

## **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. 2005-54, page 289.**

**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 August 2005.

#### **T.D. 9210, page 290.**

Final regulations under section 1363(d) of the Code address LIFO recapture by corporations converting from C corporations to S corporations. The purpose of these regulations is to provide guidance on the LIFO recapture requirement when the corporation holds inventory accounted for under the last-in, first-out (LIFO) method (LIFO inventory) indirectly through a partnership.

#### **T.D. 9211, page 287.**

Final regulations under section 861 of the Code provide that deductions for charitable contributions (as defined in section 170(c)) are definitely related and allocable to all of a taxpayer's gross income and are apportioned on the basis of income from sources within the United States. In addition, regulations are finalized in this document with respect to the allocation and apportionment of deductions for charitable contributions that are provided by an income tax treaty rather than by sections 170, 873(b)(2), and 882(c)(1)(B).

#### **Rev. Proc. 2005-51, page 296.**

This procedure provides guidance to persons who may be required to pay certain penalties under sections 6662(h), 6662A, or 6707A of the Code, and who may be required under section 6707A(e) to disclose those penalties on reports filed with the Securities and Exchange Commission (SEC). The procedure describes the report on which the disclosures must be made,

the information that must be disclosed, and the deadlines by which persons must make the disclosures on reports filed with the SEC in order to avoid additional penalties under section 6707A(e).

### **EMPLOYEE PLANS**

#### **Rev. Rul. 2005-55, page 284.**

**Profit-sharing plan; retiree health accounts; nonforfeiture; prospective application.** This ruling holds that a sub-account within a profit-sharing plan that provides medical reimbursement expenses to each participant does not meet the provisions of section 411 of the Code on nonforfeiture because it imposes conditions on the use of the amounts held in the participants' accounts. If certain criteria are met, the ruling will be applied prospectively.

#### **REG-138362-04, page 299.**

Proposed regulations under section 401 of the Code provide guidance on the use of electronic media to provide certain notices to recipients or to transmit participant and beneficiary elections or consents with respect to employee benefit arrangements. A public hearing is scheduled for November 2, 2005.

#### **Notice 2005-58, page 295.**

This notice addresses certain income tax issues with respect to nonqualified deferred compensation plans maintained by federal credit unions, including whether a federal credit union can maintain an eligible nonqualified deferred compensation plan described in section 457 of the Code, and issues relating to plans in effect on publication of this notice that are intended to satisfy section 457.

**(Continued on the next page)**

**Announcements of Disbarments and Suspensions begin on page 309.**  
**Finding Lists begin on page ii.**

## EXEMPT ORGANIZATIONS

### **Notice 2005–58, page 295.**

This notice addresses certain income tax issues with respect to nonqualified deferred compensation plans maintained by federal credit unions, including whether a federal credit union can maintain an eligible nonqualified deferred compensation plan described in section 457 of the Code, and issues relating to plans in effect on publication of this notice that are intended to satisfy section 457.

### **Announcement 2005–58, page 319.**

A list is provided of organizations now classified as private foundations.

## EMPLOYMENT TAX

### **Rev. Proc. 2005–51, page 296.**

This procedure provides guidance to persons who may be required to pay certain penalties under sections 6662(h), 6662A, or 6707A of the Code, and who may be required under section 6707A(e) to disclose those penalties on reports filed with the Securities and Exchange Commission (SEC). The procedure describes the report on which the disclosures must be made, the information that must be disclosed, and the deadlines by which persons must make the disclosures on reports filed with the SEC in order to avoid additional penalties under section 6707A(e).

### **Announcement 2005–55, page 317.**

This document withdraws proposed regulations (REG–142686–01, 2001–2 C.B. 561) concerning the application of FICA, FUTA, and federal income tax withholding to stock options issued under an employee stock purchase plan or an incentive stock option plan (collectively, statutory stock options).

## EXCISE TAX

### **Rev. Proc. 2005–51, page 296.**

This procedure provides guidance to persons who may be required to pay certain penalties under sections 6662(h), 6662A, or 6707A of the Code, and who may be required under section 6707A(e) to disclose those penalties on reports filed with the Securities and Exchange Commission (SEC). The procedure describes the report on which the disclosures must be made, the information that must be disclosed, and the deadlines by which persons must make the disclosures on reports filed with the SEC in order to avoid additional penalties under section 6707A(e).

## ADMINISTRATIVE

### **Rev. Proc. 2005–51, page 296.**

This procedure provides guidance to persons who may be required to pay certain penalties under sections 6662(h), 6662A, or 6707A of the Code, and who may be required under section 6707A(e) to disclose those penalties on reports filed with the Securities and Exchange Commission (SEC). The procedure describes the report on which the disclosures must be made, the information that must be disclosed, and the deadlines by which persons must make the disclosures on reports filed with the SEC in order to avoid additional penalties under section 6707A(e).

### **Announcement 2005–56, page 318.**

This document contains corrections to proposed regulations (REG–102144–04, 2005–25 I.R.B. 1297) relating to dual consolidated loss issues.

### **Announcement 2005–57, page 318.**

This document contains corrections to proposed regulations (REG–100420–03, 2005–24 I.R.B. 1236) relating to elective safe harbor for dealers and traders in securities and commodities.

# 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 August 2005. See Rev. Rul. 2005-54, page 289.

## Section 105.—Amounts Received Under Accident and Health Plans

Does a medical reimbursement account for each participant that's contained in a profit-sharing plan cause the profit-sharing plan to fail the vesting requirements of § 401(a)(7) of the Code? See Rev. Rul. 2005-55, page 284.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2005. See Rev. Rul. 2005-54, page 289.

## 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 August 2005. See Rev. Rul. 2005-54, page 289.

## Section 411.—Minimum Vesting Standards

26 CFR 1.411(a)-1: Minimum vesting standards; general rules.  
(Also, §§105, 7805; 301.7805-1.)

**Profit-sharing plan; retiree health accounts; nonforfeitability; prospective application.** This ruling holds that a sub-account within a profit-sharing plan that provides medical reimbursement expenses to each participant does not meet the provisions of section 411 of the Code on nonforfeitability because it imposes conditions on the use of the amounts held in the participants' accounts. If certain criteria are met, the ruling will be applied prospectively.

## Rev. Rul. 2005-55

### ISSUE

Does a profit-sharing plan fail to satisfy the requirements of § 401(a)(7) of the Internal Revenue Code if it provides a medical reimbursement account for each participant from which payments may only be distributed to reimburse the participant for expenses for medical care?

### FACTS

Employer M maintains Plan A, a non-governmental profit-sharing plan that is intended to be a qualified plan under § 401(a). Plan A includes two separate accounts for each participant: a profit-sharing account and a medical reimbursement account. Plan A provides that 75% of Employer M's annual contributions to Plan A on behalf of each participant is allocated to that participant's profit-sharing account and the remaining 25% is allocated to the participant's medical reimbursement account. Plan A does not provide for (after-tax) employee contributions.

Plan A provides that amounts in a participant's medical reimbursement account may be used to reimburse the participant for any substantiated expenses for medical care (as defined by § 213(d)) incurred by the participant or the participant's spouse and dependents (as defined in § 152, determined without regard to § 152(b)(1), (b)(2), and (d)(1)(B)). Plan A also expressly provides that under no circumstances may amounts held in the medical reimbursement account be distributed except to reimburse the participant for expenses for medical care incurred by the participant or the participant's spouse or dependents. The restriction on use of the medical reimbursement account applies to all participants in the plan (*i.e.*, current and former employees, including retired employees). Plan A further provides that, upon the death of the participant, the account is available only to reimburse expenses for medical care of the participant's spouse or, if unmarried or the spouse consents (in the manner required under § 417(a)(2)), the medical care expenses of the participant's dependents, if

any, and is only available for that purpose as long as those individuals qualify as the participant's spouse and dependents for purposes of § 105(b). If there is no surviving spouse or dependent(s), upon the participant's death, or at such time when no individual qualifies as a surviving spouse or dependent for purposes of § 105(b), any remaining unused portion of the medical reimbursement account will be forfeited and will be applied to reduce future employer contributions to medical reimbursement accounts under the plan.

Plan A provides that amounts in the profit-sharing account of each participant (and not amounts in the medical reimbursement account of the participant) are available for distribution to the participant after severance from employment with Employer M.

### LAW

Section 401(a) provides requirements for a trust forming part of a stock bonus, pension or profit-sharing plan to be qualified under § 401(a). A profit-sharing plan is a type of defined contribution plan. Section 414(j) provides that a defined contribution plan is a plan which provides an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to the participant's account.

Section 1.401-1(b)(1)(ii) of the Income Tax Regulations provides that a profit-sharing plan, within the meaning of § 401, must provide for distributing the funds accumulated under the plan after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as layoff, illness, disability, retirement, death, or severance of employment. Section 1.401-1(b)(1)(ii) further provides that a profit-sharing plan is primarily a plan of deferred compensation but the amounts allocated to the account of a participant may be used to provide incidental life or accident or health insurance for him and his family.

Section 402(a) generally provides that any amount distributed to any distributee from a plan qualified under § 401(a) is taxable to the distributee, in the taxable year in which distributed, under § 72.

Rev. Rul. 61-164, 1961-2 C.B. 99, provides that a profit-sharing plan does not violate the incidental benefit rule in § 1.401-1(b)(1)(ii) merely because, in accordance with the terms of the plan, each participant's account under the plan is charged with the cost of the major medical benefits for the participant under the group hospitalization insurance for the employer's employees, provided that the total amount used for life or accident or health insurance for him and his family is incidental. The revenue ruling further provides that such insurance will be treated as incidental if the amount expended for such benefits does not exceed 25% of the funds allocated to a participant's account that have not been accumulated for the period prescribed by the plan for the deferment of distributions. However, Rev. Rul. 61-164 provides that the incidental benefit requirement does not limit the amount expended for such benefits from funds allocated to a participant's account that have been accumulated for the period prescribed by the plan for the deferment of distributions. The revenue ruling also concludes that although the purchase of the major hospitalization insurance does not prevent the qualification of the plan if the insurance is deemed to be incidental, the use of the funds to pay for the employees' medical insurance is a distribution within the meaning of § 402.

Section 401(a)(7) provides that a trust shall not constitute a qualified trust unless the plan of which such trust is a part satisfies the requirements of § 411.

Section 411(a) describes minimum vesting standards that a retirement plan subject to that section must satisfy in order for the plan to be qualified under § 401(a). These standards include § 411(a)(2), which requires that an employee's accrued benefit derived from employer contributions become nonforfeitable in accordance with one of the two schedules specified in § 411(a)(2). Section 411(a)(7) and § 1.411(a)-7(a)(2) provide that, in the case of a defined contribution plan, an employee's accrued benefit is the balance of the employee's account under the plan.

Notwithstanding § 411(a)(2), § 411(a)(3) and § 1.411(a)-4(b) permit the forfeiture of an employee's accrued benefit under certain circumstances. These permissible forfeitures include forfeitures on account of death.

Section 1.411(a)-4T(a) provides that, for purposes of § 411, a right to an accrued benefit is considered to be nonforfeitable at a particular time if, at that time and thereafter, it is an unconditional right. The regulation further provides that, subject to the permissible forfeitures of § 411(a)(3) and § 1.411(a)-4(b) and certain other prescribed situations, a right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause the loss of such right is a forfeitable right at that time.

Section 105(a) provides that, except as otherwise provided in § 105, amounts received by an employee through accident or health insurance for personal injuries or sickness are included in gross income to the extent such amounts (1) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (2) are paid by the employer. Section 105(b) provides that, except in the case of amounts attributable to (and not in excess of) deductions allowed under § 213 for any prior taxable year, gross income does not include amounts described in § 105(a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by the taxpayer for the medical care (as defined in § 213(d)) of the taxpayer or the taxpayer's spouse or dependents (as defined in § 152, determined without regard to § 152(b)(1), (b)(2), and (d)(1)(B)).

Section 1.105-2 of the regulations provides that only amounts that are paid specifically to reimburse the taxpayer for the expenses incurred by the taxpayer for medical care (as defined in § 213(d)) are excludable from gross income. Section 105(b) does not apply to amounts that the taxpayer would be entitled to receive irrespective of whether the taxpayer incurs expenses for medical care. Accordingly, if an employee is entitled to receive the payment irrespective of whether or not any medical expenses have been incurred, none of the payments are excludable from gross income under § 105(b), even if the employee has incurred medical expenses

during the year. See Rev. Rul. 2002-80, 2002-2 C.B. 925, and Rev. Rul. 2005-24, 2005-16 I.R.B. 892.

Finally, Congress has specifically prescribed rules relating to the funding of future health benefits on a tax-favored basis. For example, such funding is addressed by the rules in §§ 419, 419A, 501(c)(9), and 512 for welfare benefit funds (including Voluntary Employees' Beneficiary Associations) and by §§ 401(h) and 420 with respect to retiree health benefits provided through a qualified plan.

## ANALYSIS

Under a profit-sharing plan, as a defined contribution plan, benefits to a participant must be based solely upon amounts contributed to the participant's account and attributable income, gains, expenses and losses. Under the § 411(a)(7) definition of accrued benefit for a defined contribution plan, all amounts credited to a participant's account under the plan are part of the accrued benefit and must satisfy the nonforfeiture requirements of § 411(a)(2).

Plan A provides that under no circumstances may any amounts held in a medical reimbursement account be distributed to any participant except to reimburse the participant for substantiated medical expenses incurred by the participant or the participant's spouse and dependents. Plan A thereby imposes a condition on the entitlement of the participant (and the participant's beneficiaries) to the amounts held in the medical reimbursement accounts and, as a result of that restriction, these amounts fail to be nonforfeitable.

However, if Plan A instead provided that amounts payable from the medical reimbursement account were available for distribution under the same terms as the amounts held in the profit-sharing account (e.g. after severance of employment with Employer M), Plan A would not fail to satisfy § 411 merely because Plan A also permitted amounts held in the medical reimbursement account to be distributed both before and after severance of employment to reimburse medical expenses (or to pay the cost of major medical insurance as described in Rev. Rul. 61-164). However, in that case, no amounts paid from Plan A would be excludable under § 105(b). Therefore, any distribution from

Plan A would be includable in gross income under § 402(a).

#### **HOLDING**

Plan A fails to satisfy the vesting requirements of § 411 because it imposes conditions on the use of the amounts held in the participants' accounts. Accordingly, the plan fails to satisfy § 401(a)(7).

In addition to the requirements of §§ 401(a)(7) and 411, a profit-sharing plan which only permits distribution of amounts held in a separate medical reimbursement account for reimbursement of substantiated medical care expenses, as described in the facts above, may fail to satisfy various other qualification requirements of § 401(a), including § 401(a)(9), § 401(a)(11), and § 401(a)(14).

#### **CORRECTIVE PLAN AMENDMENTS**

Pursuant to the authority contained in § 7805(b) and § 301.7805-1 of the Procedure and Administration Regulations, the Commissioner has determined that a profit-sharing plan or stock bonus plan will not fail to be qualified under § 401(a) for plan years beginning on or before August 15, 2005, merely because the plan provides for a separate medical reimbursement account for each participant and for the amounts in the participant's medical reimbursement account to be only used to reimburse the participant for any substantiated expenses for medical care provided that (i) the plan (including the provisions of the plan relating to the medical reimbursement accounts) is the subject of a favorable determination letter (or in the case of a pre-approved plan, a favorable advisory or opinion letter) issued before August 15, 2005, and (ii) the plan is amended effective on the first day of the first plan year beginning after August 15, 2005, to provide that amounts in each participant's medical reimbursement account are available for distribution under the same terms as amounts held in the participant's other accounts under the plan (*e.g.* upon severance from employment).

Further, any distributions made from a plan that is the same as or similar to the plan described under the FACTS section of this revenue ruling before the first day of the first plan year beginning after August 15, 2005, to reimburse the participant for any substantiated expenses for medical care (as defined by § 213(d)) incurred by the participant or the participant's spouse or dependents (as defined in § 152, determined without regard to § 152(b)(1), (b)(2), and (d)(1)(B)) will not fail to be excluded from income under § 105(b) merely because, due to the publication of this revenue ruling, the plan is amended effective as of the first day of the plan year beginning on or after August 15, 2005, to allow distribution of the amounts held in the medical reimbursement account for reasons other than for reimbursement for any substantiated expenses for medical care.

#### **DRAFTING INFORMATION**

The principal author of this revenue ruling is Robert Walsh of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling, contact the Employee Plans taxpayer assistance telephone service between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday, by calling (877) 829-5500 (a toll-free number). Mr. Walsh may be reached at (202) 283-9888 (not a toll-free number). For further information regarding this revenue ruling as it pertains to § 105, please contact Barbara E. Pie of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities) at (202) 622-6080 (not a toll-free number).

#### **Section 412.—Minimum Funding Standards**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2005. See Rev. Rul. 2005-54, page 289.

#### **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 August 2005. See Rev. Rul. 2005-54, page 289.

#### **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 August 2005. See Rev. Rul. 2005-54, page 289.

#### **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 August 2005. See Rev. Rul. 2005-54, page 289.

#### **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 August 2005. See Rev. Rul. 2005-54, page 289.

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

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2005. See Rev. Rul. 2005-54, page 289.

#### **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 August 2005. See Rev. Rul. 2005-54, page 289.

#### **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 August 2005. See Rev. Rul. 2005-54, page 289.

## Section 861.—Income From Sources Within the United States

26 CFR 1.861–8: Computation of taxable income from sources within the United States and from other sources and activities.

### T.D. 9211

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Allocation and Apportionment of Deductions for Charitable Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations relating to the allocation and apportionment of the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c)(1)(B) and the deduction for charitable contributions allowed under an income tax treaty. These regulations apportion the deduction for charitable contributions on the basis of income from sources within the United States. These regulations affect individuals and corporations that make contributions to charitable organizations and that have foreign source income and calculate their foreign tax credit limitations under section 904.

**DATES:** *Effective Date:* These regulations are effective July 28, 2004, except §1.861–8(e)(12)(ii), which is effective July 14, 2005.

*Applicability Dates:* For dates of applicability, see §§1.861–8(e)(12)(iv) and 1.861–14(e)(6)(ii). The regulations generally apply to charitable contributions made on or after July 28, 2004, although taxpayers generally may choose to apply these regulations to contributions made before July 28, 2004, but during a taxable year ending on or after July 28, 2004. Section 1.861–8(e)(12)(ii) applies to contributions made on or after July 14, 2005, although taxpayers may choose to apply that section to contributions made before July 14,

2005, but during a taxable year ending on or after July 14, 2005.

FOR FURTHER INFORMATION CONTACT: Teresa Burridge Hughes at (202) 622–3850 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to 26 CFR part 1. Section 1.861–8(e)(9)(iv) (the 1977 regulations) provided that deductions for charitable contributions generally were not definitely related to any gross income and therefore were ratably apportioned to the statutory and residual groupings on the basis of gross income. In 1991, the Treasury Department and the IRS issued proposed regulations (the 1991 proposed regulations) that would have changed the ratable apportionment rule of the 1977 regulations to a rule that, assuming certain requirements were met, generally would have apportioned the deduction for a charitable contribution based on where the contribution would have been used. Prop. Treas. Reg. §1.861–8(e)(12), 56 Fed. Reg. 10,395.

On July 28, 2004, the Treasury Department and the IRS issued temporary regulations (T.D. 9143, 2004–36 I.R.B. 442) relating to the allocation and apportionment of the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c)(1)(B) of the Internal Revenue Code. A notice of proposed rulemaking by cross reference to the temporary regulations (REG–208246–90, 2004–36 I.R.B. 450) was also published in the **Federal Register** on the same date. That notice of proposed rulemaking also proposed rules governing the allocation and apportionment of the deduction for charitable contributions that is allowed under a U.S. income tax treaty (rather than under sections 170, 873(b)(2), and 882(c)(1)(B)). As part of the issuance of the temporary and proposed regulations, the Treasury Department and the IRS removed the 1977 regulations and withdrew the 1991 proposed regulations. REG–208246–90, 2004–36 I.R.B. 450. Although a public hearing on the proposed regulations was originally scheduled for December 2, 2004, the public hearing was cancelled because no person requested to provide an oral statement at the hearing.

#### Explanation of Provisions

These final regulations adopt the rules of the temporary and proposed regulations, which provide that the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c)(1)(B) is definitely related and allocable to all of the taxpayer's gross income and is apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources in the United States in each grouping. The corresponding temporary regulations are removed.

One written comment responding to the temporary and proposed regulations was received. The comment requested that taxpayers be permitted to elect to apply the new allocation and apportionment rules to deductions for charitable contributions previously claimed on timely filed tax returns for all open tax years. After consideration, the Treasury Department and the IRS concluded that adoption of the comment's suggestion is not appropriate. The new allocation and apportionment rules apply to charitable contributions made on or after July 28, 2004. Although the temporary regulations permit taxpayers to apply the new rules to charitable contributions made before July 28, 2004, this election applies only to charitable contributions made in a taxable year that ends on or after July 28, 2004. The purpose of this election is to allow taxpayers to apply only one set of allocation and apportionment rules to charitable contributions made in the same taxable year. To permit taxpayers to apply the new rules to all open tax years would not provide such simplification and would raise concerns regarding fairness and administration.

The regulations also adopt, as proposed, the rules with respect to deductions for charitable contributions that are allowed under an income tax treaty (rather than by sections 170, 873(b)(2), and 882(c)(1)(B)). The regulations make one change to the effective date in the proposed regulations. As with the deduction for charitable contributions allowed under sections 170, 873(b)(2), and 882(c)(1)(B), the regulations give taxpayers the opportunity to apply the new rules for all charitable contributions made during the taxable year. Accordingly, the rule for

the deduction for charitable contributions allowed under an income tax treaty is effective for taxable years beginning on or after July 14, 2005, with an election to apply the rule to contributions made before July 14, 2005, but during a taxable year that ends on or after July 14, 2005.

### 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. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

### Drafting Information

The principal author of these regulations is Teresa Burridge Hughes, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1 — INCOME TAXES

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

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

Par. 2. Section §1.861-8 is amended as follows:

1. Remove the last sentence of paragraph (a)(5)(i).

2. Revise paragraph (e)(12).

The revision and addition read as follows:

*§1.861-8 Computation of taxable income from sources within the United States and from other sources and activities.*

\* \* \* \* \*

(e) \* \* \* (1) \* \* \*

(12) *Deductions for certain charitable contributions*—(i) *In general.* The deduction for charitable contributions that is allowed under sections 170, 873(b)(2), and 882(c)(1)(B) is definitely related and allocable to all of the taxpayer's gross income. The deduction allocated under this paragraph (e)(12)(i) shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources in the United States in each grouping.

(ii) *Treaty provisions.* If a deduction for charitable contributions not otherwise permitted by sections 170, 873(b)(2), and 882(c)(1)(B) is allowed under a U.S. income tax treaty, and such treaty limits the amount of the deduction based on a percentage of income arising from sources within the treaty partner, the deduction is definitely related and allocable to all of the taxpayer's gross income. The deduction allocated under this paragraph (e)(12)(ii) shall be apportioned between the statutory grouping (or among the statutory groupings) of gross income and the residual grouping on the basis of the relative amounts of gross income from sources within the treaty partner within each grouping.

(iii) *Coordination with §§1.861-14 and 1.861-14T.* A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of this section, §1.861-14(e)(6), and §1.861-14T(c)(1).

(iv) *Effective date.* (A) The rules of paragraphs (e)(12)(i) and (iii) of this section shall apply to charitable contributions made on or after July 28, 2004. Taxpayers may apply the provisions of paragraphs (e)(12)(i) and (iii) of this section to charitable contributions made before July 28, 2004, but during the taxable year ending on or after July 28, 2004.

(B) The rules of paragraphs (e)(12)(ii) of this section shall apply to charitable contributions made on or after July 14, 2005. Taxpayers may apply the provisions of paragraph (e)(12)(ii) of this section to

charitable contributions made before July 14, 2005, but during the taxable year ending on or after July 14, 2005.

\* \* \* \* \*

Par. 3. Section 1.861-8T is amended as follows:

1. Remove paragraph (e)(12).

2. Revise the second sentence of paragraph (h) introductory text.

The revision reads as follows:

*§1.861-8T Computation of taxable income from sources within the United States and from other sources and activities (temporary).*

\* \* \* \* \*

(h) \* \* \* However, see §§1.861-8(e)(12)(iv) and 1.861-14(e)(6) for rules concerning the allocation and apportionment of deductions for charitable contributions. \* \* \*

\* \* \* \* \*

Par. 4. Section 1.861-14 is amended by removing paragraphs (d)(3) through (j), adding new paragraphs (d)(3) through (e)(5), adding paragraph (e)(6), and adding new paragraphs (f) through (j) to read as follows:

*§1.861-14 Special rules for allocating and apportioning certain expenses (other than interest expense) of an affiliated group of corporations.*

\* \* \* \* \*

(d)(3) through (e)(5) [Reserved]. For further guidance, see §1.861-14T(d)(3) through (e)(5).

(e)(6) *Charitable contribution expenses*—(i) *In general.* A deduction for a charitable contribution by a member of an affiliated group shall be allocated and apportioned under the rules of §§1.861-8(e)(12) and 1.861-14T(c)(1).

(ii) *Effective date.* (A) The rules of this paragraph shall apply to charitable contributions subject to §1.861-8(e)(12)(i) that are made on or after July 28, 2004, and, for taxpayers applying the second sentence of §1.861-8(e)(12)(iv)(A), to charitable contributions made during the taxable year ending on or after July 28, 2004.

(B) The rules of this paragraph shall apply to charitable contributions subject to §1.861-8(e)(12)(ii) that are made on or after July 14, 2005, and, for taxpayers applying the second sentence of

§1.861-8(e)(12)(iv)(B), to charitable contributions made during the taxable year ending on or after July 14, 2005.

(f) through (j) [Reserved]. For further guidance, see §1.861-14T(f) through (j).

**§1.861-14T [Amended]**

Par. 5. Section 1.861-14T is amended by removing paragraph (e)(6).

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

Approved July 5, 2005.

Eric Solomon,  
Acting Deputy Assistant Secretary  
of the Treasury.

(Filed by the Office of the Federal Register on July 13, 2005, 8:45 a.m., and published in the issue of the Federal Register for July 14, 2005, 70 F.R. 40661)

**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 August 2005.

**Rev. Rul. 2005-54**

This revenue ruling provides various prescribed rates for federal income tax purposes for August 2005 (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)(2) for buildings placed in service during the current month. 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. 2005-54 TABLE 1  
Applicable Federal Rates (AFR) for August 2005

	Period for Compounding			
	Annual	Semiannual	Quarterly	Monthly
<i>Short-term</i>				
AFR	3.58%	3.55%	3.53%	3.52%
110% AFR	3.95%	3.91%	3.89%	3.88%
120% AFR	4.31%	4.26%	4.24%	4.22%
130% AFR	4.67%	4.62%	4.59%	4.58%
<i>Mid-term</i>				
AFR	3.92%	3.88%	3.86%	3.85%
110% AFR	4.32%	4.27%	4.25%	4.23%
120% AFR	4.71%	4.66%	4.63%	4.62%
130% AFR	5.10%	5.04%	5.01%	4.99%
150% AFR	5.90%	5.82%	5.78%	5.75%
175% AFR	6.91%	6.79%	6.73%	6.70%
<i>Long-term</i>				
AFR	4.33%	4.28%	4.26%	4.24%
110% AFR	4.77%	4.71%	4.68%	4.66%
120% AFR	5.21%	5.14%	5.11%	5.09%
130% AFR	5.64%	5.56%	5.52%	5.50%

REV. RUL. 2005-54 TABLE 2				
Adjusted AFR for August 2005				
	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	2.71%	2.69%	2.68%	2.68%
Mid-term adjusted AFR	3.11%	3.09%	3.08%	3.07%
Long-term adjusted AFR	4.12%	4.08%	4.06%	4.05%

REV. RUL. 2005-54 TABLE 3	
Rates Under Section 382 for August 2005	
Adjusted federal long-term rate for the current month	4.12%
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.)	4.20%

REV. RUL. 2005-54 TABLE 4	
Appropriate Percentages Under Section 42(b)(2) for August 2005	
Appropriate percentage for the 70% present value low-income housing credit	7.96%
Appropriate percentage for the 30% present value low-income housing credit	3.41%

REV. RUL. 2005-54 TABLE 5	
Rate Under Section 7520 for August 2005	
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	4.8%

**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 August 2005. See Rev. Rul. 2005-54, page 289.

**Section 1363.—Effect of Election on Corporation**

26 CFR 1.1363-2: Recapture of LIFO benefits.

**T.D. 9210**

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

**LIFO Recapture Under Section 1363(d)**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations regarding LIFO recapture

by corporations converting from C corporations to S corporations. The purpose of these regulations is to provide guidance on the LIFO recapture requirement when the corporation holds inventory accounted for under the last-in, first-out (LIFO) method (LIFO inventory) indirectly through a partnership. These regulations affect C corporations that own interests in partnerships holding LIFO inventory and that elect to be taxed as S corporations or that transfer such partnership interests to S corporations in nonrecognition transactions. These regulations also affect S corporations receiving such partnership interests from C corporations in nonrecognition transactions.

DATES: *Effective Date:* These regulations are effective July 12, 2005.

*Applicability Date:* These regulations apply to S elections and transfers made on or after August 13, 2004.

FOR FURTHER INFORMATION CONTACT: Pietro Canestrelli, at (202) 622-3060 and Martin Schäffer, at (202) 622-3070 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

### **Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1906.

The collection of information in these final regulations is in § 1.1363-2(e)(3). This information is required to inform the IRS of partnerships electing to increase the basis of inventory to reflect any amount included in a partner's income under section 1363(d).

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 control number assigned by the Office of Management and Budget.

Estimated total annual reporting burden: 200 hours.

The estimated annual burden per respondent varies from 1 to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

Estimated number of respondents: 100.

Estimated annual frequency of responses: On occasion.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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 1363(d) of the Internal Revenue Code (Code). Section 1363(d)(1) provides that a C corporation that owns LIFO inventory and that elects under section 1362(a) to be taxed as an S corporation must include in its gross income for its final tax year as a C corporation the LIFO recapture amount. Under section 1363(d)(3), the LIFO recapture amount is the excess of the inventory amount of the inventory using the first-in, first-out (FIFO) method (the FIFO value) over the inventory amount of the inventory using the LIFO method (the LIFO value) at the close of the corporation's final tax year as a C corporation (essentially, the amount of income the corporation has deferred by using the LIFO method rather than the FIFO method).

Final regulations (T.D. 8567, 1994-2 C.B. 199) under section 1363(d) were published in the **Federal Register** on October 7, 1994 (59 FR 51105) to describe the recapture of LIFO benefits when a C corporation that owns LIFO inventory elects to become an S corporation or transfers LIFO inventory to an S corporation in a nonrecognition transaction. The regulations did not explicitly address the indirect ownership of inventory through a partnership.

A notice of proposed rulemaking (REG-149524-03, 2004-39 I.R.B. 528) was published in the **Federal Register** on August 13, 2004 (69 FR 50109). The proposed regulations provided guidance for situations in which a C corporation that owns LIFO inventory through a partnership (or through tiered partnerships) converts to an S corporation or transfers its partnership interest to an S corporation in a nonrecognition transaction. One person submitted comments in response to the notice of proposed rulemaking. A public hearing was held on December 8, 2004. After consideration of the comments, the proposed regulations are adopted as final regulations with the modifications discussed below.

### **Summary of Comments and Explanation of Revisions**

The proposed regulations provided that a C corporation that holds an interest in a partnership owning LIFO inventory must include the lookthrough LIFO recapture amount in its gross income where the corporation either elects to be an S corporation or transfers its interest in the partnership to an S corporation in a nonrecognition transaction. The proposed regulations defined the lookthrough LIFO recapture amount as the amount of income that would be allocated to the corporation, taking into account section 704(c) and §1.704-3, if the partnership sold all of its LIFO inventory for the FIFO value. A corporate partner's lookthrough LIFO recapture amount must be determined, in general, as of the day before the effective date of the S corporation election or, if the recapture event is a transfer of a partnership interest to an S corporation, the date of the transfer (the recapture date). The proposed regulations provided that, if a partnership is not otherwise required to determine inventory values on the recapture date, the lookthrough LIFO recapture amount may be determined based on inventory values of the partnership's opening inventory for the year that includes the recapture date.

The sole commentator suggested that the regulations provide that, if the lookthrough LIFO recapture amount is determined based on inventory values of the partnership's opening inventory for the year that includes the recapture date, then the lookthrough LIFO recapture amount must be adjusted to take into account any adjustments to the partnership's basis in its LIFO inventory that result from transactions occurring during the period from the start of the partnership's tax year to the end of the recapture date. Thus, the lookthrough LIFO recapture amount would have to reflect any adjustments to the basis of LIFO inventory during that period under sections 734(b), 737(c), or 751(b). The final regulations adopt this suggestion.

The proposed regulations provided that a corporation owning LIFO inventory through a partnership must increase its basis in its partnership interest by the lookthrough LIFO recapture amount. The proposed regulations also allowed the partnership through which the LIFO in-

ventory is owned to elect to adjust the basis of partnership inventory (or lookthrough partnership interests held by that partnership) to account for LIFO recapture. This adjustment to basis is patterned in manner and effect after the adjustment in section 743(b). Thus, the basis adjustment constitutes an adjustment to the basis of the LIFO inventory (or lookthrough partnership interests held by that partnership) with respect to the corporate partner only; no adjustment is made to the partnership's common basis.

The Treasury Department and the IRS requested comments on whether the partnership should be required, in some or all circumstances, to increase the basis of partnership assets by the lookthrough LIFO recapture amount attributable to those assets. No comments were received on this question. Therefore, the final regulations follow the rule of the proposed regulations.

The sole commentator recommended that the regulations should extend the availability of a section 743(b)-type basis adjustment to the purchase of a lookthrough partnership interest by a C corporation that subsequently makes an S election (or subsequently disposes of the partnership interest in a nontaxable carryover basis transaction). It has been determined that this recommendation is beyond the scope of the regulations and, so, is not included in the final regulations.

The commentator recommended that the regulations provide for the retroactive revaluation of LIFO inventories under §1.704-1(b)(2)(iv)(f) when a non-C corporation partner has been admitted to a partnership (or the non-C-corporation partner's relative interest in the partnership has increased) within a period of two years ending on the date when a C corporation partner in the same partnership makes an S election (or transfers its partnership interest to an S corporation in a nontaxable carryover basis transaction). It has been determined that this recommendation is beyond the scope of the regulations and, so, is not included in the final regulations.

Regarding the payment of the LIFO recapture tax during an S year, the commentator made two suggestions. First, notwithstanding section 1371(c)(1), the regulations should provide that the S corporation's earnings and profits be reduced upon such a payment. Second, notwithstand-

ing section 1367(a)(2)(D), the regulations should provide that the stock basis of the shareholders of the S corporation not be reduced upon such a payment. The issues raised by the payment by an S corporation of taxes attributable to a taxable year in which the corporation was a C corporation are not unique to a payment of the LIFO recapture tax and are beyond the scope of these regulations.

Finally, the commentator questioned whether it is appropriate to issue these regulations under the authority of section 337(d). The Treasury Department and the IRS continue to believe that issuing these regulations under the authority of section 337(d) is appropriate, because Congress's purpose in enacting section 1363(d) was to prevent taxpayers owning LIFO inventory from avoiding the built-in gain rules of section 1374. H.R. Rep. No. 100-391 (Parts 1 and 2), 1098 (1987).

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866; therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few corporations engage in the type of transactions that are subject to these regulations (the conversion from C corporation to S corporation status while holding an interest in a partnership that owns LIFO inventory or the transfer of an interest in such a partnership by a C corporation to an S corporation in a nonrecognition transaction). Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. These final regulations are necessary to prevent abusive transactions involving partnerships and S corporations. Accordingly, good cause is found for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). Pursuant to section 7805(f) of the 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 authors of these regulations are Pietro Canestrelli and Martin Schäffer, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

### Adoption of 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 an entry in numerical order to read, in part, as follows:

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

Section 1.1363-2 also issued under 26 U.S.C. 337(d). \* \* \*

Par. 2. Section 1.1363-2 is amended by:

1. Redesignating paragraphs (b), (c), and (d) as paragraphs (d), (e), and (g), respectively.
2. Adding new paragraphs (b), (c), (f), and (g)(3).
3. Revising newly designated paragraphs (d) and (e).

The revision and addition read as follows:

#### *§1.1363-2 Recapture of LIFO benefits.*

\* \* \* \* \*

(b) *LIFO inventory held indirectly through partnership.* A C corporation must include the lookthrough LIFO recapture amount (as defined in paragraph (c)(4) of this section) in its gross income—

(1) In its last taxable year as a C corporation if, on the last day of the corporation's last taxable year before its S corporation election becomes effective, the corporation held a lookthrough partnership interest (as defined in paragraph (c)(3) of this section); or

(2) In the year of transfer by the C corporation to an S corporation of a lookthrough partnership interest if the corporation transferred its lookthrough partnership interest to the S corporation in a nonrecognition transaction (within the meaning of section 7701(a)(45)) in which the

transferred interest constitutes transferred basis property (within the meaning of section 7701(a)(43)).

(c) *Definitions and special rules*—(1) *Recapture date.* In the case of a transaction described in paragraph (a)(1) or (b)(1) of this section, the recapture date is the day before the effective date of the S corporation election. In the case of a transaction described in paragraph (a)(2) or (b)(2) of this section, the recapture date is the date of the transfer of the partnership interest to the S corporation.

(2) *Determination of LIFO recapture amount.* The LIFO recapture amount shall be determined as of the end of the recapture date for transactions described in paragraph (a)(1) of this section, and as of the moment before the transfer occurs for transactions described in paragraph (a)(2) of this section.

(3) *Lookthrough partnership interest.* A partnership interest is a lookthrough partnership interest if the partnership owns (directly or indirectly through one or more partnerships) assets accounted for under the last-in, first-out (LIFO) method (LIFO inventory).

(4) *Lookthrough LIFO recapture amount*—(i) *In general.* For purposes of this section, a corporation's lookthrough LIFO recapture amount is the amount of income that would be allocated to the corporation, taking into account section 704(c) and §1.704-3, if the partnership sold all of its LIFO inventory for the inventory's FIFO value. For this purpose, the FIFO value of inventory is the inventory amount of the inventory assets under the first-in, first-out method of accounting authorized by section 471, determined in accordance with section 1363(d)(4)(C).

(ii) *Determination of lookthrough LIFO recapture amount.* Except as provided in paragraph (c)(4)(iii) of this section, the lookthrough LIFO recapture amount shall be determined as of the end of the recapture date for transactions described in paragraph (b)(1) of this section, and as of the moment before the transfer occurs for transactions described in paragraph (b)(2) of this section.

(iii) *Alternative rule.* If the partnership is not otherwise required to determine the inventory amount of the inventory using the LIFO method (the LIFO value) on the recapture date, the partnership may determine the lookthrough LIFO

recapture amount as though the FIFO and LIFO values of the inventory on the recapture date equaled the FIFO and LIFO values of the opening inventory for the partnership's taxable year that includes the recapture date. For this purpose, the opening inventory includes inventory contributed by a partner to the partnership on or before the recapture date and excludes inventory distributed by the partnership to a partner on or before the recapture date. A partnership that applies the alternative method of this paragraph (c)(4)(iii) to calculate the lookthrough LIFO recapture amount must take into account any adjustments to the partnership's basis in its LIFO inventory that result from transactions occurring after the start of the partnership's taxable year and before the end of the recapture date. For example, the lookthrough LIFO recapture amount must be adjusted to take into account any adjustments to the basis of LIFO inventory during that period under sections 734(b), 737(c), or 751(b).

(d) *Payment of tax.* Any increase in tax caused by including the LIFO recapture amount or the lookthrough LIFO recapture amount in the gross income of the C corporation is payable in four equal installments. The C corporation must pay the first installment of this payment by the due date of its return, determined without regard to extensions, for the last taxable year it operated as a C corporation if paragraph (a)(1) or (b)(1) of this section applies, or for the taxable year of the transfer if paragraph (a)(2) or (b)(2) of this section applies. The three succeeding installments must be paid—

(1) For a transaction described in paragraph (a)(1) or (b)(1) of this section, by the corporation that made the election under section 1362(a) to be an S corporation, on or before the due date for the corporation's returns (determined without regard to extensions) for the succeeding three taxable years; and

(2) For a transaction described in paragraph (a)(2) or (b)(2) of this section, by the transferee S corporation on or before the due date for the transferee corporation's returns (determined without regard to extensions) for the succeeding three taxable years.

(e) *Basis adjustments*—(1) *General rule.* Appropriate adjustments to the basis of inventory are to be made to reflect any

amount included in income under paragraph (a) of this section.

(2) *LIFO inventory owned through a partnership*—(i) *Basis of corporation's partnership interest.* Appropriate adjustments to the basis of the corporation's lookthrough partnership interest are to be made to reflect any amount included in income under paragraph (b) of this section.

(ii) *Basis of partnership assets.* A partnership directly holding LIFO inventory that is taken into account under paragraph (b) of this section may elect to adjust the basis of that LIFO inventory. In addition, a partnership that holds, through another partnership, LIFO inventory that is taken into account under paragraph (b) of this section may elect to adjust the basis of that partnership interest. Any adjustment under this paragraph (e)(2) to the basis of inventory held by the partnership is equal to the amount of LIFO recapture attributable to the inventory. Likewise, any adjustment under this paragraph (e)(2) to the basis of a lookthrough partnership interest held by the partnership is equal to the amount of LIFO recapture attributable to the interest. A basis adjustment under this paragraph (e)(2) is treated in the same manner and has the same effect as an adjustment to the basis of partnership property under section 743(b). See §1.743-1(j).

(3) *Election.* A partnership elects to adjust the basis of its inventory and any lookthrough partnership interest that it owns by attaching a statement to its original or amended income tax return for the first taxable year ending on or after the date of the S corporation election or transfer described in paragraph (b) of this section. This statement shall state that the partnership is electing under this paragraph (e)(3) and must include the names, addresses, and taxpayer identification numbers of any corporate partner liable for tax under paragraph (d) of this section and of the partnership, as well as the amount of the adjustment and the portion of the adjustment that is attributable to each pool of inventory or lookthrough partnership interest that is held by the partnership.

(f) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* (i) G is a C corporation with a taxable year ending on June 30. GH is a partnership with a calendar year taxable year. G has a 20 percent interest in GH. The remaining 80 percent interest is owned by an individual. On April 25, 2005, G contributed inventory that is LIFO inventory to GH, increasing G's

interest in the partnership to 50 percent. GH holds no other LIFO inventory, and there are no other adjustments to the partnership's basis in its LIFO inventory between January 1, 2005, and the end of the recapture date. G elects to be an S corporation effective July 1, 2005. The recapture date is June 30, 2005, under paragraph (c)(1) of this section. GH elects to use the LIFO method for the inventory and determines that the FIFO and LIFO values of the opening inventory for GH's 2005 taxable year, including the inventory contributed by G, are \$200 and \$120, respectively.

(ii) Under paragraph (c)(4)(iii) of this section, GH is not required to determine the FIFO and LIFO values of the inventory on the recapture date. Instead, GH may determine the lookthrough LIFO recapture amount as though the FIFO and LIFO values of the inventory on the recapture date equaled the FIFO and LIFO values of the opening inventory for the partnership's taxable year (2005) that includes the recapture date. For this purpose, under paragraph (c)(4) of this section, the opening inventory includes the inventory contributed by G. The amount by which the FIFO value (\$200) exceeds the LIFO value (\$120) in GH's opening inventory is \$80. Thus, if GH sold all of its LIFO inventory for \$200, it would recognize \$80 of income. G's lookthrough LIFO recapture amount is \$80, the amount of income that would be allocated to G, taking into account section 704(c) and §1.704-3, if GH sold all of its LIFO inventory for the FIFO value. Under paragraph (b)(1) of this section, G must include \$80 in income in its taxable year

ending on June 30, 2005. Under paragraph (e)(2) of this section, G must increase its basis in its interest in GH by \$80. Under paragraphs (e)(2) and (3) of this section, and in accordance with section 743(b) principles, GH may elect to increase the basis (with respect to G only) of its LIFO inventory by \$80.

*Example 2.* (i) J is a C corporation with a calendar year taxable year. JK is a partnership with a calendar year taxable year. J has a 30 percent interest in the partnership. JK owns LIFO inventory that is not section 704(c) property. J elects to be an S corporation effective January 1, 2005. The recapture date is December 31, 2004, under paragraph (c)(1) of this section. JK determines that the FIFO and LIFO values of the inventory on December 31, 2004, are \$240 and \$140, respectively.

(ii) The amount by which the FIFO value (\$240) exceeds the LIFO value (\$140) on the recapture date is \$100. Thus, if JK sold all of its LIFO inventory for \$240, it would recognize \$100 of income. J's lookthrough LIFO recapture amount is \$30, the amount of income that would be allocated to J if JK sold all of its LIFO inventory for the FIFO value (30 percent of \$100). Under paragraph (b)(1) of this section, J must include \$30 in income in its taxable year ending on December 31, 2004. Under paragraph (e)(2) of this section, J must increase its basis in its interest in JK by \$30. Under paragraphs (e)(2) and (3) of this section, and in accordance with section 743(b) principles, JK may elect to increase the basis (with respect to J only) of its inventory by \$30.

(g) \* \* \*

(3) The provisions of paragraphs (b), (c), (d), (e)(2), (e)(3), and (f) of this section apply to S elections and transfers made on or after August 13, 2004. The rules that apply to S elections and transfers made before August 13, 2004, are contained in §1.1363-2 as in effect prior to August 13, 2004 (see 26 CFR part 1 revised as of April 1, 2005).

**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In §602.101, paragraph (b) is amended by adding an 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.
* * * * *	
1.1363-2 .....	1545-1906
* * * * *	

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

Approved June 23, 2005.

Eric Solomon,  
*Acting Deputy Assistant Secretary of the Treasury.*

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**Section 7520.—Valuation Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2005. See Rev. Rul. 2005-54, page 289.

**Section 7805.—Rules and Regulations**

*26 CFR 301.7805-1: Rules and regulations.*

Whether a revenue ruling may be applied prospectively where a profit-sharing plan contains a medical

reimbursement account for each participant. See Rev. Rul. 2005-55, page 284.

**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 August 2005. See Rev. Rul. 2005-54, page 289.

# Part III. Administrative, Procedural, and Miscellaneous

## Section 457(b) Plans and Federal Credit Unions

### Notice 2005-58

#### I. PURPOSE

This notice addresses certain income tax issues with respect to nonqualified deferred compensation plans maintained by federal credit unions, including whether a federal credit union can maintain an eligible nonqualified deferred compensation plan described in § 457(b) of the Internal Revenue Code (the “Code”).

The provisions of this notice are applicable to any nonqualified deferred compensation plan maintained by a federal credit union described in § 501(c)(1) until publication of guidance regarding the definition of a “governmental plan” under § 414(d).

#### II. BACKGROUND

Section 457 provides rules regarding the taxation of a nonqualified deferred compensation plan of an eligible employer. For this purpose, the term “eligible employer” is defined in § 457(e)(1)(A) as a state, a political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state. In addition, § 457(e)(1)(B) includes as an eligible employer “any other organization (*other than a governmental unit*) exempt from tax under” subtitle A of the Internal Revenue Code. [Emphasis added.] Section 1.457-2(e) of the Income Tax Regulations provides that the term “eligible employer” does not include “the federal government or any agency or instrumentality thereof.” Thus, agencies or instrumentalities of the federal government are not eligible employers described in § 457(e)(1)(A) or (B).

In 2004, the IRS issued a private letter ruling (LTR 200430013) to a federal credit union indicating that because federal credit unions chartered under the Federal Credit Union Act are not eligible employers under § 457(e)(1), the nonqualified deferred compensation plan to be established by the requesting entity is not an eligible

plan under § 457(b). This private letter ruling was based on prior published authority indicating that federal credit unions chartered under the Federal Credit Union Act are federal instrumentalities for purposes of § 501(c)(1). Rev. Rul. 69-283, 1969-1 C.B. 156. *See also* Rev. Rul. 55-133, 1955-1 C.B. 138 (*superseded by* Rev. Rul. 60-169) (“Federal credit unions are recognized as instrumentalities of the United States within the meaning of section 501(c)(1) of the Internal Revenue Code”); Rev. Rul. 60-169, 1960-1 C.B. 621 (*obsoleted on other grounds by* Rev. Rul. 89-94, 1989-2 C.B. 233) (“Federal credit unions organized and operated in accordance with the Federal Credit Union Act are recognized as instrumentalities of the United States within the meaning of section 501(c)(1) of the Code.”)

Section 6110(k)(3) provides that a private letter ruling applies only to the taxpayer who requested it and is not to be cited or treated as precedent with respect to any other taxpayer. Therefore, no federal credit union, other than the credit union to whom the private letter ruling was issued, is entitled to rely on the 2004 private letter ruling with respect to whether § 457 applies to its nonqualified deferred compensation plan. In addition, the 2004 private letter ruling did not address the application of other provisions of the Internal Revenue Code to a nonqualified deferred compensation plan maintained by a federal credit union.

#### III. CURRENT TREATMENT OF FEDERAL CREDIT UNION 457 PLANS

Treasury and the IRS intend to publish guidance regarding the meaning of the term “governmental plan” under § 414(d). Treasury and the IRS have determined that, until § 414(d) guidance is published, a plan in effect on August 15, 2005, that is maintained by a federal credit union and is intended to be an eligible nonqualified deferred compensation plan of a non-governmental tax-exempt entity under § 457(b) will not fail to be a § 457(b) plan solely because the employer establishing and maintaining it is a federal credit union

described in § 501(c)(1), provided that the federal credit union has consistently claimed the status of a non-governmental tax-exempt organization for all employee benefit plan purposes, including § 414(d) and the parallel definition of a “governmental plan” in section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA). In addition, because eligible § 457(b) plans are not subject to § 409A of the Code (providing new requirements for most nonqualified deferred compensation plans), if the federal credit union treats its nonqualified deferred compensation plan as an eligible § 457(b) plan pursuant to this notice, that plan will not be subject to the requirements of § 409A. If future § 414(d) guidance contains rules providing that a federal credit union is not an eligible employer under § 457, the guidance will include a reasonable transition period during which any federal credit union that has consistently claimed the status of a non-governmental tax-exempt organization will be permitted to revise its arrangements in order to avoid possible adverse tax consequences for participants in its nonqualified deferred compensation plan that was intended to constitute an eligible plan under § 457(b).

Pending further guidance, a federal credit union that has consistently claimed the status of a non-governmental tax-exempt organization for all employee benefit plan purposes may treat § 457(f) as applying to any nonqualified plan it maintains (other than an eligible § 457(b) plan) that provides for a deferral of compensation. Note that § 409A applies to arrangements to which § 457(f) applies. *See* Q&A-6 of Notice 2005-1, 2005-2 I.R.B. 274, 279.

#### IV. DRAFTING INFORMATION

The principal author of this notice is John A. Tolleris of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this notice, contact John A. Tolleris at (202) 622-6060 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

(Also: Part I, §§ 6011, 6662, 6662A, 6707A; 1-6011-4.)

## Rev. Proc. 2005-51

### SECTION 1. PURPOSE

This revenue procedure provides guidance to persons who may be required to pay certain penalties under sections 6662(h), 6662A, or 6707A of the Internal Revenue Code, and who may be required under section 6707A(e) to disclose those penalties on reports filed with the Securities and Exchange Commission. This revenue procedure describes the report on which the disclosures must be made, the information that must be disclosed, and the deadlines by which persons must make the disclosures on reports filed with the SEC in order to avoid additional penalties under section 6707A(e).

### SECTION 2. BACKGROUND

.01 Section 6011 and the regulations thereunder require a taxpayer that has participated in a reportable transaction to disclose certain information with respect to the reportable transaction with its tax return. Section 1.6011-4(b) of the Income Tax Regulations describes six categories of reportable transactions. One category of reportable transactions is a transaction that is the same as, or substantially similar to, one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and has identified by notice, regulation, or other form of published guidance as a "listed transaction." Treas. Reg. § 1.6011-4(b)(2).

.02 The American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (the Act) was enacted on October 22, 2004. Section 811 of the Act added section 6707A to the Code to provide a monetary penalty for the failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction. Section 6707A(b)(1) provides that the penalty for failure to include information with respect to a reportable transaction, other than a listed transaction, is \$10,000 in the case of

a natural person, and \$50,000 in any other case. Section 6707A(b)(2) provides that for a listed transaction, the penalty is increased to \$100,000 in the case of a natural person, and \$200,000 in any other case.

.03 Section 812 of the Act, which added section 6662A to the Code, provides that a 20-percent accuracy-related penalty may be imposed on any "reportable transaction understatement," as defined in section 6662A(b). Section 6662A(c) increases the penalty rate to 30-percent for the portion of any reportable transaction understatement with respect to which the relevant facts affecting the tax treatment of the item were not adequately disclosed in accordance with regulations prescribed under section 6011. If the penalty under section 6707A for failure to include reportable transaction information with a return is rescinded pursuant to section 6707A(d), the taxpayer is treated as having adequately disclosed the relevant facts with respect to that reportable transaction, and the 30-percent penalty rate under section 6662A(c) does not apply. See I.R.C. § 6664(d)(2). In addition, section 6662A(e)(2)(C)(ii) provides that the reportable transaction understatement penalty does not apply to any portion of an understatement on which the 40-percent accuracy-related penalty for a gross valuation misstatement is imposed under section 6662(h).

.04 Section 6707A(e) requires a person that is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934, or is required to be consolidated with another person for purposes of those reports, to disclose in those reports for the periods specified by the Secretary the requirement to pay the penalties set forth in section 6707A(e)(2). If the person fails to disclose the requirement to pay the penalties, as required by section 6707A(e), that failure shall be treated as a failure to disclose a listed transaction and shall be subject to an additional penalty.

.05 Under section 6707A(e), the penalties a person must disclose in periodic reports filed with the SEC are as follows:

(1) the penalty imposed by section 6707A(a) in the amount determined under section 6707A(b)(2) for failure to disclose a listed transaction;

(2) the accuracy-related penalty imposed by section 6662A(a) at the 30-percent rate determined under section 6662A(c) for a reportable transaction

understatement with respect to which the relevant facts affecting the tax treatment of the item were not adequately disclosed in accordance with regulations prescribed under section 6011;

(3) the accuracy-related penalty imposed by section 6662(a) at the 40-percent rate determined under section 6662(h) for a gross valuation misstatement, if the person would (but for the exclusionary rule of section 6662A(e)(2)(C)(ii)) have been subject to the accuracy-related penalty under section 6662A(a) at the 30-percent rate determined under section 6662A(c); and

(4) the penalty imposed by section 6707A(e) for failure to disclose any of the penalties described in section 2.05(1) – (3) of this revenue procedure in periodic reports required under section 13 or 15(d) of the Securities Exchange Act of 1934, as specified in this revenue procedure.

### SECTION 3. SCOPE

This revenue procedure applies to any person required to pay any penalty described in section 2.05 of this revenue procedure that is also required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of those reports. Further guidance will be issued providing pre-assessment administrative appeal rights to persons required to pay the penalties described in section 2.05(1). The administrative appeal rights for the penalties described in section 2.05(2) and (3) are the same as the administrative appeal rights afforded with respect to the deficiency determinations (or proposed deficiency determinations) with which those penalties are associated, and no separate administrative appeal rights regarding those penalties are available. There are no administrative appeal rights with respect to penalties described in section 2.05(4).

### SECTION 4. APPLICATION

.01 *Periodic reports required under the Securities Exchange Act of 1934.* In accordance with section 6707A(e), a person who files SEC Form 10-K, Annual Report, pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934, either separately or consolidated with another per-

son, must disclose in Item 3 (Legal Proceedings) of Form 10-K the requirement to pay any penalty specified in section 2.05 of this revenue procedure.

.02 *Required disclosures.* A person must disclose in the Form 10-K the amount of any penalty specified in section 2.05 of this revenue procedure, whether it has paid the penalty in full, the Code section and subparagraph under which the penalty was determined (*i.e.*, section 6662(h), section 6662A(c), section 6707A(b)(2), or section 6707A(e)), and a description of the penalty (*i.e.*, accuracy-related penalty for gross valuation misstatement, accuracy-related penalty on an understatement attributable to a nondisclosed listed or other avoidance transaction, penalty for failure to include listed transaction information with return, or penalty for failure to disclose imposition of penalty in report filed with the SEC). A person must disclose in its Form 10-K the requirement to pay the 40-percent accuracy-related penalty under section 6662(h) if:

(1) the person consented to the assessment of the 40-percent penalty without the issuance of a statutory notice of deficiency if the Service proposed the 30-percent penalty determined under section 6662A(c) in the alternative in a notice of proposed deficiency (30-day letter);

(2) the person consented to the assessment of the 40-percent penalty or did not timely petition the Tax Court if the Service included the 30-percent penalty determined under 6662A(c) in the alternative in a statutory notice of deficiency;

(3) the government raised the 30-percent accuracy-related penalty under section 6662A(c) in the alternative in any pleading in a judicial proceeding challenging the applicability of the 40-percent penalty and the court expressly determined that the 30-percent penalty applied in the alternative to the 40-percent penalty; or

(4) the person expressly acknowledged the applicability of the 30-percent accuracy-related penalty under section 6662A(c) in the alternative to the 40-percent accuracy-related penalty under section 6662(h) in a written settlement agreement with the government.

.03 *When disclosure must be made.* (1) A person required to pay a penalty specified in section 2.05 of this revenue procedure must disclose the requirement to pay

the penalty on the Form 10-K filed with the SEC that relates to the fiscal year (as defined in 17 C.F.R. § 240.12b-2) in which the Service sends the person notice and demand for payment of the penalty. If the person pays the penalty (not including interest) in full prior to the Service sending notice and demand for payment, the person must disclose the requirement to pay the penalty on the Form 10-K filed with the SEC that relates to the fiscal year in which the person has paid the penalty. If the person fails to disclose the requirement to pay any penalty specified in section 2.05, as specified in the two preceding sentences, the disclosure must be made on the next Form 10-K filed with the SEC after the failure to disclose has occurred. This obligation to disclose on each successive Form 10-K filed will continue until the person actually discloses its requirement to pay each of the penalties specified in section 2.05. Each failure to disclose the requirement to pay a penalty specified in section 2.05, in the manner specified in sections 4.01, 4.02 and this section 4.03, will give rise to a new, separate penalty under section 6707A(e) that also must be disclosed on the Form 10-K in the manner specified.

*Example:* In Year 1, Taxpayer T failed to disclose the requirement to pay a section 6662A(c) accuracy-related penalty on the Form 10-K filed with the SEC (the Year 1 Form 10-K) that relates to the fiscal year in which the IRS sent notice and demand for payment of the penalty. Taxpayer T is subject to a penalty under section 6707A(e) for a failure to disclose the section 6662A(c) accuracy-related penalty. Accordingly, Taxpayer T must disclose on the next Form 10-K filed with the SEC (the Year 2 Form 10-K) the requirement to pay the original section 6662A(c) penalty and, if the IRS sends notice and demand for payment of the section 6707A(e) penalty in the fiscal year to which the Year 2 Form 10-K relates, must disclose the requirement to pay that penalty as well.

(2) If a person brings a refund action seeking recovery of a 40-percent accuracy-related penalty under section 6662(h) and the government raises the 30-percent penalty under section 6662A(c) in the alternative in any pleading filed in that action without having previously raised the 30-percent penalty in a 30-day letter or a statutory notice of deficiency, the requirement to disclose the penalty will only apply if the 30-percent penalty is upheld, either directly or in the alternative to the 40-percent penalty. In that case, the person must disclose the requirement to pay either the 30-percent or 40-percent penalty, as applicable, on the first Form

10-K filed with the SEC that relates to the fiscal year in which a decision upholding the 30-percent penalty (either directly, or in the alternative to the 40-percent penalty) becomes final. If, after commencing a refund action described above, the person enters into a written settlement agreement with the government expressly acknowledging the applicability of the 30-percent penalty in the alternative to the 40-percent penalty, the person must disclose the requirement to pay either the 30-percent or 40-percent penalty, as applicable, on the first Form 10-K filed with the SEC that relates to the fiscal year in which the settlement agreement is entered into.

## SECTION 5. 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 (44 U.S.C. § 3507) under control number 1545-1956.

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

The collections of information in this revenue procedure are in sections 4.01 and 4.02. This information is required to enforce the provisions of section 6707A(e) and make investors or potential investors aware of a person's participation in certain reportable transactions that led to penalties under the Internal Revenue Code. The collection of information is mandatory. The likely respondents are businesses that are publicly traded corporations.

The estimated total annual reporting or recordkeeping burden is 429.5 hours.

The estimated annual burden per respondent/recordkeeper varies from .25 to .75 hour, depending on individual circumstances, with an estimated average of .5 hour. The estimated number of respondents 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 6. EFFECTIVE DATE

This revenue procedure is effective for any penalty specified in section 2.05 that

relates to a return or statement the due date for which is after October 22, 2004.

#### SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Matthew S. Cooper of the

Office of the Associate Chief Counsel (Procedure & Administration), Administrative Provisions & Judicial Practice Division. For further information regarding this revenue procedure, contact Matthew S. Cooper at (202) 622-4940 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking and Notice of Public Hearing

## Use of Electronic Technologies for Providing Employee Benefit Notices and Transmitting Employee Benefit Elections and Consents

### REG-138362-04

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that would provide guidance on the use of electronic media to provide certain notices to recipients or to transmit participant and beneficiary elections or consents with respect to employee benefit arrangements. In general, these proposed regulations would affect sponsors of, and participants and beneficiaries in, certain employee benefit arrangements. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 12, 2005. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for November 2, 2005, must be received by October 12, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-138362-04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday, between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-138362-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at

[www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS—REG—138362-04). The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Pamela R. Kinard at (202) 622-6060; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622-7180 (not toll-free numbers).

### SUPPLEMENTARY INFORMATION:

#### Paperwork Reduction Act

The collections of information referenced in this notice of proposed rulemaking were previously 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 1545-1632, in conjunction with the Treasury Decision (T.D. 8873, 2000-1 C.B. 713), relating to New Technologies in Retirement Plans, published on February 8, 2000 in the **Federal Register** (65 FR 6001), and control number 1545-1780, in conjunction with the Treasury Decision (T.D. 9052, 2003-1 C.B. 879), relating to Notice of Significant Reduction in the Rate of Future Benefit Accrual, published on April 9, 2003 in the **Federal Register** (68 FR 17277). No substantive changes to these collections of information are being proposed.

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 control number assigned by the Office of Management and Budget.

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 proposed amendments to the regulations under section 401 of the Internal Revenue Code (Code) and to other sections of the Code relating to employee benefit arrangements. These proposed amendments, when finalized, will set forth rules regarding the use of electronic media to provide notices to plan participants and beneficiaries or to transmit elections or consents relating to employee benefit arrangements. These regulations also reflect the provisions of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229 (114 Stat. 464 (2000)) (E-SIGN).

The Code and regulations thereunder, and the parallel provisions of the Employee Retirement Income Security Act of 1974 (ERISA), include a number of rules that require certain retirement plan notices, elections, or consents to be written or in writing.<sup>1</sup> Examples of these rules include the following:

- Under sections 401(k)(12)(D) and 401(m)(11), a written notice is required to be given to each employee eligible to participate in a cash or deferred arrangement under section 401(k) in order for the plan to be permitted to use a safe harbor in lieu of the actual deferral percentage test or actual contribution percentage test to ensure that the plan satisfies certain nondiscrimination requirements.
- Under section 402(f), a plan is required to provide a distributee, within a reasonable period of time before an eligible rollover distribution is made, a written explanation of the distributee's rollover rights and the tax and other potential consequences of the distribution or rollover.
- Under section 411(a)(11) (and the parallel provision in section 203(e) of ERISA) and §1.411(a)-11(f)(2), a participant cannot be cashed out of a plan before the later of normal retirement age or age 62 without the participant's

<sup>1</sup> Pursuant to section 101(a) of the Reorganization Plan No. 4 of 1978, 29 U.S.C. 1001nt, the Secretary of the Treasury has authority to issue regulations under parts 2 and 3 of subtitle B of title I of ERISA with certain exceptions. Under section 104 of the Reorganization Plan No. 4, the Secretary of Labor retains enforcement authority with respects to parts 2 and 3 of subtitle B of title I of ERISA, but, in exercising that authority, is bound by the regulations issued by the Secretary of Treasury.

written consent if the value of the participant's nonforfeitable accrued benefit exceeds \$5,000.

- Under section 417 (and the parallel provision in section 205 of ERISA) and the regulations thereunder, a plan must provide to each participant a written explanation of the terms and conditions of a qualified joint and survivor annuity, the participant's right to make an election to waive the qualified joint and survivor annuity, the right to revoke such an election, and the rights of the participant's spouse. Under section 417(a)(2), an election to waive a qualified joint and survivor annuity can generally go into effect only if the participant's spouse consents to the election in writing and that consent is witnessed by either a plan representative or a notary public.
- Under section 3405(e)(10)(B) and §34.3405-1, A-d-35, a payor is required to provide written notice to a payee regarding the payee's right to elect not to have Federal income tax withheld from a periodic payment (as defined in section 3405(e)(2)).
- Under section 4980F (and the parallel provision in section 204(h) of ERISA) and §54.4980F-1, A-13, a plan must provide written notice (section 204(h) notice) of an amendment to an applicable pension plan that either provides for a significant reduction in the rate of future benefit accrual or that eliminates or significantly reduces an early retirement benefit or retirement-type subsidy.

Section 1510 of the Taxpayer Relief Act of 1997, Public Law 105-34 (111 Stat. 788, 1068) (TRA '97), provides for the Secretary of the Treasury to issue guidance designed to interpret the notice, election, consent, disclosure, and timing requirements (include related recordkeeping requirements) under the Code and ERISA relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators. Section 1510 of TRA '97 further provides that the guidance should maintain the protection of

the rights of participants and beneficiaries. Pursuant to the mandate of section 1510 of TRA '97, final regulations (T.D. 8873) relating to the use of electronic media for transmissions of notices and consents under sections 402(f), 411(a)(11), and 3405(e)(10)(B) were published in the **Federal Register** (65 FR 6001) on February 8, 2000 (the 2000 regulations). These regulations are discussed in this preamble under the heading *Prior Guidance Related to New Technologies*.

E-SIGN, signed into law on June 30, 2000, generally provides that electronic documents and signatures are given the same legal effect as their paper counterparts. Section 101(a) of E-SIGN provides that, notwithstanding any statute, regulation, or rule of law relating to a transaction in or affecting interstate or foreign commerce, a signature, contract, or other record may not be denied legal effect, validity, or enforceability solely because it is in electronic form.

Section 101(b)(1) provides that E-SIGN does not limit, alter, or otherwise affect any requirement imposed by a statute, regulation, or rule of law relating to a person's rights or obligations under any statute, regulation, or rule of law except with respect to a requirement that contracts be written, signed, or in non-electronic form. Section 101(b)(2) provides that E-SIGN does not require any person to agree to use or accept electronic signatures or records, other than a governmental agency with respect to a record other than a contract to which it is a party.

Section 101(c) of E-SIGN sets forth special protections for consumers that apply when a statute, regulation, or other rule of law requires that consumer information relating to a transaction be provided or made available in writing.<sup>2</sup> Under those protections, before information can be transmitted electronically, a consumer must first affirmatively consent to receiving the information electronically and the consent must be made in a manner that reasonably demonstrates the consumer's ability to access the information in electronic form (or if the consent is not provided in such a manner, that confirmation of the consent be made electronically in a manner that reasonably demonstrates the con-

sumer's ability to access the information in electronic form). Prior to consent, the consumer must receive certain specified disclosures. The disclosures must include, among other items, the hardware or software requirements for access to and retention of the electronic records, the consumer's right to withdraw his or her consent to receive the information electronically (and the consequences that follow the withdrawal of consent), the procedures for requesting a paper copy of the electronic record, and the cost, if any, of obtaining a paper copy. Section 106(1) of E-SIGN generally defines a consumer as an individual who obtains products or services used primarily for personal, family, or household purposes.

Section 104(b)(1) of E-SIGN generally provides that a Federal or state agency that is responsible for rulemaking under a statute has interpretative authority to issue guidance interpreting section 101 of E-SIGN with respect to that other statute. However, as a limitation on that authority, section 104(b)(2) of E-SIGN prohibits the issuance of any regulation that is not consistent with section 101 or that adds to the requirements of that section. Section 104(b)(2) of E-SIGN also requires that any agency issuing the regulations find that the rules selected to carry out the purpose of the relevant statute are substantially equivalent to the requirements imposed on records that are not electronic, do not impose unreasonable cost on the acceptance and use of electronic records, and do not require or give greater legal status to a specific technology.

Section 104(d)(1) of E-SIGN authorizes a Federal regulatory agency to exempt, without condition, a specified category or type of record from the consent requirements in section 101(c). The exemption may be issued only if the exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers.

Subsequent to the enactment of E-SIGN, Congress amended section 204(h) of ERISA and enacted a corresponding provision in section 4980F of the Code. Under ERISA section 204(h)(7) and Code section 4980F(g), the Secretary

<sup>2</sup> The rules of section 101 of E-SIGN do not apply to certain consumer notices. These include consumer notices that are necessary for the protection of a consumer's health, safety, or shelter (e.g., cancellation of health benefits or life insurance and foreclosure on a credit agreement secured by an individual's primary residence). See section 103(b)(2)(B) and (C) of E-SIGN.

of the Treasury may, by regulations, allow any section 204(h) notice to be provided by using new technologies.

### *Prior Guidance Relating to New Technologies*

Following the enactment of section 1510 of TRA '97, the Treasury Department and IRS issued several items of guidance relating to the use of electronic media with respect to employee benefit arrangements. Notice 99-1, 1999-1 C.B. 269, provides guidance relating to qualified retirement plans permitting the use of electronic media for plan participants or beneficiaries conducting certain account transactions for which there is no specific writing requirement, such as plan enrollments, direct rollover elections, beneficiary designations, investment change allocations, elective and after-tax contribution designations, and general plan or specific account inquiries.<sup>3</sup>

The 2000 regulations relating to the use of electronic media for transmissions of notices and consents required to be in writing under sections 402(f), 411(a)(11), and 3405(e)(10)(B) set forth standards for the electronic transmission of certain notices and consents required in connection with distributions from retirement plans. These regulations provide that a plan may provide a notice required under section 402(f), 411(a)(11), or 3405(e)(10)(B) either on a written paper document or through an electronic medium that is reasonably accessible to the participant. The system must be reasonably designed to provide the notice in a manner no less understandable to the participant than a written paper document. In addition, the participant must be advised of the right to request and receive a paper copy of the written paper document at no charge, and, upon request, the document must be provided to the participant without charge.

The 2000 regulations permit an electronic system to satisfy the requirement that a participant provide written consent to a distribution if certain requirements

are satisfied. First, the electronic medium must be reasonably accessible to the participant. Second, the electronic system must be reasonably designed to preclude anyone other than the participant from giving the consent. Third, the system must provide the participant with a reasonable opportunity to review and to confirm, modify, or rescind the terms of the consent before it becomes effective. Fourth, the system must provide the participant, within a reasonable time after the consent is given, a confirmation of the terms (including the form) of the distribution through either a written paper document or in an electronic format that satisfies the requirements for providing applicable notices. Thus, the participant must be advised of the right to request and to receive a confirmation copy of the consent on a written paper document without charge.

Subsequent to the issuance of the 2000 regulations, the Treasury Department and IRS have applied the standards set forth in those regulations in other situations. For example, §1.7476-2(c)(2) provides that a notice to an interested party<sup>4</sup> is deemed to be provided in a manner that satisfies the delivery requirements of §1.7476-2(c)(1) if the notice is delivered using an electronic medium under a system that satisfies the requirements of §1.402(f)-1, Q&A-5. Q&A-7 of Notice 2000-3, 2000-1 C.B. 413, provides that, until the issuance of further guidance, a plan is permitted to use electronic media to provide notices required under sections 401(k)(12) and 401(m)(11) if the employee receives the notice through an electronic medium that is reasonably accessible, the system is designed to provide the notice in a manner no less understandable to the employee than a written paper document, and, at the time the notice is provided, the employee is advised that the employee may request and receive the notice on a written paper document at no charge. Similarly, regulations at §1.72(p)-1, Q&A-3(b), require a loan from a plan to a participant to be set forth in a written paper document, in an electronic medium that satisfies standards

that are the same as the standards in the 2000 regulations, or in such other form as may be approved by the Commissioner.

In 2003, final regulations (T.D. 9052) under section 4980F were published in the **Federal Register** (68 FR 17277). Q&A-13 of §54.4980F-1 provides the rules for the manner of delivering a section 204(h) notice. For a plan to deliver electronically a section 204(h) notice, the following requirements must be satisfied. First, the section 204(h) notice must actually be received by the applicable individual or the plan administrator must take appropriate and necessary measures reasonably calculated to ensure that the method for providing the section 204(h) notice results in actual receipt. Second, the plan administrator must provide the applicable individual with a clear and conspicuous statement that the individual has a right to receive a paper version of the section 204(h) notice without the imposition of fees and, if the individual requests a paper copy of the section 204(h) notice, the paper copy must be provided without charge.

In addition, the regulations under section 4980F provide a safe harbor method for delivering a section 204(h) notice electronically. Under the safe harbor, which is substantially the same as the consumer consent rules of E-SIGN, consent must be made electronically in a manner that reasonably demonstrates the individual's ability to access the information in electronic form. The applicable individual must also provide an address for the delivery of the electronic section 204(h) notice and the plan administrator must provide the applicable individual with certain disclosures regarding the section 204(h) notice, including the right to withdraw consent.

The Department of Labor (DOL) and the Pension Benefit Guaranty Corporation (PBGC) have also issued regulations relating to the use of electronic media to furnish notices, reports, statements, disclosures, and other documents to participants, beneficiaries, and other individuals under

<sup>3</sup> The Treasury Department and IRS have also issued guidance regarding the use of electronic media with respect to tax reporting and other tax requirements with respect to employee benefit plans. For example, Announcement 99-6, 1999-1 C.B. 352, authorizes payers of pensions, annuities, and other employee benefits to establish a system for payees to submit electronically Forms W-4P, "Withholding Certificate for Pension or Annuity Payments," W-4S, "Request for Federal Income Tax Withholding From Sick Pay," and W-4V, "Voluntary Withholding Request," if certain requirements, including signature and recordkeeping requirements, are satisfied. In addition, Notice 2004-10, 2004-1 C.B. 433, authorizes the electronic delivery of certain forms relating to the reporting of contributions and distributions of pensions, simplified employee pensions, traditional IRAs, Roth IRAs, qualified tuition programs, Coverdell education savings accounts, and Archer Medical Savings Accounts. See also §§31.6051-1(j) and 1.6039-1(f).

<sup>4</sup> Under section 7476, in order to receive a determination letter on the qualified status of a retirement plan, the applicant must provide evidence that individuals who qualify as interested parties received notification of the determination letter application.

titles I and IV of ERISA. See 29 CFR 2520.104b-1 and 29 CFR 4000.14.

## Explanation of Provisions

### Overview

The proposed regulations would coordinate the existing notice and election rules under the Code and regulations relating to certain employee benefit arrangements with the requirements of E-SIGN and set forth the exclusive rules relating to the use of electronic media to satisfy any requirement under the Code that a communication to or from a participant, with respect to the participant's rights under the employee benefit arrangement be in writing or in written form. The standards set forth in the proposed regulations would also function as a safe harbor when an electronic medium is used for any communication that is not required to be in writing or in written form.

The proposed regulations would apply to any notice, election, or similar communication provided to or made by a participant or beneficiary under a qualified plan, an annuity contract described in section 403(a) or 403(b), a simplified employee pension (SEP) under section 408(k), a simple retirement plan under section 408(p), or an eligible governmental plan under section 457(b). Thus, for example, the proposed regulations would apply to a section 402(f) notice, a section 411(a)(11) notice, and a section 204(h) notice.

In addition, the proposed regulations would apply to any notice, election, or similar communication provided to or made by a participant or beneficiary under an accident and health plan or an arrangement under section 104(a)(3) or 105, a cafeteria plan under section 125, an educational assistance program under section 127, a qualified transportation fringe program under section 132, an Archer Medical Savings Account under section 220, or a health savings account under section 223.

However, the proposed regulations would not apply to any notice, election, consent, or disclosure required under the provisions of title I or IV of ERISA over

which the DOL or the PBGC has interpretative and regulatory authority. For example, the rules in 29 C.F.R. 2520.104b-1 of the Labor Regulations apply with respect to an employee benefit plan furnishing disclosure documents, such as a summary plan description or a summary annual report. The proposed regulations would also not apply to Code section 411(a)(3)(B) (relating to suspension of benefits), Code section 4980B(f)(6) (relating to an individual's COBRA rights), or any other Code provision over which DOL and the PBGC have similar interpretative authority. In addition, the rules in these proposed regulations apply only with respect to notices and elections relating to a participant's rights under an employee benefit arrangement; thus they do not apply with respect to other requirements under the Code, such as requirements relating to tax reporting, tax records,<sup>5</sup> or substantiation of expenses.

### Requirements for the Use of Electronic Media

These proposed regulations would require that any communication that is provided using an electronic medium satisfy all the otherwise applicable requirements (including the applicable timing and content rules) relating to that communication. In addition, these regulations would require that the content of the notice and the medium through which it is delivered be reasonably designed to provide the information to a recipient in a manner no less understandable to the recipient than if provided on a written paper document. For example, a plan delivering a lengthy section 402(f) notice would not satisfy this requirement if the plan chose to provide the notice through a pre-recorded message on an automated phone system.<sup>6</sup> The regulations would also require that, at the time the applicable notice is provided, the electronic transmission alert the recipient to the significance of the transmittal (including the identification of the subject matter of the notice), and provide any instructions needed to access the notice, in a manner that is readily understandable and accessible.

The view of the Treasury Department and IRS is that a participant under an employee benefit arrangement is generally a consumer within the meaning of section 106(1) of E-SIGN when receiving a notice in order to make a decision about the participant's benefits or other rights under an employee benefit arrangement.<sup>7</sup> Accordingly, §1.401(a)-21(b) of these proposed regulations would provide rules, reflecting the consumer consent requirements of section 101(c) of E-SIGN, under which an employee benefit arrangement may provide an applicable notice through an electronic medium. However, the Treasury Department and IRS also believe that, if an employee benefit arrangement could provide these notices only by complying with the rules in §1.401(a)-21(b) of these proposed regulations, it would impose a substantial burden on electronic commerce. Furthermore, there is an alternative that is less burdensome and that would not increase the material risk of harm to plan participants. Accordingly, §1.401(a)-21(c) of these proposed regulations provides an alternative means of providing notices electronically.

Section 1.401(a)-21(b) of these proposed regulations would generally require that before a plan may provide an applicable notice using an electronic medium, the participant must consent to receive the communication electronically. The consent generally must be made in a manner that reasonably demonstrates that the participant can access the notice in the electronic form that will be used to provide the notice. Alternatively, the consent may be made using a written paper document or through some other nonelectronic means, but only if the participant confirms the consent in a manner that reasonably demonstrates that the participant can access the notice in the electronic form to be provided. Prior to consenting, the participant must receive a disclosure statement that outlines the scope of the consent, the participant's right to withdraw his or her consent to receive the communication electronically (including any conditions, consequences, or fees in the event of the withdrawal), and the right to receive the

<sup>5</sup> See section 6001 of the Code and the regulations thereunder, and Rev. Proc. 98-25, 1998-1 C.B. 689 (setting forth the basic requirements that the IRS treats as essential for satisfying the recordkeeping requirements of section 6001 in cases where a taxpayer's records are maintained in electronic form).

<sup>6</sup> Note that a section 204(h) notice cannot be provided using oral communication or a recording of an oral communication. See §54.4980F-1, A-13(c)(1).

<sup>7</sup> See also 12 CFR 202.16, 205.17, 213.6, and 2226.36, treating electronic disclosures in connection with certain credit transactions as consumer information for purposes of E-SIGN.

communication using paper. The disclosure must also specify the hardware and software requirements for accessing the electronic media and the procedures for updating information to contact the participant electronically. In the event the hardware or software requirements change, new consent must be obtained from the participant, generally following the rules of section 101(c) of E-SIGN.

Section 1.401(a)–21(c) of these proposed regulations provides alternate conditions for providing notices electronically. The proposed regulations would exempt applicable notices from the consumer consent requirements of E-SIGN and would provide an alternative method of complying with the requirement that a participant notice be in writing or in written form if the plan complies with those conditions. This alternative method of compliance is based on the 2000 regulations previously issued under section 1510 of TRA '97 (which provides that any guidance issued should maintain *the protection of the rights of participants and beneficiaries*). This alternative method of compliance satisfies the requirements of section 104(d)(1) of E-SIGN, including the requirement that any exemption from the consumer consent requirements *not increase the material risk of harm to consumers*.

The alternative method of compliance provides rules that are intended generally to replicate the requirements in the 2000 regulations that apply to notices required under sections 402(f), 411(a)(11), and 3405 and thereby allow plans to continue to provide these notices electronically using the rules in those 2000 regulations. As under the 2000 regulations, the proposed regulations would retain the requirement that, at the time the applicable notice is provided, the participant must be advised that he or she may request and must receive the applicable notice in writing on paper at no charge. However, the requirement that the electronic medium be reasonably accessible under the 2000 regulations would be changed to require that the recipient

of the notice be effectively able to access the electronic medium. This is not intended to reflect a substantive change in the rules, but rather to avoid confusion with Labor Regulations interpreting the words *reasonably accessible* as used in section 101(i)(2)(D) of ERISA, as added by section 306 of the Sarbanes Oxley Act of 2002, Public Law 107–204 (116 Stat. 745).<sup>8</sup>

Proposed §1.401(a)–21(d) would set forth the requirements that apply if a consent, election, request, agreement, or similar communication is made by or from a participant, beneficiary, or alternate payee using an electronic medium. (For simplicity, the proposed regulations refer to all of these types of actions as *participant elections*.) The rules in proposed §1.401(a)–21(d), which are also based on the standards in the 2000 regulations, would require that (1) the participant be effectively able to access to the electronic system in order to transmit the participant election, (2) the electronic system be reasonably designed to preclude any person other than the participant from making the participant election (for example, through the use of a personal identification number (PIN)), (3) the electronic system provide the participant making the participant election with a reasonable opportunity to review, confirm, modify, or rescind the terms of the election before it becomes effective, and (4) the participant making the participant election, within a reasonable time period, receive a confirmation of the election through either a written paper document or an electronic medium under a system that satisfies the applicable notice requirements of proposed §1.401(a)–21(b) or (c).

These regulations require that a participant be effectively able to access the electronic system that the plan provides for participant elections, but, like the 2000 regulations, do not require that a plan also permit the election to be transmitted by paper as an alternative to using the electronic system available to the participant. If a plan were to require participant elec-

tions to be provided electronically, such as requiring that any consent to a distribution under section 411(a)(11) be transmitted electronically through a particular medium (without an option to make the election on paper), then these regulations would not apply with respect to a participant who is not effectively able to access to the electronic medium. In addition, such a participant would be effectively unable to provide consent and would generally not be paid until the later of age 62 or normal retirement age. Moreover, no form of distribution would be available to the former employee and such a plan may have difficulties demonstrating compliance with the qualification requirements. For example, the plan may not be able to demonstrate that it satisfies the requirements of §1.401(a)(4)–4 under which benefits, rights, and features, such as a right to early distribution, must be made available in a nondiscriminatory manner.<sup>9</sup>

Unlike the 2000 regulations, the rules in these proposed regulations would extend the use of electronic media to the notice and election rules applicable to plans subject to the QJSA requirements of section 417. Section 417 requires the consent of a spouse to be witnessed by a plan representative or a notary public. In accordance with section 101(g) of E-SIGN, the proposed regulations would permit the use of an electronic acknowledgment or notarization of a signature (if the standards of section 101(g) of E-SIGN and State law applicable to notary publics are satisfied). However, the proposed regulations would require that the signature of the individual be witnessed in the physical presence of the plan representative or notary public, regardless of whether the signature is provided on paper or through an electronic medium.

As discussed above, these proposed regulations, which are consistent with section 101 of E-SIGN and do not add to the requirements of that section, are issued to set forth rules that coordinate section 101 of E-SIGN with the sections of the Code relating to employee benefit arrangements.

<sup>8</sup> Section 101(i) of ERISA sets forth a requirement for a plan administrator to notify plan participants and beneficiaries of a blackout period with respect to an individual account plan. Section 101(i)(2)(D) provides that the required blackout notice "shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient." Section 2520.101–3(b)(3) of the Labor Regulations interpreting this requirement provides for this notice to be in writing and furnished in any manner consistent with the requirements of section 2520.104b–1 of the Labor Regulations, including the provisions in that section relating to the use of electronic media. Those regulations also deem a notice requirement to be satisfied if certain measures are taken. Section 1.401(a)–21 of these proposed regulations only provides rules for satisfying, through the use of electronic media, a requirement that a notice or election be in writing.

<sup>9</sup> Similar problems would arise under section 411(d)(6), assuming the plan previously permitted election of early distribution to be made on paper.

In accordance with section 104(b)(2)(C) of E-SIGN, the Treasury Department and IRS find that there is substantial justification for these proposed regulations, that the requirements imposed on the use of electronic media under these regulations are substantially equivalent to those imposed on non-electronic records, that the requirements will not impose unreasonable costs on the acceptance and use of electronic records, and that these regulations do not require (or accord greater legal status or effect to) the use of any specific technology.

#### *Conforming Amendments to Other Rules in Law*

The proposed regulations would modify a number of existing regulations (including the 2000 regulations and the other regulations described above) that have previously provided rules relating to the use of new technology in providing applicable notices that are required to be in writing or in written form. These modifications, which merely add the consumer consent requirements of E-SIGN, are not expected to adversely affect existing administrative practices of plan sponsors designed to comply with the 2000 regulations.

As noted above, these proposed regulations would apply to categories of applicable notices that were not previously addressed in the 2000 regulations and subsequent regulations. As such, these regulations apply whenever there is a requirement that an applicable notice under one of the covered sections be provided in written form or in writing, without regard to whether that other requirement specifically cross-references these regulations. Thus, safe harbor notices under sections 401(k)(12)(D) and 401(m)(11), which are required to be in writing, can be provided electronically if the requirements of §1.401(a)-21 of this chapter are satisfied.

#### **Proposed Effective Date**

These regulations are proposed to apply prospectively. Thus, these rules will apply no earlier than the date of the publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. These regulations cannot be relied upon prior to their issuance as final regulations.

#### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not propose any new collection of information, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. These regulations only provide guidance on how to satisfy existing collection of information requirements through the use of electronic media. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### **Comments and Public Hearing**

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

The proposed regulations have reserved the issue of whether there should be any exceptions to the rule generally requiring the physical presence of the spouse for a notarization of the spouse's consent. Comments are requested on whether the reservation should be: (i) deleted in favor of a broad prohibition that has no exception; (ii) filled in based on a general standard under which electronic notarization of an electronic signature (without the spouse's presence) would be permitted if the technology provides the same protections and assurance as the requirement that a person's signature be executed in the presence of a notary (e.g., that the spouse is actually the person signing); or (iii) filled in with a grant of discretion to the Commissioner to determine in the future, after advance notice and an opportunity for comment, that a particular form of electronic nota-

rization of an electronic signature (without the spouse's presence) provides the same protections and assurance as the requirement that a person's signature be executed in the presence of a notary.

A public hearing has been scheduled for November 2, 2005, beginning at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the main entrance, located at 1111 Constitution Avenue, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written or electronic comments and an outline of the topics to be discussed and time to be devoted to each topic (a signed original and eight (8) copies) by October 12, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving comments has passed. Copies of the agenda will be available free of charge at the hearing.

#### **Drafting Information**

The principal author of these proposed regulations is Pamela R. Kinard, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities), Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

\* \* \* \* \*

#### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR parts 1, 35, and 54 are proposed to be amended as follows:

#### PART 1—INCOME TAXES

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

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

Section 1.401(a)-21 also issued under 26 U.S.C. 401 and section 104(b)(1) and (2) of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229 (114 Stat. 464). \* \* \*

Par. 2. Section 1.72(p)-1, Q&A-3, is amended by revising the text of paragraph (b) to read as follows:

*§1.72(p)-1 Loans treated as distributions.*

\* \* \* \* \*

A-3. \* \* \*

(b) \* \* \* A loan does not satisfy the requirements of this paragraph unless the loan is evidenced by a legally enforceable agreement (which may include more than one document) and the terms of the agreement demonstrate compliance with the requirements of section 72(p)(2) and this section. Thus, the agreement must specify the amount and date of the loan and the repayment schedule. The agreement does not have to be signed if the agreement is enforceable under applicable law without being signed. The agreement must be set forth either—

(1) In a written paper document; or

(2) In an electronic medium under a system that satisfies the participant election requirements of §1.401(a)-21(d) of this chapter.

\* \* \* \* \*

Par. 3. Section 1.401(a)-21 is added to read as follows:

*§1.401(a)-21 Rules relating to the use of electronic media to provide applicable notices and to transmit participant elections.*

(a) *Introduction*—(1) *In general*—(i) *Permission to use electronic media.* This section provides rules relating to the use of electronic media to provide applicable notices and to transmit participant elections as defined in paragraphs (e)(1) and (2) of this section with respect to certain employee benefit arrangements referenced in this section. The rules in this section reflect the provisions of the Electronic Signatures in Global and National Commerce Act, Public Law 106-229 (114 Stat. 464 (2000) (E-SIGN)).

(ii) *Notices and elections required to be in writing or in written form*—(A) *In general.* The rules of this section must be satisfied in order to use electronic media to provide an applicable notice or to transmit a participant election if the notice or election is required under the Internal Revenue Code or Department of Treasury regulations to be in writing or in written form.

(B) *Rules relating to applicable notices.* An applicable notice that is provided using electronic media is treated as being provided in writing or in written form if and only if the consumer consent requirements of paragraph (b) of this section are satisfied or the requirements for exemption from the consumer consent requirements under paragraph (c) of this section are satisfied. For example, in order to provide a section 402(f) notice electronically, a qualified plan must satisfy either the consumer consent requirements of paragraph (b) of this section or the requirements for exemption under paragraph (c) of this section. If a plan fails to satisfy either of these requirements, the plan must provide the section 402(f) notice using a written paper document in order to satisfy the requirements of section 402(f).

(C) *Rules relating to participant elections.* A participant election that is transmitted using electronic media is treated as being provided in writing or in written form if and only if the requirements of paragraph (d) of this section are satisfied.

(iii) *Safe harbor method for applicable notices and participant elections that are not required to be in writing or written form.* For an applicable notice or a participant election that is not required to be in writing or in written form, the rules of this section provide a safe harbor method for using electronic media to provide the applicable notice or to transmit the participant election.

(2) *Application of rules*—(i) *Notices, elections, or consents under retirement plans.* The rules of this section apply to any applicable notice or any participant election relating to a qualified retirement plan under section 401(a) or 403(a). In addition, the rules of this section apply to any applicable notice and any participant election relating to an annuity contract under section 403(b), a simplified employee pension (SEP) under section 408(k), a simple retirement plan under section 408(p), and

an eligible governmental plan under section 457(b).

(ii) *Notices, elections, or consents under other employee benefit arrangements.* The rules of this section also apply to any applicable notice or any participant election relating to accident and health plans or arrangements under sections 104(a)(3) and 105, cafeteria plans under section 125, qualified education assistance programs under section 127, qualified transportation fringe programs under section 132, Archer medical savings accounts under section 220, and health savings accounts under section 223.

(3) *Limitation on application of rules*—(i) *In general.* The rules of this section do not apply to any notice, election, consent, or disclosure required under the provisions of title I or IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA), over which the Department of Labor or the Pension Benefit Guaranty Corporation has interpretative and regulatory authority. For example, the rules in 29 C.F.R. 2520.104b-1 of the Labor Regulations apply with respect to an employee benefit plan providing disclosure documents, such as a summary plan description or a summary annual report. The rules in this section also do not apply to Internal Revenue Code section 411(a)(3)(B) (relating to suspension of benefits), Internal Revenue Code section 4980B(f)(6) (relating to an individual's COBRA rights), or any other Internal Revenue Code provision over which Department of Labor or the Pension Benefit Guaranty Corporation has similar interpretative authority.

(ii) *Other requirements under the Internal Revenue Code.* Because the rules in this section only apply with respect to applicable notices and participant elections relating to a participant's rights under an employee benefit arrangement; thus they do not apply with respect to other requirements under the Internal Revenue Code, such as requirements relating to tax reporting, tax records, or substantiation of expenses.

(4) *Additional requirements related to applicable notices and participant elections.* The rules of this section supplement the general requirements related to each applicable notice and to each participant election. Thus, in addition to satisfying the rules for delivery under this sec-

tion, the timing, content, and other general requirements (including recordkeeping requirements in guidance issued by the Commissioner under section 6001) relating to the applicable notice or participant election must be satisfied. With respect to the content of the notice, the system of delivery must be reasonably designed to provide the applicable notice to a recipient in a manner no less understandable to the recipient than a written paper document. In addition, at the time the applicable notice is provided, the electronic transmission must alert the recipient to the significance of the transmittal (including identification of the subject matter of the notice) and provide any instructions needed to access the notice, in a manner that is readily understandable and accessible.

(b) *Consumer consent requirements*—(1) *Requirements*. The consumer consent requirements of this paragraph (b) are satisfied if the requirements in paragraphs (b)(2) through (5) of this section are satisfied.

(2) *Consent*—(i) *In general*. The recipient must affirmatively consent to the delivery of the applicable notice using electronic media. This consent must be either—

(A) Made electronically in a manner that reasonably demonstrates that the recipient can access the applicable notice in the electronic form that will be used to provide the notice; or

(B) Made using a written paper document (or using another form not described in paragraph (b)(2)(i)(A) of this section), but only if the recipient confirms the consent electronically in a manner that reasonably demonstrates that the recipient can access the applicable notice in the electronic form that will be used to provide the notice.

(ii) *Withdrawal of consumer consent*. The consent to receive electronic delivery requirement of this paragraph (b)(2) is not satisfied if the recipient withdraws his or her consent before the applicable notice is delivered.

(3) *Required disclosure statement*. The recipient, prior to consenting under paragraph (b)(2)(i) of this section, must be provided with a clear and conspicuous statement containing the disclosures described in paragraphs (b)(3)(i) through (v) of this section:

(i) *Right to receive paper document*—(A) *In general*. The statement informs the recipient of any right to have the applicable notice be provided using a written paper document or other nonelectronic form.

(B) *Post-consent request for paper copy*. The statement informs the recipient how, after having provided consent to receive the applicable notice electronically, the recipient may, upon request, obtain a paper copy of the applicable notice and whether any fee will be charged for such copy.

(ii) *Right to withdraw consumer consent*. The statement informs the recipient of the right to withdraw consent to receive electronic delivery of an applicable notice on a prospective basis at any time and explains the procedures for withdrawing that consent and any conditions, consequences, or fees in the event of the withdrawal.

(iii) *Scope of the consumer consent*. The statement informs the recipient whether the consent to receive electronic delivery of an applicable notice applies only to the particular transaction that gave rise to the applicable notice or to other identified transactions that may be provided or made available during the course of the parties' relationship. For example, the statement may provide that a recipient's consent to receive electronic delivery will apply to all future applicable notices of the recipient relating to the employee benefit arrangement until the recipient is no longer a participant in the employee benefit arrangement (or withdraws the consent).

(iv) *Description of the contact procedures*. The statement describes the procedures to update information needed to contact the recipient electronically.

(v) *Hardware or software requirements*. The statement describes the hardware and software requirements needed to access and retain the applicable notice.

(4) *Post-consent change in hardware or software requirements*. If, after a recipient provides consent to receive electronic delivery, there is a change in the hardware or software requirements needed to access or retain the applicable notice and such change creates a material risk that the recipient will not be able to access or retain the applicable notice in electronic format—

(i) The recipient must receive a statement of—

(A) The revised hardware or software requirements for access to and retention of the applicable notice; and

(B) The right to withdraw consent to receive electronic delivery without the imposition of any fees for the withdrawal and without the imposition of any condition or consequence that was not previously disclosed in paragraph (b)(3) of this section.

(ii) The recipient must reaffirm consent to receive electronic delivery in accordance with the requirements of paragraph (b)(2) of this section.

(5) *Prohibition on oral communications*. For purposes of this paragraph (b), neither an oral communication nor a recording of an oral communication is an electronic record.

(c) *Exemption from consumer consent requirements*—(1) *In general*. This paragraph (c) is satisfied if the conditions in paragraphs (c)(2) and (3) of this section are satisfied. This paragraph (c) constitutes an exemption from the consumer consent requirements of section 101(c) of E-SIGN pursuant to the authority granted in section 104(d)(1) of E-SIGN.

(2) *Effective ability to access*. For purposes of this paragraph (c), the electronic medium used to provide an applicable notice must be a medium that the recipient has the effective ability to access.

(3) *Free paper copy of applicable notice*. At the time the applicable notice is provided, the recipient must be advised that he or she may request and receive the applicable notice in writing on paper at no charge, and, upon request, that applicable notice must be provided to the recipient at no charge.

(d) *Special rules for participant elections*—(1) *In general*. This paragraph (d) is satisfied if the conditions described in paragraphs (d)(2) through (6) of this section are satisfied.

(2) *Effective ability to access*. The electronic medium under a system used to make a participant election must be a medium that the individual who is eligible to make the election is effectively able to access. If the individual is not effectively able to access the electronic medium for making the participant election, the participant election will not be treated as made available to that individual. For example, the participant election will not be treated

as made available for purposes of the rules under section 401(a)(4).

(3) *Authentication.* The electronic system used in delivering a participant election is reasonably designed to preclude any person other than the appropriate individual from making the election. For example, a system can require that an account number and a personal identification number (PIN) be entered into the system before a participant election can be transmitted.

(4) *Opportunity to review.* The electronic system provides the individual making the participant election with a reasonable opportunity to review, confirm, modify, or rescind the terms of the election before the election becomes effective.

(5) *Confirmation of action.* The person making the participant election, within a reasonable time, receives a confirmation of the effect of the election under the terms of the plan through either a written paper document or an electronic medium under a system that satisfies the requirements of either paragraph (b) or (c) of this section (as if the confirmation were an applicable notice).

(6) *Participant elections, including spousal consents, that are required to be witnessed by a plan representative or a notary public.* (i) Except as provided in paragraph (d)(6)(ii) of this section, in the case of a participant election which is required to be witnessed by a plan representative or a notary public (such as a spousal consent under section 417), an electronic notarization acknowledging a signature (in accordance with section 101(g) of E-SIGN and state law applicable to notary publics) will not be denied legal effect so long as the signature of the individual is witnessed in the physical presence of the plan representative or notary public.

(ii) [Reserved].

(e) *Definitions.* The following definitions apply to this section:

(1) *Applicable notice.* The term *applicable notice* includes any notice, report, statement, or other document required to be provided to a recipient under an arrangement described in paragraph (a)(2) of this section.

(2) *Participant election.* The term *participant election* includes any consent, election, request, agreement, or similar communication made by or from a participant, beneficiary, or alternate payee to which this section applies under an ar-

angement described in paragraph (a)(2) of this section.

(3) *Recipient.* The term *recipient* means a plan participant, beneficiary, employee, alternate payee, or any other person to whom an applicable notice is to be provided.

(4) *Electronic.* The term *electronic* means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, voice-recording systems, or similar capabilities.

(5) *Electronic media.* The term *electronic media* means an electronic method of communication (e.g., websites, electronic mail, telephonic systems, magnetic disks, and CD-ROMs).

(6) *Electronic record.* The term *electronic record* means an applicable notice created, generated, sent, communicated, received, or stored by electronic means.

(f) *Examples.* The following examples illustrate the rules of this section. In all of these examples, with the exception of *Example 4* and *Example 5*, assume that the requirements of paragraph (a)(4) of this section are satisfied.

*Example 1.* (i) *Facts.* Plan A, a qualified plan, permits participants to request benefit distributions from the plan on Plan A's Intranet website. Under Plan A's system for such transactions, a participant must enter his or her account number and personal identification number (PIN), and this information must match the information in Plan A's records in order for the transaction to proceed. If a participant requests a distribution from Plan A on Plan A's website, then, at the time of the request for distribution, a disclosure statement appears on the computer screen that explains that the participant can consent to receive the section 402(f) notice electronically. In the disclosure statement, Plan A provides information relating to the consent, including how to receive a paper copy of the notice, how to withdraw the consent, the hardware and software requirements, and the procedures for accessing the section 402(f) notice, which is in a file format from a specific spreadsheet program. After reviewing the disclosure statement, which satisfies the requirements of paragraph (b)(3) of this section, the participant consents to receive the section 402(f) notice via e-mail by selecting the consent button at the end of the disclosure statement. As a part of the consent procedure, the participant must demonstrate that the participant can access the spreadsheet program by answering a question from the spreadsheet program, which is in an attachment to an e-mail. Once the participant correctly answers the question, the section 402(f) notice is then delivered to the participant via e-mail.

(ii) *Conclusion.* In this *Example 1*, Plan A's delivery of the section 402(f) notice satisfies the requirements of paragraph (b) of this section.

*Example 2.* (i) *Facts.* Plan B, a qualified plan, permits participants to request benefit distributions from the plan by e-mail. Under Plan B's system for

such transactions, a participant must enter his or her account number and personal identification number (PIN) and this information must match the information in Plan B's records in order for the transaction to proceed. If a participant requests a distribution from Plan B by e-mail, the plan administrator provides the participant with a section 411(a)(11) notice in an attachment to an e-mail. Plan B sends the e-mail with a request for a computer generated notification that the message was received and opened. The e-mail instructs the participant to read the attachment for important information regarding the request for a distribution. In addition, the e-mail also provides that the participant may request the section 411(a)(11) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Plan B receives notification indicating that the e-mail was received and opened by the participant. The participant is effectively able to access the e-mail system used to make a participant election and consents to the distribution by e-mail. Within a reasonable period of time after the participant's consent to the distribution by e-mail, the plan administrator, by e-mail, sends confirmation of the terms (including the form) of the distribution to the participant and advises the participant that the participant may request the confirmation on a written paper document that will be provided at no charge.

(ii) *Conclusion.* In this *Example 2*, Plan B's delivery of the section 411(a)(11) notice and the transmission of a participant's consent to a distribution satisfy the requirements of paragraphs (c) and (d) of this section.

*Example 3.* (i) *Facts.* Plan C, a qualified pension plan, permits participants to request plan loans through the Plan C's web site on the internet with the notarized consent of the spouse in accordance with applicable State law. Under Plan C's system for such transactions, a participant must enter his or her account number, personal identification number (PIN), and his or her e-mail address. The information entered by the participant must match the information in Plan C's records in order for the transaction to proceed. A participant may request a loan from Plan C by following the applicable instructions on Plan C's web site. Participant M, a married participant, is effectively able to access the web site available to apply for a loan and completes the forms on the web site for obtaining the loan. The forms include attachments setting forth the terms of the loan agreement and all other required information. Participant M is then instructed to submit to the plan administrator a notarized spousal consent form. Participant M and M's spouse go to a notary public and the notary witnesses Participant M's spouse signing the spousal consent for the loan agreement. After witnessing M's spouse signing the spousal consent, the notary public sends an e-mail with an electronic acknowledgement that is attached to or logically associated with the signature of M's spouse to the plan administrator. The electronic acknowledgement is in accordance with section 101(g) of E-SIGN and the relevant state law applicable to notary publics. After the plan receives the e-mail, Plan C sends an e-mail to the participant, giving the participant a reasonable period to review and confirm the loan application or to determine whether the application should be modified or rescinded. In addition, the e-mail to the participant also provides that the participant may request the plan loan applica-

tion on a written paper document and that, if the participant requests the written paper document, it will be provided at no charge.

(ii) *Conclusion.* In this *Example 3*, the transmissions of the loan agreement and the spousal consent satisfy the requirements of paragraph (d) of this section.

*Example 4.* (i) *Facts.* A qualified profit-sharing plan (Plan D) permits participants to request distributions through an automated telephone system. Under Plan D's system for such transactions, a participant must enter his or her account number and personal identification number (PIN); this information must match that in Plan D's records in order for the transaction to proceed. Plan D provides only the following distribution options: single-sum payment; and annual installments over 5, 10, or 20 years. A participant may request a distribution from Plan D by following the applicable instructions on the automated telephone system. After the participant has requested a distribution, the automated telephone system recites the section 411(a)(11) notice to the participant. The automated telephone system also advises the participant that he or she may request the notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. The participants are effectively able to access the automated telephone system used to make a participant election. The automated telephone system requires a participant to review and confirm the terms (including the form) of the distribution before the transaction is completed. After the participant has given consent, the automated telephone system confirms the distribution to the participant and advises the participant that he or she may request the confirmation on a written paper document that will be provided at no charge.

(ii) *Conclusion.* In this *Example 4*, because Plan D has relatively few and simple distribution options, the provision of the section 411(a)(11) notice through the automated telephone system is no less understandable to the participant than a written paper notice for purposes of paragraph (a)(4) of this section. In addition, the automated telephone procedures of Plan D satisfy the requirements of paragraphs (c) and (d) of this section.

*Example 5.* (i) *Facts.* Same facts as *Example 4*, except that, pursuant to Plan D's system for processing such transactions, a participant who so requests is transferred to a customer service representative whose conversation with the participant is recorded. The customer service representative provides the section 411(a)(11) notice from a prepared text and processes the participant's distribution in accordance with the predetermined instructions from the plan administrator.

(ii) *Conclusion.* Like in *Example 4*, because Plan D has relatively few and simple distribution options, the provision of the section 411(a)(11) notice through the automated telephone system is no less understandable to the participant than a written paper notice for purposes of paragraph (a)(4) of this section. Further, in this *Example 5*, the customer service telephone procedures of Plan D satisfy the requirements of paragraphs (c) and (d) of this section.

*Example 6.* (i) *Facts.* Plan E, a qualified plan, permits participants to request distributions by e-mail on the employer's e-mail system. Under this system, a participant must enter his or her account number and

personal identification number (PIN). This information must match that in Plan E's records in order for the transaction to proceed. If a participant requests a distribution by e-mail, the plan administrator provides the participant with a section 411(a)(11) notice by e-mail. The plan administrator also advises the participant by e-mail that he or she may request the section 411(a)(11) notice on a written paper document and that, if the participant requests the notice on a written paper document, it will be provided at no charge. Participant N requests a distribution and receives the section 411(a)(11) notice from the plan administrator by reply e-mail. However, before Participant N elects a distribution, N terminates employment. Following termination of employment, Participant N no longer has access to the employer's e-mail system.

(ii) *Conclusion.* In this *Example 6*, Plan E does not satisfy the participant election requirements under paragraph (d) of this section because Participant N is not effectively able to access the electronic medium used to make the participant election. Plan E must provide Participant N with the opportunity to transmit the participant election through another system that Participant N is effectively able to access, such as the automated telephone systems described in *Example 4* and *Example 5* of this paragraph (f).

Par. 4. Section 1.402(f)-1 is amended by:

- (1) Revising A-5.
- (2) Removing Q&A-6.

The revision reads as follows:

*§1.402(f)-1 Required explanation of eligible rollover distributions; questions and answers.*

\* \* \* \* \*

A-5. Yes. See §1.401(a)-21 of this chapter for rules permitting the use of electronic media to provide applicable notices to recipients with respect to employee benefit arrangements.

Par. 5. Section 1.411(a)-11 is amended by:

- (1) Revising the text of paragraphs (f)(1) and (2).
- (2) Removing paragraph (g).

The revisions read as follows.

*§1.411(a)-11 Restriction and valuation of distributions.*

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \* The notice of a participant's rights described in paragraph (c)(2) of this section or the summary of that notice described in paragraph (c)(2)(iii)(B)(2) of this section must be provided on a written paper document. However, see §1.401(a)-21 of this chapter for rules permitting the use of electronic media to

provide applicable notices to recipients with respect to employee benefit arrangements.

(2) \* \* \* The consent described in paragraphs (c)(2) and (3) of this section must be given on a written paper document. However, see §1.401(a)-21(d) of this chapter for rules permitting the use of electronic media to transmit participant elections with respect to employee benefit arrangements.

Par. 6. Section 1.417(a)(3)-1 is amended by revising the text of paragraph (a)(3) to read as follows:

*§1.417(a)(3)-1 Required explanation of qualified joint and survivor annuity and qualified preretirement survivor annuity.*

(a) \* \* \*

(3) \* \* \* A section 417(a)(3) explanation must be a written explanation. First class mail to the last known address of the participant is an acceptable delivery method for a section 417(a)(3) explanation. Likewise, hand delivery is acceptable. However, posting of the explanation is not considered provision of the section 417(a)(3) explanation. But see §1.401(a)-21 of this chapter for rules permitting the use of electronic media to provide applicable notices to recipients with respect to employee benefit arrangements.

\* \* \* \* \*

Par. 7. Section 1.7476-2 is amended by revising paragraph (c)(2) to read as follows:

*§1.7476-2 Notice to interested parties.*

\* \* \* \* \*

(c) \* \* \*

(2) If the notice to interested parties is delivered using an electronic medium under a system that satisfies the applicable notice requirements of §1.401(a)-21 of this chapter, the notice is deemed to be provided in a manner that satisfies the requirements of paragraph (c)(1) of this section.

\* \* \* \* \*

PART 35—EMPLOYMENT TAX AND COLLECTION OF INCOME TAX AT THE SOURCE REGULATIONS UNDER THE TAX EQUITY AND FISCAL RESPONSIBILITY ACT OF 1982

Par. 8. The authority citation for part 35 continues to read, in part, as follows:

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

Par. 9. Section 35.3405-1 is amended by:

- (1) Revising d-35, A.
- (2) Removing d-36, Q&A.

The revision reads as follows:

*§35.3405-1 Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.*

\* \* \* \* \*

d-35. \* \* \*

A. A payor may provide the notice required under section 3405 (including the abbreviated notice described in d-27 of §35.3405-1T and the annual notice described in d-31 of §35.3405-1T) to a

payee on a written paper document. However, see §1.401(a)-21 of this chapter for rules permitting the use of electronic media to provide applicable notices to recipients with respect to employee benefit arrangements.

**PART 54—PENSION EXCISE TAXES**

Par. 10. The authority citation for part 54 continues to read, in part, as follows:

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

Par. 11. Section 54.4980F-1, Q&A-13, is amended as follows:

- (1) Revising paragraph A-13 (c)(1)(ii).
- (2) Removing paragraph A-13 (c)(1)(iii) and (c)(3).

The revision reads as follows:

*§54.4980F-1 Notice requirements for certain pension plan amendments*

*significantly reducing the rate of future benefit accrual.*

\* \* \* \* \*

A-13. \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) The section 204(h) notice is delivered using an electronic medium under a system that satisfies the applicable notice requirements of §1.401(a)-21.

\* \* \* \* \*

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

(Filed by the Office of the Federal Register on July 13, 2005, 8:45 a.m., and published in the issue of the Federal Register for July 14, 2005, 70 F.R. 40675)

# Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

## Announcement 2005-48

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

# Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her consent to suspension from

such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

The following individuals have been placed under consent suspension from

practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Harrison, John S.	Oakland, CA	Attorney	Indefinite from January 25, 2005
Newkirk, Stephon	Winterville, NC	CPA	Indefinite from February 8, 2005
Goldman, Mark L.	East Meadow, NY	Attorney	Indefinite from February 18, 2005
Johnston, H. James	Knoxville, TN	CPA	Indefinite from March 16, 2005
Gapp, Edward J.	Greenwich, CT	CPA	Indefinite from March 28, 2005
Rowland, Mark C.	Westlake, OH	CPA	Indefinite from April 11, 2005
French Jr., Paul C.	Bangor, MI	CPA	Indefinite from April 25, 2005
Mynsberge, Richard C.	Mishawaka, IN	CPA	Indefinite from May 1, 2005
Specht Jr., Henry F.	N. Myrtle Beach, SC	CPA	Indefinite from May 1, 2005
Sostarich, Mark E.	S. Milwaukee, WI	Attorney	Indefinite from May 1, 2005
Gasa, William M.	Winfield, IL	Enrolled Agent	Indefinite from June 1, 2005
Leisure, Sally R.	Portland, OR	Attorney	Indefinite from June 9, 2005
Tuerk Jr., Carl E.	Annapolis, MD	Attorney	Indefinite from July 1, 2005

## Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to

immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary

suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice be-

fore the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Hawkins, Nicholas G.	Harrods Creek, KY	Attorney	Indefinite from February 11, 2005
Richey, Michael L.	Girardeau, MO	Attorney	Indefinite from February 11, 2005
Brown, Calvin D.	Dallas, TX	CPA	Indefinite from February 16, 2005
Bell, James M.	Bandera, TX	CPA	Indefinite from February 23, 2005
Fedynshyn, Michael P.	Broomfield, CO	Attorney	Indefinite from February 23, 2005
Harris, Ross	Pikeville, KY	Attorney	Indefinite from February 23, 2005
Tehin Jr., Nikolai	San Francisco, CA	Attorney	Indefinite from March 7, 2005
Ballance, Frank W.	Warrenton, NC	Attorney	Indefinite from March 7, 2005
Jacob, Arthur F.	Sykesville, MD	Attorney	Indefinite from March 8, 2005
Hefley, Lee D.	Burleson, TX	CPA	Indefinite from March 8, 2005
Beswick, Robert H.	Encino, CA	Attorney	Indefinite from March 8, 2005
Scarpello, Joseph R.	Tustin, CA	CPA	Indefinite from March 8, 2005
Machado, Lazaro J.	Santa Ana, CA	Attorney	Indefinite from March 8, 2005
McKnew, Donna K.	Ashland, KY	Attorney	Indefinite from March 8, 2005

Name	Address	Designation	Date of Suspension
Yarno Jr., William	Lafayette, LA	Attorney	Indefinite from March 8, 2005
Walker, Frank O.	Bay City, TX	CPA	Indefinite from March 8, 2005
Kafkas, Demetrios G.	Tewksbury, MA	Attorney	Indefinite from March 8, 2005
Scott, Bertram A.	Brooklyn, NY	Attorney	Indefinite from March 8, 2005
Templeton, Robert L.	Ashland, KY	Attorney	Indefinite from March 8, 2005
Christopher, Nathan H.	Salisbury, MD	Attorney	Indefinite from March 8, 2005
Willingham, Nathaniel J.	Jacksonville, NC	Attorney	Indefinite from March 8, 2005
Anderson, Brett I.	Des Moines, IA	Attorney	Indefinite from March 8, 2005
Broderick, Thomas F.	Somerville, MA	Attorney	Indefinite from March 14, 2005
Peoples, Brendan K.	Ft. Worth, TX	CPA	Indefinite from March 15, 2005
Tidmore, J. Todd	Addison, TX	CPA	Indefinite from March 15, 2005
Cox, Patricia A.	Victoria, TX	CPA	Indefinite from March 15, 2005
Rogers, Fred	Mansfield, LA	CPA	Indefinite from March 15, 2005
Bridgeforth, Wyvonnia	Oak Park, IL	Attorney	Indefinite from March 15, 2005
Bruce, Donna M.	Athens, AL	CPA	Indefinite from March 18, 2005

Name	Address	Designation	Date of Suspension
Teske, David S.	Seattle, WA	Attorney	Indefinite from March 18, 2005
Cobb Jr., Wayne H.	Kaufman, TX	Attorney	Indefinite from March 18, 2005
Swindell IV, Lewis H.	Avondale, AZ	Attorney	Indefinite from March 18, 2005
Murr, Mark D.	Houston, TX	Attorney	Indefinite from March 18, 2005
Nip, Raymond A.C.	Honolulu, HI	CPA	Indefinite from March 18, 2005
Asbury, Lloyd T.	Jacksonville, FL	Attorney	Indefinite from March 18, 2005
Lowell, Melinda E.	New York, NY	Attorney	Indefinite from March 18, 2005
Rub, Lawrence P.	Glenwood, MD	CPA	Indefinite from March, 18, 2005
Fagan, Charles G.	Severna Park, MD	CPA	Indefinite from March 21, 2005
Lewis, Larry L.	Woodbridge, VA	Attorney	Indefinite from March 28, 2005
Mpi, Afoma M.	Peoria, IL	Attorney	Indefinite from March 30, 2005
Gross, Hyath B.	Schenectady, NY	Attorney	Indefinite from April 1, 2005
Zick, Terry T.	Wrightville Beach, NC	Attorney	Indefinite from April 1, 2005
Atlas, Joan M.	Philadelphia, PA	Attorney	Indefinite from April 4, 2005
Rider, Lawrence C.	Boulder, CO	Attorney	Indefinite from April 5, 2005
Eller, Scott D.	Frisco, TX	CPA	Indefinite from April 6, 2005

Name	Address	Designation	Date of Suspension
Brenton, Robert O.	Overland Park, KS	CPA	Indefinite from April 6, 2005
Folks, Lloyd C.	Kinston, NC	CPA	Indefinite from April 6, 2005
Suckling, John R.	San Marcos, CA	CPA	Indefinite from April 6, 2005
Pulito, James P.	Phoenix, AZ	CPA	Indefinite from April 6, 2005
Garcia, Felix D.	Auroa, CO	Attorney	Indefinite from April 6, 2005
Wentzel, Gerald L.	Bloomington, IL	CPA	Indefinite from April 14, 2005
Williams, David W.	Simpsonville, KY	Attorney	Indefinite from April 19, 2005
Sykes III, Bernard G.	Riviera Beach, FL	Attorney	Indefinite from April 19, 2005
Hambrick Jr., J. C.	Branson, MO	Attorney	Indefinite from April 19, 2005
Adams, David M.	Charleston, SC	Attorney	Indefinite from April 19, 2005
Richardson, Jon M.	Danville, IL	Attorney	Indefinite from April 19, 2005
Rose, Shaun H.	Baltimore, MD	Attorney	Indefinite from April 19, 2005
Tanner, Fred L.	Bowling Green, KY	Attorney	Indefinite from April 19, 2005
Perry, David W.	Reading, MA	Attorney	Indefinite from April 19, 2005
Fleming, Bruce D.	Council Bluffs, IA	Attorney	Indefinite from April 19, 2005
Healy, Paul J.	Pembroke, MA	Attorney	Indefinite from April 19, 2005

Name	Address	Designation	Date of Suspension
Kaczynski, Ronald C.	Andover, MA	Attorney	Indefinite from April 19, 2005
Whalley, Lester F.	Yorba Linda, CA	Attorney	Indefinite from April 27, 2005
Tanner, Max	Las Vegas, NV	Attorney	Indefinite from May 3, 2005
Blackwell, Johnny L.	Fayetteville, NC	CPA	Indefinite from May 3, 2005
Szer, Steven	Fort Mill, SC	CPA	Indefinite from May 3, 2005
Chinn, David P.	Louisville, KY	Attorney	Indefinite from May 9, 2005
Bille, Anthony J.	Hopkinton, MA	Attorney	Indefinite from May 16, 2005
Dotson, Lewis S.	Mattoon, IL	Attorney	Indefinite from May 16, 2005
Palmer, Philip B.	Chubbuck, ID	Attorney	Indefinite from May 16, 2005
Wolterbeek, Mark E.	Rindge, NH	Attorney	Indefinite from May 31, 2005
James III., Charles M.	Cheverly, MD	Attorney	Indefinite from May 31, 2005
Jorgensen, Allen C.	Redlands, CA	Attorney	Indefinite from June 2, 2005
Brisbon, Brenda C.	Baltimore, MD	Attorney	Indefinite from June 7, 2005
Gilroy, John M.	Waterloo, NE	Attorney	Indefinite from June 7, 2005
Relphorde, Colin B.	Homewood, IL	Attorney	Indefinite from June 7, 2005
Pomeroy, John S.	Dedham, MA	Attorney	Indefinite from June 7, 2005

Name	Address	Designation	Date of Suspension
Gonick, Richard S.	Ipswich, MA	Attorney	Indefinite from June 7, 2005
Curran, Martin J.	Manchester, NH	Attorney	Indefinite from June 7, 2005
Koenigsdorf, Keith B.	Overland Park, KS	Attorney	Indefinite from June 7, 2005
Jambor, Daniel F.	St. Paul, MN	Attorney	Indefinite from June 7, 2005
LaFont Jr., Henry J.	Lockport, LA	Attorney	Indefinite from June 7, 2005
Janosik, Dennis M.	Parma, OH	CPA	Indefinite from June 9, 2005
Carter, Evalyn R.	Calera, OK	CPA	Indefinite from June 9, 2005
Chasnoff, Joel	Gaithersburg, MD	Attorney	Indefinite from June 9, 2005
O'Keefe, Michael E.	Oak Park, CA	Attorney	Indefinite from June 9, 2005
Wilkes, Richard C.	Bowbells, ND	Attorney	Indefinite from June 9, 2005
Rogers, Reginald J.	Bowie, MD	Attorney	Indefinite from June 9, 2005
Hindley, Charles T.	Colton, CA	Attorney	Indefinite from June 9, 2005
Morgan, Wendy B.	Scotts Valley, CA	Attorney	Indefinite from June 9, 2005

## Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an ad-

ministrative law judge, the following individuals have been placed under suspension

from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Cahill, Gary	Shelton, CT	Attorney	January 27, 2005 to January 26, 2008
Banks, Jean R.	Van Nuys, CA	Enrolled Agent	March 8, 2005 to December 7, 2006

## Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent,

or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand.

The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Borden Kathleen	Bluffton, SC	Attorney	May 11, 2005
Williamson, Debra	Long Beach, CA	CPA	June 3, 2005

### Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options

#### Announcement 2005-55

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking (REG-142686-01, 2001-2 C.B. 561) relating to the application of the Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and Collection of Income Tax at Source to incentive stock options and options granted under employee stock purchase plans (col-

lectively referred to as “statutory stock options”) that was published on November 14, 2001. This withdrawal affects employers that grant these options and employees who exercise these options.

FOR FURTHER INFORMATION CONTACT: Paul J. Carlino or Michael Swim, 202-622-0047 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 14, 2001, the IRS and Treasury published proposed amendments to 26 CFR Part 31 under sections 3121(a), 3306(b), and 3401(a) of the Internal Revenue Code (Code), and to 26 CFR Part 1 under section 424 of the Code, that would address the application of the FICA, FUTA, and Collection of Income Tax at Source to statutory stock options. These proposed amendments to the regulations were published in the **Federal Register** (66 FR 57023).

The American Jobs Creation Act of 2004 (the AJCA), H.R. 4520, Public Law 108-357 (118 Stat. 1418), was enacted on October 22, 2004. Section 251 of the AJCA amended sections 3121(a) and 3306(b) of the Code to exclude remuneration on account of a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or any disposition by the individual of such stock, from the definition of wages for FICA and FUTA tax purposes, respectively. Section 251 of the AJCA also amended sections 421(b) and 423(c) of the Code so that no amount shall be required to be deducted and withheld under the Collection of Income Tax at Source provisions of the Code with respect to any amount treated as compensation under section 421(b) or 423(c), respectively. Because the proposed amendments to the regulations are no longer consistent with the statutes, the IRS and Treasury are

withdrawing the proposed amendments to the regulations.

The statutory amendments made by section 251 of the AJCA apply to stock acquired pursuant to statutory stock options exercised after October 22, 2004. For guidance applying to stock acquired pursuant to statutory stock options exercised on or before October 22, 2004, see Notice 2002-47, 2002-2 C.B. 97.

\* \* \* \* \*

### Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-142686-01) that was published in the **Federal Register** on November 14, 2001 (66 FR 57023) is withdrawn.

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

(Filed by the Office of the Federal Register on June 30, 2005, 8:45 a.m., and published in the issue of the Federal Register for July 1, 2005, 70 F.R. 38057)

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### Dual Consolidated Loss Regulations; Correction

#### Announcement 2005-56

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing (REG-102144-04, 2005-25 I.R.B. 1297) that was published in the **Federal Register** on Tuesday, May 24, 2005 (70 FR 29868). The proposed regulations provide guidance regarding dual consolidated loss issues, including exceptions to the general prohibition against using a dual consolidated loss to reduce the taxable income of any other member of the affiliated group.

FOR FURTHER INFORMATION CONTACT: Kathryn T. Holman, (202) 622-3840 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of proposed rulemaking (REG-102144-04) that is the subject of these corrections are under sections 1503, 953 and 367 of the Internal Revenue Code.

##### Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing (REG-102144-04) contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the notice of proposed rulemaking and notice of public hearing (REG-102144-04), that was the subject of FR Doc. 05-10160, is corrected as follows:

1. On page 29869, column 1, in the preamble under the paragraph heading “**Background**”, paragraph 3 from the top of the column, line 5, the language “as if such unit where a wholly owned” is corrected to read “as if such unit were a wholly owned”

##### §1.1503(d)-4 [Corrected]

2. On page 29897, column 2, “§1503(d)-4 (i)(1), line 6, the language, “through (ix) of this section, including” is corrected to read “through (viii) of this section, including”

##### §1.1503(d)-5 [Corrected]

3. On page 29903, column 2, §1.1503(d)-5(c), paragraph (i), of *Example 34.*, the language, “its worldwide income  $F_x$ , a an unrelated” is corrected to read “its worldwide income,  $F_x$ , an unrelated”

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 8, 2005, 8:45 a.m., and published in the issue of the Federal Register for July 11, 2005, 70 F.R. 39695)

### Safe Harbor for Valuation Under Section 475; Correction

#### Announcement 2005-57

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing (REG-100420-03, 2005-24 I.R.B. 1236) that was published in the **Federal Register** on Tuesday, May 24, 2005 (70 FR 29663). The proposed regulations provide guidance regarding elective safe harbor for dealers and traders in securities and commodities.

FOR FURTHER INFORMATION CONTACT: Marsha A. Sabin or John W. Rogers III (202) 622-3950 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of proposed rulemaking (REG-100420-03) that is the subject of these corrections is under section 475 of the Internal Revenue Code.

##### Need for Correction

The notice of proposed rulemaking (REG-100420-03) contains errors that may prove to be misleading and are in need of clarification.

##### Correction of Publication

Accordingly, the notice proposed rulemaking (REG-100420-03), that was the subject of FR Doc. 05-10167, is corrected as follows:

1. On page 29666, column 2, under paragraph heading “Record Retention and Production; Use of Different Values”, first paragraph, lines 15 through 18 from the bottom of the paragraph, the language “such as the Schedule M-1, “*Net Income (Loss) Reconciliation for Corporations With Total Assets of \$10 Million or More,*” Schedule M-3, “Net” is corrected to read

“such as the Schedule M–1, “*Reconciliation of Income (Loss) per Books With Income per Return*”, Schedule M–3, “Net”.

**§1.475(a)–4 [Corrected]**

2. On page 29670, column 3, §1.475(a)–4(k)(2)(i)(A), lines 11 through 13 from the top of the column, the language, “Schedule M–1, “*Net Income (Loss) Reconciliation for Corporations With Total Assets of \$10 Million or More*” is corrected to read “Schedule M–1, “*Reconciliation of Income (Loss) per Books With Income per Return*”.

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 July 8, 2005, 8:45 a.m., and published in the issue of the Federal Register for July 11, 2005, 70 F.R. 39695)

## Foundations Status of Certain Organizations

### Announcement 2005–58

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does not indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

18 Society Foundation, Henderson, NV  
22nd International Asian Organized  
Crime Conference, San Francisco, CA  
203 K Hope, El Paso, TX  
AAM Foundation, Novato, CA

Adventure Based Learning Experiences,  
Enterprise, OR  
Affordable Housing Associates, Inc.,  
Salt Lake City, UT  
Airborne Specialists, Inc., Claremore, OK  
Alabama Repertory Theatre, Inc.,  
Birmingham, AL  
Alder Point Blocksburg Casterlin  
Community Center, Alder Point, CA  
All Star Sports Association,  
Union City, CA  
Alzheimer Associates Enterprise,  
Fairfield, OH  
Amateur Stallions, Inc., Clifton, NJ  
American Friends of Kolliel Zichron  
Asher, Inc., Miami Beach, FL  
American Philanthropic Trust Fund, Inc.,  
Chicago, IL  
American Railroad Preservation  
Foundation, Inc., Coral Gables, FL  
Angel House, Inc., Sterling, IL  
Angelic Intervention, Torrance, CA  
Angels on Earth Foundation, Kenner, LA  
Animal Assistance Association, Inc.,  
Hillsboro, OR  
Animal Sanctuary of the Central Coast,  
Santa Maria, CA  
Animals Facilitating Adolescents &  
Children Therapeutically, Cortaro, AZ  
Arizona Ballet School, Inc., Phoenix, AZ  
Arizona Entrepreneurs Organization,  
Tempe, AZ  
Arts for Everyone, Ogden, UT  
Ashley County Tea Coalition,  
Hamburg, AR  
Asian POWs Memorial Fund, Tucson, AZ  
Auburn Riverside Grad Nite Committee,  
Auburn, WA  
Bad Epitaph Theater Company,  
Cleveland Heights, OH  
Badge 2 Badge, Encino, CA  
Balance Dance Company, Boise, ID  
Ballet Jude, Brooklyn, NY  
Barefoot Ballet, Inc., Atlanta, GA  
Beavercreek Charitable Trust,  
Beavercreek, OR  
Because We Are People Too, Houston, TX  
Ben-Hair Productions, Las Vegas, NV  
Berkeley Center for Survivors of  
Domestic Violence, Oakland, CA  
Berkeley Spay Neuter Your Pet, Inc.,  
Berkeley, CA  
Birdville High School Choir Booster  
Club, N. Richland Hills, TX  
Black Catholic Association, Inc.,  
Phoenix, AZ  
Black Women in Progress, Arlington, TX  
Black Womens Leadership Conference,  
Los Angeles, CA  
Boca Raton Preparatory PTO,  
Boca Raton, FL  
Bodega Bay Fishermans Festival,  
Bodega Bay, CA  
Bridges of Health, Inc., Alamosa, CO  
Buddies Unlimited, Pueblo, CO  
Building Community Without Walls, Inc.,  
Santa Monica, CA  
Bulldogs Cheer Boosters, Palmdale, CA  
Burney Falls Intermountain Main Street,  
Burney, CA  
Business and Research Assistance Center,  
Clarksville, TN  
Butte Glen Family Violence Prevention  
Council, Chico, CA  
By Faith Theatre Ministries, Incorporated,  
Memphis, TN  
C D Franks PTO, Ashdown, AR  
California Center for Cultural Educational  
Development, Fresno, CA  
California Culture Net, San Francisco, CA  
California Student Scholarship Fund,  
W. Sacramento, CA  
California Wine Education Foundation,  
Lodi, CA  
Camague Yanos Catolicos, Inc.,  
Miami, FL  
Cancer Care Foundation, Inc.,  
Valencia, CA  
Cantebria Senior Homes, Denver, CO  
Canyon West Academy, Arvada, CO  
Caribbean World Arts & Culture, Inc.,  
Los Angeles, CA  
Caring Veterans, Paradise, CA  
Carlos Gilbert PTK, Inc., Santa Fe, NM  
Center for Computer Literacy, Inc.,  
St. Croix, VI  
Central Arkansas Youth Hockey  
Association, Little Rock, AR  
Charitable Association of Santa Clara  
Post 419, Santa Clara, CA  
Chickasha Quarterback Club,  
Chickasha, OK  
Chickasha Youth Baseball, Inc.,  
Chickasha, OK  
Childrens Personality Development  
Foundation, Mankato, MN  
Chopin Society of Houston, Bellaire, TX  
Christian Partnerships, Inc.,  
Sacramento, CA  
Circle of Concern of Kansas, Inc.,  
Salina, KS  
City & State Economic Development  
Corporation, New Orleans, LA  
City Vision Santa Rosa, Santa Rosa, CA

Clean Money Kentucky, Inc.,  
Louisville, KY

Clear Creek Youth Initiative,  
Clearmont, WY

Clearwater Project, Inc.,  
Santa Barbara, CA

Clinical Research Network, Inc.,  
Scotch Plains, NJ

Coalinga Youth Sports Foundation,  
Coalinga, CA

Colonial Middle Band Boosters,  
Memphis, TN

Community Assistance Resource Efforts  
Non Profit Corporation, Riverside, CA

Community College Leadership  
Development Initiative, Santa Rosa, CA

Community Reinvestment Concepts, Inc.,  
Clayton, GA

Community Service Housing 1, Inc.,  
Chandler, AZ

Community Service Housing 2, Inc.,  
Chandler, AZ

Community Service Housing 3, Inc.,  
Chandler, AZ

Computer Place, Kentfield, CA

Concerned Carnegie Area Residents  
CCAR, Inc., Carnegie, OK

Concerned Parents and Patients of  
Sickle Cell Disease (CPPSCD),  
Sacramento, CA

Conversion Project, Inc., Los Angeles, CA

Cool Springs Rotary Community Fund,  
Inc., Franklin, TN

Coral Reef Elementary Act, Inc.,  
Miami, FL

C P R Community Provided Resources,  
Tucson, AZ

Creative Artitudes, Richardson, TX

Critters in Crisis, Lawai, HI

Crusade Outreach, Inc., Washington, DC

Dallas Creative Problem Solving  
Organization, Inc., Dallas, TX

Dan Stover Music Awards, Inc.,  
San Marinos, CA

Dance Safe, Oakland, CA

Deer Park Swim Club, Deer Park, TX

Denny Association for Veterinary  
Assistance, Tucson, AZ

Desert Willow PTO, Cave Creek, AZ

Design & Development Resources  
for Education and the Arts, Inc.,  
New York, NY

Dickson County Band Boosters, Inc.,  
Dickson, TN

Directions, Inc., Busby, MT

Directions Unlimited Youth Vocational  
Center, Ft. Collins, CO

Disability Policy and Planning Institute,  
Berkeley, CA

District 5520 Youth Exchange Foundation,  
Las Cruces, NM

Dollar Family Ministries, Inc.,  
Waxahachie, TX

Don't Blow Smoke on America,  
Houston, TX

Dress for Success Yuba Shelter,  
Yuba City, CA

Drill Team Booster Club, Redmond, WA

DRSA Foundation, Sacramento, CA

DUI Prevention Awareness,  
Newport Beach, CA

Durango Young Center, Inc., Durango, CO

Durham Chamber Foundation, Inc.,  
Durham, NC

Earthtime Ranch, Flagstaff, AZ

East Texas Neuro Support Group,  
Lufkin, TX

Eastside Adapt Program, San Antonio, TX

Echo Park Neighborhood Empowerment  
Project, Los Angeles, CA

Education for Global Diversity, Inc.,  
Santa Cruz, CA

Educational Concepts, Sacramento, CA

Educational Partners, Nashville, TN

Edward James Olmos Educational Center,  
Inc., Santa Fe Springs, CA

Edwards Foundation, Inc., Beaverton, OR

EEM Corporation, Los Angeles, CA

Elijah Nichols Wilson Society,  
Petaluma, CA

Elmwood House Foundation, Inc.,  
Cherry Hill, NJ

Emotional Fitness Center, Inc., Tempe, AZ

Empowerment for Life, Inc.,  
Morgan City, LA

Englewood Masonic Family Scholarship  
Trust, Englewood, FL

Ernest Kelly Outreach, Inc., Midway, GA

Eviction Defense Collaborative, Inc.,  
San Francisco, CA

Evolutions in Song, Inc., New York, NY

Faith Family Medical Clinic,  
Nashville, TN

Family Medical Physician Group, Inc.,  
Colorado City, TX

Family to Family Americans for Prostate  
Cancer Awareness, Carson City, NV

Farmers Agribusiness Resources &  
Marketing, Inc., Alexandria, VA

Fayetteville, Sister Cities, Inc.,  
Fayetteville, AR

First Night Whittier, Whittier, CA

Florida Orlando Development  
Corporation, Orlando, FL

Foundation Support Services, Inc.,  
Pine Bluff, AR

Freedoms Way Ministry, Yucca Valley, CA

Friends of the Wolf, Tenino, WA

Friendship Amateur Radio Society, Inc.,  
Oregon City, OR

Gainesville Housing & Community  
Development Corporation,  
Gainesville, TX

Gallman National Historic District  
Association, Inc., Gallman, MS

George H. Atkinson and Mable  
Allene Atkinson Foundation,  
Pacific Palisades, CA

Georgia Rural Water Education  
Foundation, Inc., Barnesville, GA

Global Aid Network, Seattle, WA

Global Oxygen Crisis, Hudson, FL

Gods House of Refuge Community  
Development Corporation,  
West Palm Beach, FL

Golden Rule Services, Inc.,  
Sacramento, CA

Good Samaritan Childrens Mission, Inc.,  
Sugarland, TX

Goodlettsville Middle School  
Parent Teacher Organization,  
Goodlettsville, TN

Grady Community Center, Inc.,  
Grady, AR

Great Compassion Buddhist Association,  
Rowland Heights, CA

Greater Bakersfield Vision 2000, Inc.,  
Bakersfield, CA

Greater Columbia County Education  
Careers Foundation, Inc.,  
St. Helens, OR

Green Valley Parent/Teacher Club,  
Suisan City, CA

Grissly Foundation, Porterville, CA

Growth Objective Distribution,  
Shreveport, LA

Guadalupe County Advocates Council,  
Inc., Seguin, TX

Guild Foundation, Inc., Woodbridge, CT

Gulf Coast Regional Community  
Development Corporation, Houston, TX

Hale O Honolulu, Honolulu, HI

Harbor View Community Treatment  
Facility, Inc., Oakland, CA

Harvey Mason Foundation, Encino, CA

Hawaii Geographic Information  
Coordinating Council, Honolulu, HI

Hawaii Good Samaritan Medical Relief  
Mission, Inc., Hilo, HI

Health Encouragement Through Active  
Living, Los Angeles, CA

Helen Lee Gentry Scholarship Fund,  
 Loveland, OH  
 Heritage Preservation Society,  
 Houston, TX  
 Highland High School Instrumental Music  
 Club, Bakersfield, CA  
 Hogar Manuel Mediavilla Negron, Inc.,  
 Humacao, FL  
 Hope Network of Montgomery County,  
 Mt. Ida, AR  
 H O P E NW, Inc., Portland, OR  
 Hope Resources, Inc., Lindale, TX  
 Housing & Economic Development, Inc.,  
 Magdalena, NM  
 Housing Development, Inc.,  
 New Bremen, OH  
 Human Services Alliance of Los Angeles,  
 Los Angeles, CA  
 I Can Wait, Inc., New Orleans, LA  
 Information Technologies Across  
 Cultures, Espanola, NM  
 Inner-City Economic Development, Inc.,  
 Austin, TX  
 Inner City Skills Center, Inc.,  
 Los Angeles, CA  
 InsightOut Enterprises, San Rafael, CA  
 Institute for Consumer Credit Education,  
 Tinley Park, IL  
 Institute for the Study of Long-Term  
 Economic Trends, Forest Hills, NY  
 International Coalition for Childrens  
 Creative Communication,  
 Culver City, CA  
 International Transpersonal Studies  
 Foundation, Honolulu, HI  
 Internet Anonymous, Inc., Reseda, CA  
 Inwood Heights Housing Development  
 Fund Corporation, Bronx, NY  
 Iris & Institute for Cultural Education,  
 Santa Fe, NM  
 Its Not Your Fault, Inc., Portland, OR  
 Jamal Anderson Miracle Foundation,  
 Duluth, GA  
 Jammin Foundation, Los Angeles, CA  
 John Onesti Foundation, Issaquah, WA  
 Katherine Dunn Parent Teacher  
 Organization, Sparks, NV  
 Kentucky Appalachian Artisans Education  
 Foundation, Inc., Hindman, KY  
 Kenwood Charter School, Kenwood, CA  
 Kigezi International School of Medicine  
 Foundation, Bellevue, WA  
 King Enterprises Youth Programs,  
 Oakland, CA  
 Kolisko Institute, Santa Rosa, CA  
 Latino Alcohol and Drug Services, Inc.,  
 Modesto, CA  
 Lea County Womens Network,  
 Hobbs, NM  
 Leander High School Alumni Association,  
 Leander, TX  
 Learning Center, Inc., of North Little  
 Rock, North Little Rock, AR  
 Lemanski Hall Foundation, Inc.,  
 Nashville, TN  
 Lexington Home Ownership Commission  
 II, Inc., Lexington, KY  
 Liberty P A T S, Bakersfield, CA  
 Life and Economic Improvement Council  
 LEIC, Inc., Miami, FL  
 LIFE (Lifeline Initiative for Family  
 Empowerment) Center, Memphis, TN  
 Life Plan Foundation, Phoenix, AZ  
 Lions Club of Honolulu Foundation, Inc.,  
 Honolulu, HI  
 Little River Symphony, Inc.,  
 Annandale, VA  
 Los Angeles Arts Foundation-V,  
 Gardena, CA  
 Los Angeles Bach Society, La Canada, CA  
 Los Angeles Jazz Museum,  
 Los Angeles, CA  
 Los Lunas Schools Partners in Education,  
 Los Lunas, NM  
 Mala O Paulele A Me Aloha, Honolulu, HI  
 Mance Park Booster Club, Huntsville, TX  
 Marumsc Creek Wildlife Foundation,  
 Inc., Pocomoke City, MD  
 Meadow Lane Boosters, Lemoore, CA  
 Memphis Black Repertory Theatre, Inc.,  
 Memphis, TN  
 Mendenhall Rural Housing and  
 Community Development Corporation,  
 Jackson, MS  
 Menorah — The Boulder Center for Adult  
 Jewish Education, Inc., Boulder, CO  
 MentalHealthAmerica, Inc.,  
 Lexington, KY  
 Meritor Academy Parent Group,  
 Westlake Village, CA  
 Metro Denver Gang Coalition,  
 Denver, CO  
 Michael Douglas Jenner Youth Center,  
 Inc., Sheperville, KY  
 Mid-Nebraska Community Center, Inc.,  
 Kearney, NE  
 Midsouth Leadership Alliance, Inc.,  
 Jackson, MS  
 Ministry Management Seminars,  
 Kent, WA  
 Mission Tucson, Inc., Tucson, AZ  
 Mitzvah Outreach International, Inc.,  
 Brooklyn, NY  
 Mobile Jazz Instruction Studio,  
 Swanzey, NH  
 M O D E L Institute, Inc., Inglewood, CA  
 Modesto North Rotary Club Foundation,  
 Modesto, CA  
 Mozaic Minds, Inc.,  
 Colorado Springs, CO  
 Mt. Pilgrim Institute of Academic  
 Development, Inc., Anderson, IN  
 Multicultural Connections, Incorporated,  
 Merced, CA  
 Na Lima Paepae O Lele, Lahaina, HI  
 Nanook Basketball Tip Off Club, Inc.,  
 Fairbanks, AK  
 National Association of Black Women,  
 Altadena, CA  
 National Housing Assistance Corporation,  
 Oxon Hill, MD  
 National-International Abstinence  
 Association, Tucson, AZ  
 National Organization Against Gangs,  
 Vacaville, CA  
 National Police K9 Foundation, Inc.,  
 Rhinebeck, NY  
 Nebraska Federation of Families for  
 Childrens Mental Health, N. Platte, NE  
 Nehemiah Partners, Edina, MN  
 Neighbors International, Milton, MA  
 Nevada Performing Arts, Inc., Sparks, NV  
 New Beginning Corp., Miami, FL  
 New Creations Training Center,  
 Elk Grove, CA  
 New Futures for Nickerson Youth, Inc.,  
 Los Angeles, CA  
 New Hope in Unity, Inc., Fort Pierce, FL  
 New Horizons, Inc., New Roads, LA  
 New Leaf Community School,  
 Phoenix, AZ  
 New Life Thru Cars, Ceres, CA  
 New Mexico Fiesta Educativa, Inc.,  
 La Mesa, NM  
 New York Presbytery of the Lorean  
 Presbyterian Church in America,  
 Oakland Gardens, NY  
 Non Profit Projects, Inc., Houston, TX  
 North American Wildlife Photography  
 Hall of Fame, Raymondville, TX  
 North Monterey County High School  
 Athletic Boosters Organization,  
 Castroville, CA  
 North Unity Council of La Raza,  
 Fort Worth, TX  
 Northeast Arkansas Razorback Club, Inc.,  
 Paragould, AR  
 Northeast Neighbors, Santa Monica, CA  
 Northrise University Initiative,  
 Glendale, CA  
 Northwest Valley Sunset Rotary Club  
 Foundation, Sun City, AZ

Norwalk-Knights Youth Hockey Club, Norwalk, CA  
 Nowata Volunteer Fire Department, Inc., Nowata, OK  
 Oceans and Earth Research Foundation, Inc., Dallas, TX  
 Odyssey Industries, Inc., Ada, OK  
 Oklahoma County Sheriffs Reserves, Oklahoma City, OK  
 Oldtown Salinas Foundation, Salinas, CA  
 Olympus Northwest Parent Support Group, Bellevue, WA  
 On Course Now, Inc., Rowlett, TX  
 Oncology Consultants Cancer Research Fund, Inc., Cincinnati, OH  
 One Vision Childrens Foundation, Tempe, AZ  
 Oregon Only, Salem, OR  
 O U R Childrens Center, Inc., Harrison, AR  
 Our House, Inc., Columbia, SC  
 Ovarian Cancer Alliance of Nevada, Las Vegas, NV  
 Overtown Development Corporation, Miami, FL  
 P. A. K. T., Albuquerque, NM  
 P. J. Howard Scholarship Fund, Safford, AZ  
 Pacific Rim Cultural Foundation, Sherman Oaks, CA  
 Parker Sayles Foundation, N. Charleston, SC  
 Partners Helping People Foundation of America, Alexandria, KY  
 Partnership Way, Clinton, IA  
 Pena Del Sur, San Francisco, CA  
 People Need People, Walnut Creek, CA  
 Peoria Firefighters Olympic Committee, Peoria, AZ  
 PORCH, Clarksdale, MS  
 Prisoner Integration Experience PIE, Las Vegas, NV  
 Prodigal Ranch Foundation, Silt, CO  
 Programa De Ayuda, Inc., Bend, OR  
 Progression in Education, Inc., Reseda, CA  
 Progressive Housing Assistance, Manhattan Beach, CA  
 Progresso Foundation, Inc., Ft. Lauderdale, FL  
 Project Graduation 2000, Texas City, TX  
 Project Success, Lebanon, OR  
 Proyouth Ministries, Vancouver, WA  
 PS Foundation, Sacramento, CA  
 Pueblo of Laguna Boys and Girls Club, Inc., Old Laguna, NM  
 Purchasing Services Agency, San Francisco, CA  
 Rad4Christ, etc., Inc., Wilmington, DE  
 Red Hill Council, Carbondale, CO  
 Renaissance Foundation of Alabama, Inc., Andalusia, AL  
 Renaissance on Farnam, Omaha, NE  
 Renewed Hope Charitable Foundation, Castle Rock, CO  
 Riders of Azgard Search and Rescue Team, San Antonio, TX  
 River Valley Elementary Parent Teacher Student Organization, Inc., Meridian, ID  
 Riverside for a Just Society, Inc., New York, NY  
 Rivets, Inc., Las Vegas, NV  
 RMDC Ptarmigan, Inc., Helena, MT  
 Robyn Institute on Violence, Las Cruces, NM  
 Rotary Club of Killeen Heights Charitable Corporation, Temple, TX  
 Rural Access to Growth and Education, Inc., Imperial, NE  
 Russellville Cyclone Football Booster Club, Inc., Fayetteville, AR  
 Russellville High School Renaissance Foundation, Inc., Russellville, AR  
 S & P Foundation, San Ramon, CA  
 Sacramento Geranium Club, Sacramento, CA  
 Safe-on-Sixth, San Francisco, CA  
 Safer St. Tammy, Inc., Lacombe, LA  
 Saint Andrews Renaissance Guild, Incorporated, Reno, NV  
 San Leandro Charter Schools, Inc., San Leandro, CA  
 Santa Clara County Black Firefighters Association, San Jose, CA  
 Santa Paula Resource Youth Team, Santa Paula, CA  
 Save Our City Kids, Lake Elsinore, CA  
 Save the Horse, Inc., Massapequa, NY  
 Saving Wildlife International, Malibu, CA  
 Scott County Family Resource Organization, Huntsville, TN  
 Seniors Advocating for Equality, Tacoma, WA  
 Shawnee Park Cultural Renaissance Art Series, Inc., Louisville, KY  
 Sheldon High School Drill and Flag Team Booster Club, Sacramento, CA  
 Shields Valley Foundation, Inc., Clyde Park, MT  
 Shiloh-Gibeah, Cottonwood, AZ  
 Shoulder to Shoulder Ministries, Folsom, CA  
 Sisters of Joy, Inc., Houston, TX  
 Skilltalk, Bellevue, WA  
 Skillworks, Inc., Summit, NJ  
 South Bay Workforce Investment Consortium, Inc., Hawthorne, CA  
 South Los Angeles Economic Development Corporation, Los Angeles, CA  
 South Perry Fire-EMS Association, Inc., Viper, KY  
 Southeastern Oklahoma Social Services, Inc., Wilburton, OK  
 Southern African Cultural and Economic Organization, Houston, TX  
 Southern Nevada Opera Association, Las Vegas, NV  
 SPCA Ambassadors, Monterey, CA  
 Special Riders of Summer, Cottontown, TN  
 Springhurst Project, Kirkland, WA  
 St. Gabriels 1st Goal, St. Gabriel, LA  
 Strategic Leadership Institute, Seattle, WA  
 Suited for Success, Chattanooga, TN  
 Summit Community Health Education Center, Inc., Miami, FL  
 Sunnyside Home Attendant Program, Inc., Sunnyside, NY  
 Sunshine Foundation of USA, Inc., Dale City, VA  
 Sunshine Homes, Inc., Tempe, AZ  
 Supportive Employments Technologies, Vacaville, CA  
 Sutter Buttes Sunrise Scholarship Foundation, Yuba City, CA  
 Synchronized on Ice, Long Beach, CA  
 Taft Volunteer Advisory Board, Inc., Pikeville, TN  
 Tennessee Musical Arts Group, Inc., Nashville, TN  
 Terpsicorps, Palos Verdes, CA  
 Thunderbird Foundation for the Arts, Ogden, UT  
 Topcare, Inc., Glendora, CA  
 Torres Basketball Club, San Diego, CA  
 Total Outreach, Inc., Atlanta, GA  
 Trailhead Foundation, Mandeville, LA  
 Truth Alternatives, Inc., Cinebar, WA  
 Tumwater Hill Elementary PTA 4-4-35, Tumwater, WA  
 Tye HUD 811 Housing, Kenai, AK  
 Ujamaa Youth Education Foundation, Oakland, CA  
 Ujima Village Resident Council, Los Angeles, CA  
 Unitarian Universalist Community Ministry Center, Berkeley, CA  
 United Assistance Corporation, South Gate, CA  
 Unlimited Entertainment, Inc., Long Beach, CA  
 Uptown Transportation, Inc., Orem, UT

U S Youth Flyfishing Association, Inc.,  
Van Buren, AR  
Utopian Health System, Inc.,  
Baton Rouge, LA  
Valley Action Community Services,  
Eloy, AZ  
Vaughns Valley Foundation,  
Elk Grove, CA  
Violet Foundation, Los Angeles, CA  
Waldorf International Trading House,  
Citrus Heights, CA  
Warren Avenue Baptist Church Housing  
Project, Inc., Detroit, MI  
Waterside Community Association,  
Shreveport, LA  
Watsonville Cultural Center,  
Watsonville, CA  
Watsonville Police Assistance Fund,  
Watsonville, CA  
Waverly United for Action, Inc.,  
Columbia, SC

Were Here for Kids, Inc.,  
Santa Barbara, CA  
West Broward Family Empowerment  
Center, Lauderhill, FL  
West Wind Worship, Mission Viego, CA  
Westminster Institute, Santa Barbara, CA  
Westside Community Group, Inc.,  
Coldwater, MS  
White Mountain Youth Alliance Teen  
Advocacy Group, Show Low, AZ  
Whitley County Family Violence  
Prevention Board, Inc.,  
Williamsburg, KY  
Wind River Therapeutic Riding Facility,  
Box Elder, SD  
Wirikuta Peace Fellowship, Boulder, CO  
Wolf Pack, Plano, TX  
Yes We Can, Inc., Boca Raton, FL  
Young Actors Guild, Inc., Memphis, TN  
Young Musicians of Virginia,  
Virginia Beach, VA

Youth Aid, Inc., Houston, TX  
Yuma Main Street, Inc., Yuma, AZ  
Zanimals Children Foundation, Inc.,  
Miami Beach, FL

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

# 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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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–1 through 2005–26 is in Internal Revenue Bulletin 2005–26, dated June 27, 2005.