8. *Confidentiality*.

IRS and Treasury employees who participate in or observe the mediation process in any way, and any person under contract to the IRS pursuant to § 6103(n) of the Internal Revenue Code (including the mediator) that the IRS invites to participate or observe, will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including §§ 6103, 7213 and 7431. *See also* 5 U.S.C. § 574.

9. *Ex Parte Contacts Prohibited.*

There will be no *ex parte* contacts from a PARTY to the mediator outside the mediation session. This provision is not intended to prevent the mediator from contacting a PARTY, or a PARTY from responding to the mediator's request for information.

10. *Section 7214(a)(8) Disclosure*.

The PARTIES to this agreement acknowledge that IRS employees involved in this mediation are bound by the § 7214(a)(8) disclosure requirements concerning violations of any revenue law.

11. *No Record*.

There will be no stenographic record, audio or video tape recording, or other transcript of the mediation session(s).

12. *Report by Mediator*.

At the conclusion of the mediation session, the mediator will issue a brief report to the PARTIES identifying each issue described in section 4, above, and whether the PARTIES either agreed to resolve or did not resolve the issue.

13. *Appeals Procedures Apply*.

If the mediation process enables the PARTIES to reach agreement on the issues, Appeals will use established procedures to close the case. Delegation Order 236 (Rev. 3) (addressing settlement authority for issues in a Coordinated Examination Program) or § 7122(b) (regarding offer in compromise cases) may apply to settlements resulting from the mediation process. If the PARTIES do not reach an agreement on an issue being mediated, the PARTIES may request arbitration for the issue provided the issue meets the requirements for arbitration. *See* Rev. Proc. 2006–44, 2006–2 C.B. 800, or any subsequent procedure. If arbitration is not requested or approved, Appeals will not reconsider the mediated issue(s), and a statutory notice of deficiency will be issued with respect to all unagreed issues (or the case will be processed using established closing procedures if there is no deficiency).

14. *Precedential Use*.

A settlement reached by the PARTIES through mediation will not be binding on the PARTIES (or be otherwise controlling) for taxable years not covered by the agreement. Except as provided in the agreement, no PARTY may use such settlement as precedent.

INTERNAL REVENUE SERVICE, APPEALS	NAME OF TAXPAYER
By:________________________ NAME Appeals Team Manager	By:________________________ NAME TITLE
Date:________________________	Date:________________________

Exhibit 3:

Model Mediation Participants List

Case Name: ______________________________

Submitted By: ______________________________

Date: ______________________________

Please list below *all* participants attending the mediation, including witnesses, consultants, and attorneys. This form must be sent to the other PARTY and to the mediator(s) no later than two weeks before the mediation session. Insert an **asterisk (*)** before the name of the person who has decision-making authority at the mediation session:

NAME	***POSITION OR AFFILIATION***	***ADDRESS***	***TELEPHONE & FAX NUMBER***

Exhibit 4:

Consent to Disclose Tax Information

Pursuant to section 6103(c) of the Internal Revenue Code of 1986 (as amended), I hereby consent to the disclosure of return information (as defined in section 6103(b)(2)) relating to the mediation session between ____________________ (Taxpayer) and the Commissioner of Internal Revenue to be held on ____________________ (date), as follows:

> The Internal Revenue Service may disclose the taxpayer's return and return information incident to the mediation to the mediator and any participants or observers identified in the initial list of participants and to any subsequent participants and observers identified in writing by the parties.

This consent relates to the mediation session that is the subject of an agreement to mediate dated ____________________. I am aware that in the absence of this authorization, the return and return information of ____________________ (Taxpayer) is confidential and may not be disclosed except as authorized by the Internal Revenue Code.

I certify that I have the authority to execute this consent on behalf of Taxpayer.

Taxpayer Name: ____________________

Taxpayer Identification Number: ____________________

Taxpayer Address: ____________________

By: **[Name of Individual Executing Consent]** ____________________

Title: **[Title of Individual Executing Consent]** ____________________

Signature: ____________________

Date: ____________________

Exhibit 5:

Model Mediator's Report

The parties below agreed to mediate their dispute and attended a mediation session on **MONTH DAY, YEAR** in an attempt to settle the following issue(s):

ISSUE:

SETTLEMENT: [ ] Yes
[ ] No
[ ] Partial

Proposed Adjustment Amount: Amount Sustained:

ISSUE:

SETTLEMENT: [ ] Yes
[ ] No
[ ] Partial

Proposed Adjustment Amount: Amount Sustained:

Settlement documents will be prepared under established Appeals procedures.

DATED this__________ day of ____________________

____

/s/ Mediator

____

/s/ Party

____

/s/ Party

---

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 860D, 860F, 860G, 1001; 1.860G–2, 1.1001–3, 301.7701–2, 301.7701–3, 301.7701–4.)

Rev. Proc. 2009–45

SECTION 1. PURPOSE

This revenue procedure describes the conditions under which modifications to certain mortgage loans will not cause the Internal Revenue Service (Service) to challenge the tax status of certain securitization vehicles that hold the loans or to assert that those modifications give rise to prohibited transactions.

No inference should be drawn about whether similar consequences would obtain if a transaction falls outside the limited scope of this revenue procedure. Furthermore, there should be no inference that, in the absence of this revenue procedure, transactions within its scope would have impaired the tax status of securitization vehicles or would have given rise to prohibited transactions.

SECTION 2. BACKGROUND—COMMERCIAL MORTGAGE LOANS

.01 Under the terms of many commercial mortgage loans, all or a large portion of the original stated principal is due at maturity. Typically, at the time of loan origination, both the borrower and the lender expected the borrower to obtain funds to satisfy the large payment at maturity by obtaining a new mortgage loan secured by the same underlying interest in real property.

.02 The current situation in the credit markets is affecting the availability of financing and refinancing for commercial real estate. In particular, borrowers under many of the commercial mortgage loans that will mature in the next few years are concerned that they will encounter great difficulty in obtaining refinancing for these loans. Because they had always anticipated using the proceeds from refinancing to satisfy the principal balance due at maturity, these borrowers are often at risk of defaulting when their loans mature. This may be true even for loans in which the underlying commercial real estate is providing more than enough cash flow to satisfy debt service before maturity.

.03 Many commercial mortgage loans are held in securitization vehicles such as investment trusts and real estate mortgage investment conduits (REMICS). Typically, these pools of loans are administered by servicers that handle the day-to-day operations of the mortgage loan pools and by special servicers that handle the modification and restructuring of defaulted loans, as well as foreclosure or similar conversion of defaulted mortgage loan property.

.04 Many loan pool administrators have developed and implemented procedures for monitoring both the status of the commercial properties securing the mortgage loans and the likelihood of borrowers being able to refinance their mortgage loans or sell the mortgaged property as the loans mature. The personnel who implement these procedures are often experienced in negotiating with borrowers, restructuring troubled commercial loans, and foreclosing on commercial properties. It may be possible, therefore, to foresee impending difficulties for a mortgage loan well in advance of any actual payment default.

.05 Many industry participants have concluded that the monitoring procedures that have been adopted and the level of experience of those implementing the procedures make it possible to assess with substantial accuracy whether particular commercial mortgage loans present an unacceptably high risk of eventual foreclosure. It may be possible to foresee this risk of foreclosure even when no payment default has yet occurred and when the event of default may not occur until the maturity of the loan.

.06 Many industry participants have also concluded that it is possible to predict with a reasonable degree of accuracy whether proposed modifications will allow mortgage loans to continue to perform (and so avoid the necessity of property foreclosure). Modifications that may be considered include interest rate changes, principal forgiveness, extensions of maturity, and alterations in the timing of changes to an interest rate or to a principal amortization schedule. In many cases, modifications that include extensions of the maturity and, thus, postpone the need for refinancing, may reduce the risk of foreclosure.

.07 Often the complexity of the mortgage loans themselves and the consequent complexity of modifications to them necessitate a substantial period prior to any expected payment or maturity default for the negotiation of any such modifications.

SECTION 3. BACKGROUND—REMICS

.01 REMICs are widely used securitization vehicles for mortgages. REMICs are governed by sections 860A through 860G of the Internal Revenue Code.

.02 For an entity to qualify as a REMIC, all of the interests in the entity must consist of one or more classes of regular interests and a single class of residual interests, *see* section 860D(a), and those interests must be issued on the startup day, within the meaning of § 1.860G–2(k) of the Income Tax Regulations.

.03 A regular interest is one that is designated as a regular interest and whose terms are fixed on the startup day. Section 860G(a)(1). In addition, a regular interest must (1) unconditionally entitle the holder to receive a specified principal amount (or other similar amount), and (2) provide that interest payments, if any, at or before maturity are based on a fixed rate (or to the extent provided in regulations, at a variable rate).

.04 An interest issued after the startup day does not qualify as a REMIC regular interest.

.05 Under section 860D(a)(4), an entity qualifies as a REMIC only if, among other things, as of the close of the third month beginning after the startup day and at all times thereafter, substantially all of its assets consist of qualified mortgages and permitted investments. This asset test is satisfied if the entity owns no more than a *de minimis* amount of other assets. *See* § 1.860D–1(b)(3)(i). As a safe harbor, the amount of assets other than qualified mortgages and permitted investments is *de minimis* if the aggregate of the adjusted bases of those assets is less than one percent of the aggregate of the adjusted bases of all of the entity's assets. § 1.860D–1(b)(3)(ii).

.06 With limited exceptions, a mortgage loan is not a qualified mortgage unless it is transferred to the REMIC on the startup day in exchange for regular or residual interests in the REMIC. *See* section 860G(a)(3)(A)(i).

.07 The legislative history of the REMIC provisions indicates that Congress intended the provisions to apply only to an entity that holds a substantially fixed pool of real estate mortgages and related assets and that "has no powers to vary the composition of its mortgage assets." S. Rep. No. 99–313, 99th Cong., 2d Sess. 791–92, 1986–3 (Vol. 3) C.B. 791–92.

.08 Section 1.1001–3(c)(1)(i) defines a "modification" of a debt instrument as any alteration, including any deletion or addition, in whole or in part, of a legal right or obligation of the issuer or holder of a debt instrument, whether the alteration is evidenced by an express agreement (oral or written), conduct of the parties, or otherwise. Section 1.1001–3(e) governs which modifications of debt instruments are "significant." Under § 1.1001–3(b), for most federal income tax purposes, a significant modification produces a deemed exchange of the original debt instrument for a new debt instrument.

.09 Under § 1.860G–2(b), related rules apply to determine REMIC qualification. Except as specifically provided in § 1.860G–2(b)(3), if there is a significant modification of an obligation that is held by a REMIC, then the modified obligation is treated as one that was newly issued in exchange for the unmodified obligation that it replaced. *See* § 1.860G–2(b)(1). For this purpose, the rules in § 1.1001–3(e) determine whether a modification is "significant." *See* § 1.860G–2(b)(2). Thus, even if an entity initially qualifies as a REMIC, one or more significant modifications of loans held by the entity may terminate the qualification if the modifications cause less than substantially all of the entity's assets to be qualified mortgages.

.10 Certain loan modifications, however, are not significant for purposes of § 1.860G–2(b)(1), even if the modifications are significant under the rules in § 1.1001–3. In particular, under § 1.860G–2(b)(3)(i), if a change in the terms of an obligation is "occasioned by default or a reasonably foreseeable default," the change is not a significant modification for purposes of § 1.860G–2(b)(1), regardless of the modification's status under § 1.1001–3.

.11 Discussions between a holder or servicer and a borrower concerning a possible modification of a loan may occur at any time and need not begin only after the loan is in default or there is a reasonably foreseeable default.

.12 The Service understands that many industry participants believe that a loan modification necessarily fails to be "occasioned by default or a reasonably foreseeable default" unless the loan is not performing or default is imminent.

.13 Section 860F(a)(1) imposes a tax on REMICs equal to 100 percent of the net income derived from "prohibited transactions." The disposition of a qualified mortgage is a prohibited transaction unless the "disposition [is] pursuant to—(i) the substitution of a qualified replacement mortgage for a qualified mortgage . . . , (ii) a disposition incident to the foreclosure, default, or imminent default of the mortgage, (iii) the bankruptcy or insolvency of the REMIC, or (iv) a qualified liquidation." Section 860F(a)(2)(A).

.14 Under section 860C(b)(1), "The taxable income of a REMIC shall be determined under an accrual method of accounting . . . except that— . . . (C) there shall not be taken into account any item of income, gain, loss, or deduction allocable to a prohibited transaction, ..."

SECTION 4. BACKGROUND—TRUSTS

.01 Section 301.7701–2(a) of the Procedure and Administration Regulations defines a "business entity" as any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under § 301.7701–3) that is not properly classified as a trust under § 301.7701–4 or otherwise subject to special treatment under the Code.

.02 Section 301.7701–4(a) provides that an arrangement is treated as a trust if the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

.03 Section 301.7701–4(c) provides that an "investment" trust is not classified as a trust if there is a power under the trust agreement to vary the investment of the certificate holders.

SECTION 5. SCOPE

This revenue procedure applies to a modification (including an actual exchange to which § 1.1001–3 applies) of a mortgage loan (the "pre-modification loan") that is held by a REMIC, or by an investment trust, if all of the following conditions are satisfied:

.01 The pre-modification loan is not secured by a residence that contains fewer than five dwelling units and that is the principal residence of the issuer of the loan.

.02 Either—(1) If a REMIC holds the pre-modification loan, then as of the end of the 3-month period beginning on the startup day, no more than ten percent of the stated principal of the total assets of the REMIC was represented by loans fitting the following description: At the time of contribution to the REMIC, the payments on the loan were then overdue by at least 30 days or a default on the loan was reasonably foreseeable; or

(2) If an investment trust holds the pre-modification loan, then as of all dates when assets were contributed to the trust, no more than ten percent of the stated principal of all the debt instruments then held by the trust was represented by instruments the payments on which were then overdue by 30 days or more or for which default was reasonably foreseeable.

.03 Based on all the facts and circumstances, the holder or servicer reasonably believes that there is a significant risk of default of the pre-modification loan upon maturity of the loan or at an earlier date. This reasonable belief must be based on a diligent contemporaneous determination of that risk, which may take into account credible written factual representations made by the issuer of the loan if the holder or servicer neither knows nor has reason to know that such representations are false. In a determination of the significance of the risk of a default, one relevant factor is how far in the future the possible default may be. There is no maximum period, however, after which default is *per se* not foreseeable. For example, in appropriate circumstances, a holder or servicer may reasonably believe that there is a significant risk of default even though the foreseen default is more than one year in the future. Similarly, although past performance is another relevant factor for assessing default risk, in appropriate circumstances, a holder or servicer may reasonably believe that there is a significant risk of default even if the loan is performing.

.04 Based on all the facts and circumstances, the holder or servicer reasonably believes that the modified loan presents a substantially reduced risk of default, as compared with the pre-modification loan.

SECTION 6. APPLICATION

If one or more modifications of pre-modification loans are within the scope of Section 5 of this revenue procedure—

.01 The Service will not challenge a securitization vehicle's qualification as a REMIC on the grounds that the modifications are not among the exceptions listed in § 1.860G–2(b)(3);

.02 The Service will not contend that the modifications are prohibited transactions under section 860F(a)(2) on the grounds that the modifications result in one or more dispositions of qualified mortgages and that the dispositions are not among the exceptions listed in section 860F(a)(2)(A)(i)-(iv);

.03 The Service will not challenge a securitization vehicle's classification as a trust under § 301.7701–4(c) on the grounds that the modifications manifest a power to vary the investment of the certificate holders; and

.04 The Service will not challenge a securitization vehicle's qualification as a REMIC on the grounds that the modifications result in a deemed reissuance of the REMIC regular interests.

SECTION 7. EXAMPLE

The following example illustrates the application of this revenue procedure:

.01 *Facts*. As part of its business, *S* services mortgage loans that are held by *R*, a REMIC that is described in Section 5.02(1) of this revenue procedure. Borrower *B* is the issuer of one of the mortgage loans held by *R*. *B*'s mortgage loan is non-amortizing, and thus the entire principal amount is due upon maturity. The real property securing *B*'s mortgage loan is an office building. All of *B*'s required payments on the mortgage loan have been timely, and the loan is not scheduled to mature for another 12 months. *B* expects that in order to repay the loan when it matures, *B* will have to refinance the maturing mortgage loan into a newly issued mortgage loan. There are factors, however, that indicate that refinancing options may be unavailable to *B* at the time the mortgage loan matures. These factors include either or both of the following: current economic conditions in the relevant credit markets, and the current market value of the real property securing the loan. *B* provides a written factual representation to *S* showing that *B* will probably not be able to repay or refinance the mortgage loan at maturity. *S* neither knows, nor has reason to know, that the representation is false.

Based on all the facts and circumstances and a diligent contemporaneous determination, *S* reasonably believes that, if the loan to *B* is not modified, there is a significant risk of default by *B* upon maturity of the mortgage loan. Therefore, *S* and *B* agree to modify the mortgage loan by extending its maturity and increasing the interest rate. *S* reasonably believes that this modification reduces the risk of default. The modification is a significant modification under § 1.1001–3(e). The modification occurs after the effective date of this revenue procedure.

.02 *Analysis*. *S* reasonably believed that the pre-modification loan presented a significant risk of default and that the modification substantially reduced that risk. Accordingly, the modification is within the scope of this revenue procedure.

SECTION 8. EFFECTIVE DATE

This revenue procedure applies to loan modifications effected on or after January 1, 2008.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Diana Imholtz of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information, contact Ms. Imholtz at (202) 622–3930 (not a toll-free call).

Part IV. Items of General Interest

Wind Energy Partnerships

Announcement 2009–69

This announcement revises Revenue Procedure 2007–65 by replacing the following language in Section 3: "The Service generally will closely scrutinize a Project Company as a partnership or Investors as partners if a Project Company's partnership agreement does not satisfy each requirement of this revenue procedure. The requirements set forth in this revenue procedure that must be satisfied in order to qualify for the Safe Harbor, however, are not intended to provide substantive rules and are not to be used as audit guidelines. The Safe Harbor in this revenue procedure is to provide guidance to taxpayers establishing or participating in wind energy partnerships in lieu of taxpayers requesting a letter ruling. Therefore, the Service will not rule on any issues under Subchapter K for partnerships claiming the credit under § 45." with "The requirements set forth in this revenue procedure that must be satisfied in order to qualify for the Safe Harbor are not intended to provide substantive rules and are not to be used as audit guidelines. Returns claiming wind energy production tax credits under § 45 are subject to examination by the Service. The Safe Harbor in this revenue procedure is to provide guidance to taxpayers establishing or participating in wind energy partnerships in lieu of taxpayers requesting a letter ruling. Therefore, the Service will not rule on any issues under Subchapter K for partnerships claiming the credit under § 45."

This announcement also replaces the following language from Section 4.05: "Neither the Developer, the Investors nor any related parties may have a contractual right to purchase, at any time, the Wind Farm, any property included in the Wind Farm or an interest in the Project Company at a price less than its fair market value determined at the time of exercise of the contractual right to purchase, and provided further that the Developer (or any party related to the Developer) may not have a contractual right to purchase the Wind Farm or an interest in the Project Company earlier than 5 years after the qualified facility is first placed into service," with "The Developer, the Investor, or any related party may only have a contractual right to purchase the Wind Farm, any property included in the Wind Farm, or an interest in the Project Company (the Property) that satisfies the requirements of this section 4.05. The contractual right must be negotiated for valid non-tax business reasons at arm's length by parties with material adverse interests. The purchase price for the Property must either be a price that is not less than the fair market value of the Property determined at the time of exercise or, if the purchase price is determined prior to exercise, a price that the parties reasonably believe, based on all facts and circumstances at the time the price is determined, will not be less than the fair market value of the Property at the time the right may be exercised. Finally, the Developer (or any party related to the Developer) may not have a contractual right to purchase the Property earlier than 5 years after the qualified facility is first placed in service."

This announcement also replaces the following language in Section 4.09: "Thus, generally only entities not subject to § 469, and not individuals, will be able to offset non-project income with credits received as a passive investor in the partnership," with "Generally, a taxpayer subject to § 469 may utilize passive activity credits from qualified wind facilities only to the extent of their tax liability allocable to passive activities, whether from qualified wind facilities or other sources."

Finally, this announcement replaces the following language in Section 5.02:

"*Example 2.* The facts are the same as in Example 1, except Investor is initially allocated 99.5% of LLC's gross income or loss and § 45 credits. Under these facts, the wind energy limited liability company's classification as a valid partnership would be closely scrutinized by the Service. Likewise, if any other provision of this safe harbor is not followed for any wind energy partnerships, the Service will closely scrutinize the validity of such purported partnerships," with, "*Example 2.* The facts are the same as in Example 1, except Investor is initially allocated 99.5% of LLC's gross income or loss and § 45 credits. Under these facts, the wind energy LLC's classification as a valid partnership would not be governed by the safe harbor in this revenue procedure. Likewise, if any other provision of this safe harbor is not followed for any wind energy partnerships, such partnerships would not be governed by the safe harbor in this revenue procedure."

The principal authors of this announcement are Vishal R. Amin and Richard T. Probst of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this announcement, contact Vishal R. Amin or Richard T. Probst at (202) 622–3060 (not a toll-free call).

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2009-71

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)
California				
West Hills	Rosenthal, Martin	CPA	Suspended by default decision in expedited proceeding under § 10.82 (revocation of CPA license)	Indefinite from September 16, 2009

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
California (Continued)				
Palm Desert	Winings, David M.	CPA	Suspended by default decision in expedited proceeding under § 10.82 (revocation of CPA license)	Indefinite from September 16, 2009
Florida				
Coral Gables	Estefano, Delaila J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from September 16, 2009
Miami	Goldstein, Stephen J.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from September 4, 2009
	Lawrence, Mark, See Maryland			
Naples	Hausler, Gary J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from September 4, 2009
Bonita Springs	Johanson, Kent A.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from September 16, 2009
	Haire, Benjamin H., See South Carolina			
Venice	Miller, Raymond E.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from September 4, 2009
Lauderdale Lakes	Odunna, Okechukwu J.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from September 4, 2009
	Pereira, Lizabeth L., See Michigan			
Weston	Roach, Jr., William	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from September 16, 2009

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
Florida (Continued)				
Coral Gables	Ryan, III, David P.	Attorney	Suspended by default decision in expedited proceeding under §10.82 (suspension of attorney license)	Indefinite from September 16, 2009
Miami	Stolar, Leonard U.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from September 16, 2009
Mary Esther	Tipler, James H.	Attorney	Suspended by decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from September 4, 2009
Hialeah	Whitney, Wilfrid M.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from September 16, 2009
Georgia				
Acworth	Copeland, Robert P.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (voluntary surrender of license)	Indefinite from September 4, 2009
Maryland				
Ocean City	Lawrence, Mark	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment in Florida)	Indefinite from September 16, 2009
Michigan				
Farmington Hills	Pereira, Lizabeth L.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment in Florida)	Indefinite from September 4, 2009
New York				
New Rochelle	Micek, Andrew M.	Attorney	Suspended by decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from September 10, 2009

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
South Carolina				
Seneca	Haire, Benjamin H.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment in Florida)	Indefinite from September 4, 2009

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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