Internal Revenue
bulletin

Bulletin No. 2005-17
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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.

SPECIAL ANNOUNCEMENT

Announcement 2005–26, page 969.

The IRS will discontinue its TeleFile program after August 16, 2005. TeleFile allows taxpayers to file Forms 1040EZ, 4868, and 941 by telephone. Decline in use for most forms, coupled with increasing costs to maintain the system, led to the decision.

INCOME TAX

Rev. Rul. 2005–26, page 957.

LIFO; price indexes; department stores. The February 2005 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, February 28, 2005.

Rev. Proc. 2005–26, page 965.

In this procedure, the IRS provides guidance relating to section 6501(c)(10) of the Code, which provides for an extended period of limitations to assess any tax with respect to a listed transaction that a taxpayer failed to disclose as required under section 6011. It sets forth procedures that taxpayers and material advisors may follow to disclose previously undisclosed listed transactions for purposes of section 6501(c)(10) and guidance on the date on which the period of limitations will expire if these procedures are followed.

EMPLOYEE PLANS

Notice 2005–34, page 960.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities. The weighted average interest rate for April 2005 and the resulting permissible range of interest rates used to calculate current liability and to determine the required contribution are set forth.

Rev. Proc. 2005–25, page 962.

Fair market value; distributions; qualified retirement plans. This procedure provides guidance, including examples, of how fair market value may be determined in the instance of distributions from qualified retirement plans as well as under sections 79 and 83 of the Code. Rev. Proc. 2004–16 modified and superseded.

Announcement 2005–29, page 969.

This document contains corrections to final regulations (T.D. 9130, 2004–26 I.R.B. 1082) under section 401 of the Code relating to required minimum distributions under section 401(a)(9) for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts.

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Finding Lists begin on page ii.
Index for January through April begins on page vi.

Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

T.D. 9195, page 958.

Final regulations under section 7602 of the Code adopt the rules of the temporary regulations, which confirm that officers and employees of the Office of Chief Counsel may be included as persons designated to receive summoned books, papers, records, or other data and to take summoned testimony under oath.

Notice 2005–33, page 960.

Credit for sales of fuel produced from a nonconventional source, inflation adjustment factor, and reference price. This notice publishes the nonconventional source fuel credit, the inflation adjustment factor, and the reference price under section 29 of the Code for calendar year 2004. This data is used to determine the credit allowable on sales of fuel produced from a nonconventional source.

Announcement 2005–28, page 969.

This document contains a correction to temporary and final regulations (T.D. 8408, 1992–1 C.B. 155) which were published in the Federal Register on Friday, April 10, 1992, relating to the requirement that economic performance occur in order for an amount to be incurred with respect to any item of a taxpayer using an accrual method of accounting.

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.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

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

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

Section 79.—Group-Term Life Insurance Purchased for Employees

26 CFR 1.79–1: Group-term life insurance – general rules.

How, for purposes of § 79 of the Code, the fair market value of a group-term life insurance contract may be determined. See Rev. Proc. 2005-25, page 962.

Section 83.—Property Transferred in Connection With Performance of Services

26 CFR 1.83–3: Meaning and use of certain terms.

How, for purposes of § 83 of the Code, the fair market value of a life insurance contract, etc., may be determined. See Rev. Proc. 2005-25, page 962.

Section 402.—Taxability of Beneficiary of Employees' Trust

26 CFR 1.402(a)–1: Taxability of beneficiary under a trust that meets the requirements of section 401(a).

How, for purposes of § 402 of the Code, the fair market value of a life insurance contract, retirement income contract, or endowment contract, etc., may be determined. See Rev. Proc. 2005-25, page 962.

Section 472.—Last-in, First-out Inventories

26 CFR 1.472–1: Last-in, first-out inventories.

LIFO; price indexes; department stores. The February 2005 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, February 28, 2005.

Rev. Rul. 2005–26

The following Department Store Inventory Price Indexes for February 2005 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86–46, 1986–2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, February 28, 2005.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups — soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

	Groups	Feb. 2004	Feb. 2005	Percent Change from Feb. 2004 to Feb. 2005[1]
1.	Piece Goods	469.3	479.3	2.1
2.	Domestics and Draperies	536.5	533.5	-0.6
3.	Women's and Children's Shoes	609.9	663.6	8.8
4.	Men's Shoes	850.4	852.2	0.2
5.	Infants' Wear	583.8	575.5	-1.4
6.	Women's Underwear	506.7	527.1	4.0
7.	Women's Hosiery	354.3	349.2	-1.4
8.	Women's and Girls' Accessories	556.6	592.0	6.4
9.	Women's Outerwear and Girls' Wear	341.9	346.8	1.4
10.	Men's Clothing	534.0	550.9	3.2
11.	Men's Furnishings	572.3	574.2	0.3
12.	Boys' Clothing and Furnishings	436.6	423.5	-3.0
13.	Jewelry	895.7	878.8	-1.9
14.	Notions	793.9	780.0	-1.8
15.	Toilet Articles and Drugs	984.6	998.7	1.4
16.	Furniture and Bedding	624.2	601.8	-3.6
17.	Floor Coverings	592.6	602.4	1.7
18.	Housewares	715.2	713.8	-0.2
19.	Major Appliances	206.8	203.7	-1.5
20.	Radio and Television	43.3	39.7	-8.3
21.	Recreation and Education[2]	81.6	79.7	-2.3
22.	Home Improvements[2]	128.9	136.1	5.6
23.	Automotive Accessories[2]	112.1	113.9	1.6

BUREAU OF LABOR STATISTICS, DEPARTMENT STORE
INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS
(January 1941 = 100, unless otherwise noted)

Groups	Feb. 2004	Feb. 2005	Percent Change from Feb. 2004 to Feb. 2005[1]
Groups 1–15: Soft Goods	549.5	556.7	1.3
Groups 16–20: Durable Goods	388.6	381.0	-2.0
Groups 21–23: Misc. Goods[2]	93.9	93.8	-0.1
Store Total[3]	491.9	494.3	0.5

[1]Absence of a minus sign before the percentage change in this column signifies a price increase.

[2]Indexes on a January 1986 = 100 base.

[3]The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco and contract departments.

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622–7924 (not a toll-free call).

Section 7602.—Examination of Books and Witnesses

26 CFR 301.7602–1: Examination of books and witnesses.

T.D. 9195

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301

Designated IRS Officer or Employee Under Section 7602(a)(2) of the Internal Revenue Code

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to administrative summonses under section 7602(a) of the Internal Revenue Code. The regulations adopt the rules of the temporary regulations, which confirm that officers and employees of the Office of Chief Counsel may be included as persons designated to receive summoned books, papers, records, or other data and to take summoned testimony under oath.

DATES: *Effective Dates*: These regulations are effective April 1, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Rawlins at (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending 26 CFR part 301 under section 7602 of the Internal Revenue Code of 1986. The final regulations define officers or employees of the Office of Chief Counsel as persons who may be designated to receive summoned books, papers, records, or other data or to take testimony under oath. The final regulations also provide that more than one person may be designated to receive summoned information and testimony. Additionally, the final regulations clarify that a summons need not show the designation of the specific officer or employee who is authorized to take testimony and receive summoned materials.

On September 10, 2002, temporary regulations (T.D. 9015, 2002–2 C.B. 642 [67 FR 57330]) and a notice of proposed rulemaking (REG–134026–02, 2002–2 C.B. 684 [67 FR 57354]) containing these regulatory provisions were published in the **Federal Register**. No written comments were received on the temporary and proposed regulations; no public hearing was requested, and none was scheduled or held. Accordingly, the final regulations adopt the rules of the temporary regulations without change.

Explanation of Provisions

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 7602 of the Internal Revenue Code of 1986. The final regulations make permanent three changes established in the temporary regulations regarding the persons who may be designated to receive summoned books, papers, records, or other data or to take testimony under oath. Although IRS examiners will continue to be responsible for developing and conducting examinations, these changes will allow, among other things, officers and employees of the Office of Chief Counsel to participate fully along with an IRS employee or officer in a summoned interview.

For purposes of identifying persons who may receive summoned information or take testimony under oath, the final regulations define an officer or employee of the IRS to include all persons who administer and enforce the internal revenue laws or any other laws administered by the IRS and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury

or the Secretary's delegate. This amendment clarifies that officers and employees of the Office of Chief Counsel may be designated as persons authorized to take testimony under oath and to receive summoned books, papers, records, or other data.

The final regulations also expressly provide that more than one person may be designated to receive summoned information or to take testimony under oath during a summoned interview. Finally, the final regulations clarify the existing regulations by providing that a summons document need not designate the specific officer or employee who is authorized to take testimony under oath and to receive and examine books, papers, records, or other data.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f), the preceding temporary regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of this regulation is Elizabeth Rawlins of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. In §301.7602–1, paragraphs (b) and (d) revised to read as follows:

§301.7602–1 Examination of books and witnesses.

* * * * *

(b) *Summons*—(1) *In general*. For the purposes described in § 301.7602–1(a), the Commissioner is authorized to summon the person liable for tax or required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of accounts containing entries relating to the business of the person liable for tax or required to perform the act, or any other person deemed proper, to appear before one or more officers or employees of the Internal Revenue Service at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry. This summons power may be used in an investigation of either civil or criminal tax-related liability. The Commissioner may designate one or more officers or employees of the IRS as the individuals before whom a person summoned pursuant to section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall appear. Any such officer or employee is authorized to take testimony under oath of the person summoned and to receive and examine books, papers, records, or other data produced in compliance with the summons.

(2) *Officer or employee of the IRS*. For purposes of this paragraph (b), officer or employee of the IRS means all officers and employees of the United States, who are engaged in the administration and enforcement of the internal revenue laws or any other laws administered by the IRS, and who are appointed or employed by, or subject to the directions, instructions, or orders of the Secretary of the Treasury or the Secretary's delegate. An officer or employee of the IRS, for purposes of this paragraph (b), shall include an officer or employee of the Office of Chief Counsel.

* * * * *

(d) *Effective dates*. This section is applicable after September 3, 1982, except for paragraph (b), which is applicable on and after April 1, 2005. For rules under paragraph (b) that are applicable to summonses issued on or after September 10, 2002, see 26 CFR §301.7602–1T. For rules applicable on or before September 3, 1982, see 26 CFR §301.7602–1 (revised as of April 1, 1984).

§301.7602–1T [Removed]

Par. 3. Section 301.7602–1T is removed.

Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved February 15, 2005.

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

(Filed by the Office of the Federal Register on March 31, 2005, 8:45 a.m., and published in the issue of the Federal Register for April 1, 2005, 70 F.R. 16711)

Part III. Administrative, Procedural, and Miscellaneous

Nonconventional Source Fuel Credit, Section 29 Inflation Adjustment Factor, and Section 29 Reference Price

Notice 2005–33

This notice publishes the nonconventional source fuel credit, inflation adjustment factor, and reference price under § 29 of the Internal Revenue Code for calendar year 2004. These are used to determine the credit allowable on fuel produced from a nonconventional source under § 29. The calendar year 2004 inflation-adjusted credit applies to the sales of barrel-of-oil equivalent of qualified fuels sold by a taxpayer to an unrelated person during the 2004 calendar year, the domestic production of which is attributable to the taxpayer.

BACKGROUND

Section 29(a) provides for a credit for producing fuel from a nonconventional source, measured in barrel-of-oil equivalent of qualified fuels, the production of which is attributable to the taxpayer and sold by the taxpayer to an unrelated person during the tax year. The credit is equal to the product of $3.00 and the appropriate inflation adjustment factor.

Section 29(b)(1) and (2) provides for a phaseout of the credit. The credit allowable under § 29(a) must be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to § 29(b)(1)) as the amount by which the reference price for the calendar year in which the sale occurs exceeds $23.50 bears to $6.00. The $3.00 in § 29(a) and the $23.50 and $6.00 must each be adjusted by multiplying these amounts by the 2004 inflation adjustment factor. In the case of gas from a tight formation, the $3.00 amount in § 29(a) must not be adjusted.

Section 29(c)(1) defines the term "qualified fuels" to include oil produced from shale and tar sands; gas produced from geopressurized brine, Devonian shale, coal seams, or a tight formation, or biomass; and liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks.

Section 29(d)(1) provides that the credit is to be applied only for sale of qualified fuels the production of which is within the United States (within the meaning of § 638(1)) or a possession of the United States (within the meaning of § 638(2)).

Section 29(d)(2)(A) requires that the Secretary, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year.

Section 29(d)(2)(B) defines "inflation adjustment factor" for a calendar year as the fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

Section 29(d)(2)(C) defines "reference price" to mean with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

Section 29(d)(3) provides that in the case of a property or facility in which more than one person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) must be allocated among the persons in proportion to their respective interests in the gross sales from the property or facility.

Section 29(d)(5) provides that the term "barrel-of-oil equivalent" with respect to any fuel generally means that amount of the fuel which has a Btu content of 5.8 million.

INFLATION ADJUSTMENT FACTOR AND REFERENCE PRICE

The inflation adjustment factor for calendar year 2004 is 2.1853. The reference price for calendar year 2004 is $36.75. These amounts will be published in the Federal Register on April 6, 2005.

PHASEOUT CALCULATION

Because the calendar year 2004 reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of the credit provided for in § 29(b)(1) does not occur for any qualified fuel sold in calendar year 2004.

CREDIT AMOUNT

The nonconventional source fuel credit under § 29(a) is $6.56 per barrel-of-oil equivalent of qualified fuels ($3.00 x 2.1853). This amount will be published in the Federal Register on April 6, 2005.

DRAFTING INFORMATION CONTACT

The principal author of this notice is Kelly Morrison-Lee of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Morrison-Lee at (202) 622–3120 (not a toll-free call).

Weighted Average Interest Rates Update

Notice 2005–34

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. In addition, it provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II), and the weighted average interest rate and permissible ranges of interest rates based on the 30-year Treasury securities rate.

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, 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 or 2005 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, 2004–18 I.R.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 composite corporate bond rate for March 2005 is 5.62 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: Month	Year	Corporate Bond Weighted Average	90% to 100% Permissible Range
April	2005	6.01	5.41 to 6.01

30-YEAR TREASURY SECURITIES WEIGHTED AVERAGE INTEREST RATE

Section 417(e)(3)(A)(ii)(II) 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 interest rate 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.

Section 404(a)(1) of the Code, as amended by the Pension Funding Equity Act of 2004, permits an employer to elect to disregard subclause (II) of § 412(b)(5)(B)(ii) to determine the maximum amount of the deduction allowed under § 404(a)(1).

The rate of interest on 30-year Treasury securities for March 2005 is 4.78 percent. Pursuant to Notice 2002–26, 2002–1 C.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

The following 30-year Treasury rates were determined for the plan years beginning in the month shown below.

For Plan Years Beginning in: Month	Year	30-Year Treasury Weighted Average	90% to 105% Permissible Range	90% to 110% Permissible Range
April	2005	5.05	4.54 to 5.30	4.54 to 5.55

Drafting Information

The principal authors of this notice are Paul Stern and Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Stern may be reached at 1–202–283–9703. Mr. Montanaro may be reached at 1–202–283–9714. The telephone numbers in the preceding sentences are not toll-free.

26 CFR 601.201: Rulings and determination letters. (Also, Part I, §§ 79, 83, 402; §§ 1.79–1, 1.83–3, 1.402(a)–1.)

Rev. Proc. 2005–25

SECTION 1. PURPOSE

This revenue procedure provides guidance on how to determine the fair market value of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection for purposes of applying the rules of §§ 79, 83 and 402 of the Internal Revenue Code. Rev. Proc. 2004–16, 2004–10 I.R.B. 559, is modified and superseded.

SECTION 2. BACKGROUND

.01 Relevance of Fair Market Value.

(1) Distributions from Qualified Plans Under § 402(a). Section 402(a) provides generally that any amount actually distributed to any distributee by any employees' trust described in § 401(a) (which is exempt from tax under § 501(a)) is taxable to the distributee, in the taxable year of the distributee in which distributed. Section 1.402(a)–1(a)(1)(iii) of the Income Tax Regulations provides, in general, that a distribution of property by a qualified plan is taken into account by the distributee at its "fair market value." Section 1.402(a)–1(a)(2) provides, in general, that upon distribution of a retirement income, endowment, or other life insurance contract, the "entire cash value" at the time of distribution must be included in the distributee's income. Amendments to the regulations under § 402 were proposed on February 13, 2004 (REG–126967–03, 2004–10 I.R.B. 566 [69 FR 7384]) to clarify that the fair market value standard controls when such a contract is distributed. The same valuation standard applies when such a contract is sold by the plan to a participant. This fair market value standard under the proposed regulations would apply to distributions or sales that occur on or after February 13, 2004.

(2) Permanent Benefits Provided Under § 79. Section 79 generally requires that the cost of group-term life insurance coverage on the life of an employee that is in excess of $50,000 of coverage be included in the income of the employee. Pursuant to § 1.79–1(b) of the regulations, under specified circumstances, group-term life insurance may be combined with other benefits, referred to as permanent benefits. Under § 1.79–1(d), the employee's income includes the cost of those permanent benefits, reduced by the amount the employee paid for the benefits. The cost of the permanent benefits is determined under a formula provided in the regulations that is based in part on the increase in the employee's deemed death benefit during the year. One of the factors used for determining the deemed death benefit is "the net level premium reserve at the end of that policy year for all benefits provided to the employee by the policy or, if greater, the cash value of the policy at the end of that policy year." Amendments to the regulations under § 79 were proposed on February 13, 2004 (69 FR 7384) that would delete the term "cash value" from the formula for determining the cost of permanent benefits in § 1.79–1(d) and substitute the term "fair market value." The proposed regulations would apply to permanent benefits provided on or after February 13, 2004.

(3) Transfers Under § 83(a). Section 83(a) provides that, when property is transferred to any person in connection with the performance of services, the service provider must include in gross income (as compensation income) the excess of the fair market value of the property, determined without regard to lapse restrictions (such as life insurance contract surrender charges), and determined at the first time that the transferee's rights in the property are either transferable or not subject to a substantial risk of forfeiture (*i.e.*, when those rights become "substantially vested"), over the amount (if any) paid for the property. Section 1.83–3(e) of the regulations provides that, in the case of a transfer of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, only the cash surrender value of the contract is considered to be property. Amendments to the regulations under § 83 were proposed on February 13, 2004 (69 FR 7384) that would provide that, in the case of a transfer of an insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection, the policy cash value and all other rights under the contract (including any supplemental agreements, whether or not guaranteed), other than current insurance protection, are treated as property for purposes of § 83. The proposed regulations would apply to transfers that occur on or after February 13, 2004 (with an exception for any contract that was part of a split-dollar arrangement entered into on or before September 17, 2003, and which is not materially modified after that date).

(4) Contributions To and Distributions From Nonexempt Employees' Trusts. Section 402(b)(1) provides that contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under § 501(a) are included in the gross income of the employee in accordance with § 83 (relating to property transferred in connection with the performance of services), except that the value of the employee's interest in the trust is substituted for the fair market value of the property for purposes of applying § 83. Section 1.402(b)–1(a) of the regulations provides that any contributions to a nonexempt trust by an employer during a taxable year of the employer which ends within or with a taxable year of the trust shall be included as compensation in the gross income of the employee for the employee's taxable year during which the contribution is made, but only to the extent that the employee's interest in such contribution is substantially vested (within the meaning of § 1.83–3(b)) at the time the contribution is made.

Section 1.402(b)–1(b)(1) of the regulations provides that if rights of an employee under a trust become substantially vested during a taxable year of the employee and a taxable year for which the trust is not exempt under § 501(a) ends with or within such year, the value of the employee's interest in the trust on the date of such change (substantially nonvested to substantially vested) is included in the employee's gross income for that taxable year. Section 1.402(b)–1(b)(2)(i) provides that the term "the value of the employee's interest in a trust" means the amount of the employee's beneficial interest in the net fair market value of all the assets in the trust as of any date on which some or all of the employee's interest in the trust becomes substantially vested. The net fair

market value of all the assets in the trust is the total amount of the fair market values (determined without regard to any lapse restriction, as defined in § 1.83–3(h)) of all the assets in the trust, less the amount of all the liabilities to which such assets are subject or which the trust has assumed (other than the rights of any employee in such assets), as of the date on which some or all of the employee's interest in the trust becomes substantially vested.

Section 402(b)(2) and § 1.402(b)–1(c) provide that any amount actually distributed or made available to any distributee by an employee's trust in a taxable year in which it is not exempt under § 501(a) is taxable under § 72 (relating to annuities) to the distributee in the taxable year in which it is so distributed or made available. If, for example, the distribution consists of an annuity contract, the amount of the distribution is considered to be the entire value of the contract at the time of the distribution. Such value is includible in the gross income of the distributee to the extent that such value exceeds the investment in the contract, determined by applying § 72. The distributions are included in income under the rules of § 72 whether or not the employee's rights in the contributions become substantially vested beforehand.

Section 402(b)(4)(A) provides that, if one of the reasons a trust is not exempt from tax under § 501(a) is the failure of the plan of which it is a part to meet the requirements of § 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under § 402(b)(1) or under § 402(b)(2), include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

.02 Prior Guidance Regarding Fair Market Value.

(1) Rev. Rul. 59–195 — Interpolated Terminal Reserve. Rev. Rul. 59–195, 1959–1 C.B. 18, addressed the determination of the fair market value of a policy in a situation in which an employer sold to an employee a life insurance contract on which premiums were still due. The revenue ruling held that, for purposes of computing the employee's taxable gain in the year of the purchase, the value of the contract should be determined using the approach of § 25.2512–6 of the Gift Tax Regulations. Under that regulation, the value of a life insurance contract that has been in force for some time and on which further premium payments are to be made is not its cash surrender value, but, rather, the interpolated terminal reserve as of the date of sale plus the proportionate part of any employer-paid unearned premiums. Section 25.2512–6 also provides that if "because of the unusual nature of the contract such approximation is not reasonably close to the full value, this method may not be used." Thus, this method is appropriate only where the reserve reflects the value of all of the relevant features of the policy.

(2) Notice 89–25 — Tax Reserves. Q&A–10 of Notice 89–25, 1989–1 C.B. 662, described a distribution from a qualified plan of a life insurance policy with a value substantially higher than the cash surrender value stated in the policy. The notice concluded that the practice of using cash surrender value as fair market value is not appropriate where the total policy reserves, including life insurance reserves (if any) computed under § 807(d), together with any reserves for advance premiums, dividend accumulations, etc., represent a much more accurate approximation of the policy's fair market value.

(3) Rev. Proc. 2004–16 — Safe Harbor for Determining Fair Market Value. Rev. Proc. 2004–16, 2004–10 I.R.B. 559, provided a safe harbor for determining fair market value of variable and non-variable contracts for purposes of applying the rules under the proposed regulations issued under §§ 79, 83, and 402(a). The safe harbor for non-variable contracts set forth in Rev. Proc. 2004–16 permitted the use of the contract's cash value without reduction for surrender charges as the fair market value so long as this cash value is at least equal to the sum of: (1) the premiums paid, plus (2) interest, dividends or other credits, minus (3) reasonable mortality and other reasonable charges actually charged by the date of determination (*e.g.*, date of the transfer or distribution) that are expected to be paid. In those cases where the contract is a variable contract (as defined in § 817(d)), cash value without reduction for surrender charges may be treated as the fair market value of the contract provided such cash value is at least equal to the sum of: (1) the premiums paid, plus (2) all adjustments made with respect to those premiums during that period (whether under the contract or otherwise) that reflect investment return and the current market value of segregated asset accounts, minus (3) reasonable mortality and other reasonable charges actually charged by the date of determination (*e.g.*, date of the transfer or distribution) that are expected to be paid.

.03 Need For Further Guidance. After the issuance of Rev. Proc. 2004–16, the Service received comments concerning the safe harbors set forth in that revenue procedure. Commentators asserted that the formulas did not function well for certain types of traditional policies. In addition, commentators were concerned about the possible double-counting of dividends under the formulas, and the fact that the formulas did not make an explicit adjustment for surrender charges, withdrawals, or distributions. The Service has determined that adjustments to the safe harbors are appropriate.

SECTION 3. GUIDANCE FOR DETERMINING FAIR MARKET VALUE

.01 Safe Harbor Formulas for Fair Market Value. This revenue procedure provides two safe harbor formulas that, if used to determine the value of an insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection that is distributed or otherwise transferred from a qualified plan, will meet the definition of fair market value for purposes of § 402(a). These safe harbor formulas will also meet the definition of fair market value for purposes of §§ 79, 83, and 402(b) and, in addition, will meet the definition of vested accrued benefit for purposes of § 402(b)(4)(A).

.02 Safe Harbor for Non-Variable Contracts. Except as provided in section 3.03 of this revenue procedure (which applies only to variable contracts), the fair market value of an insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection may be measured as the greater of: A) the sum of the interpolated terminal reserve and any unearned premiums plus a *pro rata* portion of a reasonable estimate of dividends expected to be paid for that policy year based on company experience, and B) the product of

the PERC amount (the amount described in the following sentence based on premiums, earnings, and reasonable charges) and the applicable Average Surrender Factor described in section 3.04 of this revenue procedure. The PERC amount is the aggregate of: (1) the premiums paid from the date of issue through the valuation date without reduction for dividends that offset those premiums, plus (2) dividends applied to purchase paid-up insurance prior to the valuation date, plus (3) any amounts credited (or otherwise made available) to the policyholder with respect to premiums, including interest and similar income items (whether credited or made available under the contract or to some other account), but not including dividends used to offset premiums and dividends used to purchase paid up insurance, minus (4) explicit or implicit reasonable mortality charges and reasonable charges (other than mortality charges), but only if those charges are actually charged on or before the valuation date and those charges are not expected to be refunded, rebated, or otherwise reversed at a later date, minus (5) any distributions (including distributions of dividends and dividends held on account), withdrawals, or partial surrenders taken prior to the valuation date.

.03 Safe Harbor for Variable Contracts. If the insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection being valued is a variable contract (as defined in § 817(d)), the fair market value may be measured as the greater of: A) the sum of the interpolated terminal reserve and any unearned premiums plus a *pro rata* portion of a reasonable estimate of dividends expected to be paid for that policy year based on company experience, and B) the product of the variable PERC amount (the amount described in the following sentence based on premiums, earnings, and reasonable charges) and the applicable Average Surrender Factor described in section 3.04 of this revenue procedure. The variable PERC amount is the aggregate of: (1) the premiums paid from the date of issue through the valuation date without reduction for dividends that offset those premiums, plus (2) dividends applied to increase the value of the contract (including dividends used to purchase paid-up insurance) prior to the valuation date, plus or minus (3) all adjustments (whether credited or made available under the contract or to some other account) that reflect the investment return and the market value of segregated asset accounts, minus (4) explicit or implicit reasonable mortality charges and reasonable charges (other than mortality charges), but only if those charges are actually charged on or before the valuation date and those charges are not expected to be refunded, rebated, or otherwise reversed at a later date, minus (5) any distributions (including distributions of dividends and dividends held on account), withdrawals, or partial surrenders taken prior to the valuation date.

.04 Average Surrender Factor.

(1) Sections 79, 83, and 402(b). The Average Surrender Factor for purposes of §§ 79, 83, and 402(b) (for which no adjustment for potential surrender charges is permitted) is 1.00.

(2) Qualified plans. In the case of a distribution or sale from a qualified plan, if the contract provides for explicit surrender charges, the Average Surrender Factor is the unweighted average of the applicable surrender factors over the 10 years beginning with the policy year of the distribution or sale. For this purpose, the applicable surrender factor for a policy year is equal to the greater of 0.70 and a fraction, the numerator of which is the projected amount of cash that would be available if the policy were surrendered on the first day of the policy year (or, in the case of the policy year of the distribution or sale, the amount of cash that was actually available on the first day of that policy year) and the denominator of which is the projected (or actual) PERC amount as of that same date. The applicable surrender factor for a year in which there is no surrender charge is 1.00. A surrender charge is permitted to be taken into account under section 3.04 of this revenue procedure only if it is contractually specified at issuance and expressed in the form of nonincreasing percentages or amounts.

.05 Application of Safe Harbor Formulas. The formulas set forth in sections 3.02 and 3.03 of this revenue procedure must be interpreted in a reasonable manner, consistent with the purpose of identifying the fair market value of a contract. Thus, for example, if income is calculated with respect to premiums paid under the contract, that amount must be included in item (3) of the formulas, even if the income can only be realized through an exchange right that gives rise to a springing cash value under another policy. Similarly, if a mortality charge or other amount charged under a contract can be expected to be directly or indirectly returned to the contractholder (whether through the contract, a supplemental agreement, or under a verbal understanding and regardless of whether there is a guarantee), the charge is not permitted to be subtracted under item (4) in the formulas. In addition, a surrender charge cannot be taken into account in determining an average surrender factor if it may be waived or otherwise avoided or was created for purposes of the transfer or distribution. Furthermore, at no time are these rules to be interpreted in a manner that allows the use of these formulas to understate the fair market value of the life insurance contracts and associated distributions or transfers. For example, if the insurance contract has not been in force for some time, the value of the contract is best established through the sale of the particular insurance contract by the insurance company (*i.e.*, as the premiums paid for that contract).

.06 Date as of Which Fair Market Value is Determined. In the case of a distribution or sale of a contract from a qualified plan, the date as of which the fair market value is to be determined is the date of that distribution or sale. The date of determination in the case of the provision of permanent benefits subject to § 79 is the date those benefits are provided. The date of determination in the case of a transfer of an insurance contract subject to § 83 is the date on which fair market value must be determined under the rules of § 83. The date of determination in the case of a non-exempt employees' trust under § 402(b) is the date on which fair market value must be determined under the rules of § 402(b).

SECTION 4. ADDITIONAL AMOUNTS THAT MUST BE INCLUDED IN INCOME

.01 Treatment of Dividends Held on Deposit. Dividends held on deposit with respect to an insurance contract are not included in the fair market value of the contract. However, such dividends are taxable income to the employee or service provider at the time the rights to those

dividends are transferred to that individual. For example, if a qualified plan distributes a contract to an employee along with the rights to dividends held on deposit with respect to that contract, the employee must take into income both the fair market value of the contract and the value of the dividends held on the deposit. This is the case regardless of whether the dividends on deposit are paid directly to the employee at the time the contract is distributed or merely made available for payment at a later time.

.02 Treatment of Loans. If a loan (including a loan secured by the cash value of a life insurance contract) is made to an employee or other service provider in connection with the performance of services, to the extent the debt owed by the employee or other service provider is terminated upon distribution or transfer of the collateral, the terminated loan or debt amount constitutes an additional distribution to the employee or service provider at that time. For this purpose, it is irrelevant whether the loan is described as having been forgiven, canceled, satisfied, extinguished, or otherwise offset, provided that the loan no longer exists after the distribution or transfer. For example, if a life insurance contract with a fair market value of $100,000 (without regard to any debt) is collateral for a policy loan of $30,000 (borrowed by the employer, who then lends the $30,000 to the employee) prior to the distribution or transfer of the contract, and the loan to the employee no longer exists after the distribution or transfer so that the amount distributed is $70,000 ($100,000 - $30,000), the entire $100,000 must be taken into account by the employee. If a participant receives a loan from a life insurance contract held by a qualified plan (or other plan subject to the rules of § 72(p)) and the contract is subsequently distributed to the participant in satisfaction of the participant's benefit under the plan, the reduction in the value of the distribution in order to repay the participant's loan from the plan constitutes a plan loan offset amount, which is treated as a distribution from the plan. See § 1.72(p)–1, Q&A–13(b).

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to distributions, sales, and other transfers made on or after February 13, 2004, to permanent benefits within the meaning of § 1.79–0 provided on or after February 13, 2004, and to non-exempt employees' trusts under § 402(b) for periods on or after February 13, 2004. However, for periods before May 1, 2005, taxpayers may rely on the safe harbors of this revenue procedure and for periods on or after February 13, 2004, and before May 1, 2005, taxpayers may also rely on the safe harbors in Rev. Proc. 2004–16.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2004–16 is modified and superseded.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Bruce Perlin and Linda Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) and Larry Isaacs of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure as it pertains to § 402(a), please contact Bruce Perlin or Linda Marshall at (202) 622–6090 (not a toll-free number) or Larry Isaacs at (202) 283–9888 (not a toll-free number) or contact the Employee Plans' taxpayer assistance telephone service at (877) 829–5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m. Eastern Time, Monday through Friday. For further information regarding this revenue procedure as it pertains to § 79, please contact Betty Clary of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) at (202) 622–6080 (not a toll-free number). For further information regarding this revenue procedure as it pertains to §§ 83 and 402(b), please contact Robert Misner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) at (202) 622–6030 (not a toll-free number).

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26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also: Part I, §§ 6011, 6501, 6707A, 6111, 6112; 1.6011–4.)

Rev. Proc. 2005–26

SECTION 1. PURPOSE

The purpose of this revenue procedure is to alert taxpayers to the enactment of section 6501(c)(10) of the Internal Revenue Code, and to provide guidance for taxpayers subject to the extended period of limitations on assessment under section 6501(c)(10).

SECTION 2. BACKGROUND

.01 In general, the limitations period on assessment of tax is three years after the later of the due date for filing a tax return or the date on which the taxpayer files its return. I.R.C. § 6501(a). Section 6501(c) provides several exceptions to the general three-year period of limitations.

.02 Section 814 of the American Jobs Creation Act of 2004, Pub. L. No. 108–357, 118 Stat. 1418 (2004) (the Act), amended section 6501(c) by adding a new paragraph (10). Section 6501(c)(10) provides that the limitations period on assessment with respect to a listed transaction that the taxpayer fails to disclose, as required under section 6011 (an "undisclosed listed transaction"), shall not expire before one year after the earlier of (A) the date on which the Secretary is furnished the information required under section 6011, or (B) the date that a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112 relating to the undisclosed listed transaction. Section 6501(c)(10) is effective for taxable years with respect to which the limitations period on assessment did not expire prior to October 22, 2004, the date of enactment of the Act. Section 6501(c)(10) does not revive an assessment limitations period that expired prior to October 22, 2004.

.03 Section 6707A(c)(2) (added by section 811 of the Act) defines a "listed transaction" as a reportable transaction that is the same as, or substantially similar to, a transaction identified by the

Secretary as a tax avoidance transaction for purposes of section 6011. *See also* Treas. Reg. § 1.6011–4(b)(2). For a list of transactions identified by the Secretary as listed transactions, go to the IRS web page at *www.irs.gov/businesses/corporations* and click on Abusive Tax Shelters and Transactions. *See also* Notice 2004–67, 2004–41 I.R.B. 600 (October 12, 2004), and subsequent published guidance.

.04 Taxpayers are required under section 6011, and the regulations thereunder, to disclose certain information regarding each listed transaction in which the taxpayer has participated, as defined in section 1.6011–4(c)(3). Generally, if a taxpayer is required to disclose information regarding the transaction, the taxpayer must complete Form 8886, *Reportable Transaction Disclosure Statement*, for each listed transaction and attach the Form 8886 to the taxpayer's return for each year in which the taxpayer participated in the listed transaction. *See* Treas. Reg. § 1.6011–4(e). A copy of the disclosure statement must also be sent to the Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer. *See* Treas. Reg. § 1.6011–4(d) and (e). The Form 8886 must provide the information requested and be completed in accordance with the instructions to the form. *See* Treas. Reg. § 1.6011–4(d).

.05 Section 6112 requires material advisors to maintain lists of investors and other information with respect to reportable transactions, including listed transactions, and to furnish that information to the Secretary upon request. The term "material advisor" is defined in section 301.6112–1(c)(2). *See* Notice 2004–80, 2004–50 I.R.B. 963 (December 13, 2004), amplified by Notice 2005–17, 2005–8 I.R.B. 606 (February 22, 2005), clarified and modified by Notice 2005–22, 2005–12 I.R.B. 756 (March 21, 2005), and section 301.6112–1 for guidance relating to the preparation, content, maintenance, retention, and furnishing of lists by material advisors.

SECTION 3. SCOPE

This revenue procedure applies to taxpayers that fail to disclose information regarding listed transactions, as required under section 6011 and the regulations thereunder, for taxable years with respect to which the period for assessing a deficiency did not expire before October 22, 2004. This revenue procedure provides procedures that taxpayers and material advisors may follow to disclose undisclosed listed transactions.

SECTION 4. APPLICATION TO TAXPAYERS

.01 *Disclosure of an undisclosed listed transaction by a taxpayer that has filed a tax return*. Until further guidance is issued, if a taxpayer filed a tax return with respect to a taxable year for which the taxpayer participated in an undisclosed listed transaction and the IRS has not previously received from the material advisor the information described in section 301.6112–1(e)(3) in accordance with section 5 of this revenue procedure, the limitations period on assessment with respect to that undisclosed listed transaction will not expire earlier than one year after the taxpayer discloses the transaction in accordance with the procedures in this section 4.

(1) *Disclosure on a Form 8886*. A taxpayer must disclose an undisclosed listed transaction by submitting a Form 8886, with appropriate cover letter, as described below, with the Internal Revenue Service Center at which the taxpayer filed its original return. A taxpayer is permitted, but not required, to file an amended return with the Form 8886 and cover letter. A copy of the Form 8886 and cover letter also must be sent simultaneously to OTSA. The taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: "*Section 6501(c)(10) Disclosure*" followed by the taxable year and tax return to which the disclosure statement relates. For example, if the Form 8886 relates to the taxpayer's Form 1040 for the 2002 taxable year, the taxpayer must include the following statement: "*Section 6501(c)(10) Disclosure; 2002 Form 1040*" on the form. Separate Forms 8886 and separate cover letters must be submitted for each taxable year for which the taxpayer participated in the undisclosed listed transaction. A cover letter to which a Form 8886 is to be attached must identify the return to which the disclosure statement relates and include the following statement signed under penalties of perjury by the taxpayer and, if applicable, by the paid preparer preparing the Form 8886 or amended return:

> Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which the preparer has any knowledge.

(2) *Taxpayers under an examination by the IRS or under Appeals consideration*. A taxpayer under examination by the IRS or under Appeals consideration for any taxable year for which the taxpayer participated in an undisclosed listed transaction also must submit a copy of the Form 8886, prepared in accordance with the requirements of subsection (1) above, to the IRS examiner or Appeals officer in addition to the other disclosure requirements of this section.

.02 *Disclosure of an undisclosed listed transaction that is designated as a listed transaction subsequent to the filing of a tax return*. If the Secretary identifies a transaction as a listed transaction after the date on which the taxpayer files a tax return for a taxable year during which the taxpayer participated in the listed transaction (a "post-filing listed transaction"), the taxpayer must disclose the transaction under section 6011 in accordance with the regulations thereunder. *See* Treas. Reg. § 1.6011–4(e)(2)(i). The exception under section 6501(c)(10) to the general period of limitations on assessment is applicable to a post-filing listed transaction unless the taxpayer discloses the listed transaction in accordance with the regulations under section 6011, which currently require that the taxpayer attach the Form 8886 to its next filed return. If the obligation to disclose a post-filing listed transaction, as prescribed by the regulations under section 6011, arises after the expiration of the period of limitations on assessment for a taxable year in which the taxpayer participated in the post-filing listed transaction, section 6501(c)(10) will not operate to reopen or extend the limitations period. Conversely, if the limitations period on assessment has not expired, and the taxpayer fails to disclose the post-filing listed transaction as required by the regulations under

section 6011, the limitations period on assessment with respect to the undisclosed listed transaction will not expire earlier than one year after the taxpayer discloses the transaction in accordance with the procedures described in section 4.01.

.03 *Date of disclosure by taxpayers for purposes of section 6501(c)(10)(A)*. For purposes of section 6501(c)(10)(A), the limitations period on assessment with respect to an undisclosed listed transaction will not expire earlier than one year after the date on which the IRS receives the information described in this section 4. A taxpayer will not be treated as disclosing an undisclosed listed transaction until the date on which the original Form 8886 is received by the appropriate Internal Revenue Service Center and a copy of the disclosure statement is received by OTSA and, if applicable, by the IRS examiner or Appeals officer. If the required disclosures are not made on the same date, the taxpayer will be deemed to have disclosed the transaction on the date that the IRS receives the disclosure that, together with prior disclosures, satisfies the requirements of this section 4. For example, if a taxpayer discloses the information only by submitting the original Form 8886 with the appropriate Internal Revenue Service Center or by sending a copy of the Form 8886 to OTSA, but not both, the one-year limitations period on assessment under section 6501(c)(10)(A) will not begin until both events have occurred.

SECTION 5. APPLICATION TO MATERIAL ADVISORS

.01 *Disclosure of an undisclosed listed transaction by material advisors*. In general, a material advisor must furnish the Secretary with the information described in section 6112 if a material advisor receives a request by the Secretary under section 6112 relating to a listed transaction. *See* Treas. Reg. § 301.6112–1(g) and Notice 2004–80, 2004–50 I.R.B. 963 (December 13, 2004), amplified by Notice 2005–17, 2005–8 I.R.B. 606 (February 22, 2005), clarified and modified by Notice 2005–22, 2005–12 I.R.B. 756 (March 21, 2005), or subsequent published guidance, for instructions on how to comply with these requirements. Until further guidance is issued, the limitations period on assessment with respect to an undisclosed listed transaction that is not otherwise disclosed by a taxpayer in accordance with section 4 of this revenue procedure will not expire earlier than one year after the date on which the IRS receives from the material advisor the information described in section 301.6112–1(e)(3) with respect to that taxpayer.

.02 *Date of disclosure by material advisors for purposes of section 6501(c)(10)(B)*. For purposes of section 6501(c)(10)(B) and this section 5, the limitations period on assessment for a taxpayer with respect to an undisclosed listed transaction will not expire earlier than one year after the date on which the material advisor makes available for inspection by the IRS the information described in section 5.01, regardless of whether the material advisor provides the information within 20 days of the IRS's request as required by section 301.6112–1(g)(1). Alternatively, if the material advisor sends the required information to the IRS, then for purposes of section 6501(c)(10)(B), the limitations period on assessment will not expire earlier than one year after the date on which the IRS receives the information.

SECTION 6. OTHER PERIODS OF LIMITATIONS FOR ASSESSING ANY TAX

The exception under section 6501(c)(10) to the period of limitations on assessment does not supplant or shorten any other applicable period of limitations on assessment, including a limitations period that has been extended by agreement under section 6501(c)(4), or a limitations period described in section 6501(c)(1) relating to a false or fraudulent return.

SECTION 7. REQUEST FOR COMMENTS

The IRS and the Department of Treasury intend to issue regulations implementing the requirements of section 6501(c)(10). The IRS and the Department of Treasury continue to consider how to balance the burden imposed on taxpayers and their representatives with the benefits to the government of early and complete disclosure. The IRS and the Department of Treasury invite interested persons to submit comments regarding these procedures, including the application of these procedures to partners and partnerships. Comments are encouraged to be submitted by June 7, 2005, to: Internal Revenue Service, CC:PA:LPD:PR (RP 2005–26), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (RP 2005–26), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224. Alternatively, taxpayers may submit electronic comments directly to the IRS e-mail address: *notice.comments@irscounsel.treas.gov*. Commentators who provide electronic comments should include the identification number of this revenue procedure in the body of the comment and in the subject line of the e-mail.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective on April 8, 2005.

SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure 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) under the control number 1545–1940.

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. The collection of information in this revenue procedure is in section 4. This information is required to provide the Service with the information necessary to properly determine the taxpayer's applicable period of limitations and to provide the information under penalties of perjury. The collection of information is required to obtain a benefit. The likely respondents are individuals and businesses or other for-profit institutions.

The estimated total annual reporting and/or record-keeping burden is 429.50 hours.

The estimated annual burden per respondent/recordkeeper varies from 0.25 hour to 0.75 hour, depending on individual

circumstances, with an estimated average of 0.5 hour. The estimated number of respondents and/or recordkeepers is 859.

The estimated annual frequency of responses (used for reporting requirements only) is 859.

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.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Audra M. Dineen of the Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this revenue procedure, contact Audra M. Dineen at (202) 622–4940 (not a toll-free call).

Part IV. Items of General Interest

IRS to Discontinue TeleFile

Announcement 2005–26

Summary Paragraph:

The IRS will discontinue its TeleFile program after August 16, 2005. TeleFile allows taxpayers to file Forms 1040EZ, 4868, and 941 by telephone. Decline in use for most forms, coupled with increasing costs to maintain the system, led to the decision.

Announcement:

IRS to Discontinue TeleFile

The IRS will discontinue its TeleFile program after August 16, 2005. TeleFile allows taxpayers to file Forms 1040EZ, 4868, and 941 by telephone.

The program's end date will permit taxpayers to TeleFile:

- Form 941 second quarter returns through July 31. Taxpayers who have electronically paid all taxes due by July 31 are granted an extension to TeleFile through Aug. 10 (Aug. 11 in Hawaii).
- 1040EZ through Aug. 15.

TeleFile rolled out nationally in 1997 for single Form 1040EZ filers. TeleFile was later expanded to allow the filing of selected Forms 1040EZ, Forms 941, 4868 and individual tax returns for eight states.

Despite its initial success, the program has since experienced a decline in use for most forms as other electronic filing alternatives have become available. This, coupled with increasing costs to maintain the TeleFile infrastructure, led the IRS to decide to discontinue the program.

In its place, IRS offers a number of electronic filing alternatives. More information on e-filing options is available by visiting *www.irs.gov* and clicking on the e-file logo.

Economic Performance Requirement; Correction

Announcement 2005–28

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to T.D. 8408, 1992–1 C.B. 155, which was published in the **Federal Register** on Friday, April 10, 1992 (57 FR 12411) relating to the requirement that economic performance occur in order for an amount to be incurred with respect to any item of a taxpayer using an accrual method of accounting.

DATES: This correction is effective April 10, 1992.

FOR FURTHER INFORMATION CONTACT: Robert M. Casey, (202) 622–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation (T.D. 8408) that is the subject of this correction is under section 461 of the Internal Revenue Code.

Need for Correction

As published, T.D. 8408, contains an error that may prove to be misleading and is in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

PART 1 — INCOME TAXES

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

Authority: 26 USC 7805 * * *

§1.461–4 [Corrected]

Par. 2. Section 1.461–4(d)(4)(i) is amended by revising the first sentence to read as follows:

§1.461–4 Economic performance.

* * * * *

(d) * * *

(4) * * *(i) *In general.* Except as otherwise provided in paragraph (d)(5) of this section, if the liability of a taxpayer requires the taxpayer to provide services or property to another person, economic performance occurs as the taxpayer incurs costs (within the meaning of §1.446–1(c)(1)(ii)) in connection with the satisfaction of the liability. * * *

* * * * *

Cynthia Grigsby,
Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on July 26, 2004, 8:45 a.m., and published in the issue of the Federal Register for July 27, 2004, 69 F.R. 44596)

Required Distributions From Retirement Plans; Correction

Announcement 2005–29

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (T.D. 9130, 2004–26 I.R.B. 1082) which were published in the **Federal Register** on Tuesday, June 15, 2004 (69 FR 33288). These final regulations relate to the required minimum distributions under section 401(a)(9) for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts.

DATES: This correction is effective June 15, 2004.

FOR FURTHER INFORMATION CONTACT: Cathy Vohs at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (T.D. 9130) that are the subject of these corrections are under sections 401 and 403 of the Internal Revenue Code.

Need for Correction

As published, TD 9130 contains errors that may prove to be misleading and are in need of clarification.

* * * * *

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1 — INCOME TAXES

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

Authority: 26 USC 7805 * * *

§1.401(a)(9)–6 [Corrected]

1. Section 1.401(a)(9)–6(c)(3) of A–2, in the *Example*., fifth sentence, the language, "In this case, Z is 30 years older than Y and is commencing benefit 5 years before attaining age 70 so the adjusted employee-beneficiary age difference is 25 years." is removed and the language "In this case, Z is 30 years older than Y and is commencing benefit 4 years before attaining age 70 so the adjusted employee-beneficiary age difference is 26 years." is added in its place.

2. Section 1.401(a)(9)–6(c)(3) of A–2, in the *Example*., sixth sentence, the language, "Under the table in paragraph (c)(2) of this A–2, the applicable percentage for a 25-year adjusted employee/beneficiary age difference is 66 percent." is removed and the language "Under the table in the paragraph (c)(2) of this A–2, the applicable percentage for a 26-year adjusted employee/beneficiary age difference is 64 percent." is added in its place.

3. Section 1.401(a)(9)–6(c)(2) of A–12 is amended by removing "A–14" and adding "A–12" in its place."

4. Section 1.401(a)(9)–6(d) *Example 1*. (vii) of A–13 is amended by removing the language "under paragraph (c)(1)".

5. Section 1.401(a)(9)–6(d) *Example 3*. (i) of A–13, is amended by adding a new second sentence "E was born in 1935.".

6. Section 1.401(a)(9)–6(f) *Example 8*. (ii) of A–14, last sentence of the paragraph the word "be" is removed.

Cynthia E. Grigsby,
Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

(Filed by the Office of the Federal Register on November 22, 2004, 8:45 a.m., and published in the issue of the Federal Register for November 23, 2004, 69 F.R. 68077)

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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Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
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PTE	Prohibited Transaction Exemption
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