

## **HIGHLIGHTS OF THIS ISSUE**

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

### **INCOME TAX**

#### **T.D. 9371, page 447.**

#### **REG-141399-07, page 470.**

Final, temporary, and proposed regulations under section 904 of the Code provide rules concerning the treatment of overall foreign and domestic losses, as well as separate limitation losses, under sections 904(f) and (g). A public hearing is scheduled for April 10, 2008.

#### **Notice 2008-22, page 465.**

#### **Low-income housing tax credit; private activity bonds.**

Resident populations of the 50 states, the District of Columbia, Puerto Rico, and the insular areas are provided for purposes of determining the 2008 calendar year (1) state housing credit ceiling under section 42(h) of the Code, (2) private activity bond volume cap under section 146, and (3) private activity bond volume limit under section 142(k).

### **EMPLOYEE PLANS**

#### **Notice 2008-24, page 466.**

#### **Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates.**

This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in February 2008; the 24-month average segment rates; the funding transitional segment rates applicable for February 2008; and the minimum present value transitional rates for January 2008.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2008-13, page 480.**

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

#### **Announcement 2008-14, page 481.**

The IRS has revoked its determination that Judah Youth Ministries of Red Bank, NJ; Little League Baseball of West Warwick, RI; Youth Sports Systems, Inc., of Albuquerque, NM; Miss Crestline Scholarship Pageant Committee of Crestline, OH; Millcreek Development Corp. of Philadelphia, PA; Jeff & Ann Mowrey Charitable Supporting Organization of Columbia, MD; Pacoima Athletic Club of Arleta, CA; Families on The Move of New Brunswick, NJ; Credit Foundation of America of Irvine, CA; Family Pride, Inc., of Cataula, GA; Bear Soldier Industries of Bismarck, ND; Equal Opportunity Housing DBA Home Star Magic of Denver, CO; One Particular Harbour Foundation of Wyoming, MI; Soulfire Films of Brooklyn, NY; Gottlieb Family Foundation of Lawrence, NY; Coltrin Family Foundation of Sandy, UT; Crock 39 Foundation of Irving, TX; Community Outreach Development Foundation of Gulfport, MS; Lakhdar Barouche Foundation, Inc., of New York, NY; Don Luscombe Aviation History Foundation of Phoenix, AZ; Americas Youth Apprenticeship Enterprises, Inc., of Oklahoma City, OK; The Educational Charitable Supporting Organization of Millersville, MD; Family to Family Americans for Prostate Cancer Awareness and Support of Carson City, NV; The Douglas and Valerie Wood Charitable Supporting Organization of Latrobe, PA, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

**(Continued on the next page)**

**Announcements of Disbarments and Suspensions begin on page 473.**

**Finding Lists begin on page ii.**

**Index for January through February begins on page iv.**



## **ADMINISTRATIVE**

### **T.D. 9372, page 462.**

The Code authorizes the Service to disclose tax return information to the Department of Commerce for the purpose of structuring censuses and conducting related statistical activities authorized by law. Final regulations under section 6103 of the Code add two items of return information disclosed to the Department of Commerce solely for the purpose of producing statutorily mandated Small Area Income and Poverty Estimates. The regulations also remove four items of return information the Department of Commerce indicated it no longer requires.

### **T.D. 9373, page 463.**

### **REG-147832-07, page 472.**

Temporary and proposed regulations under section 6103 of the Code add one item of return information disclosed to the Department of Commerce necessary for the Bureau of the Census' annual Survey of Industrial Research and Development.

# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying

the tax law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

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



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

## Section 904.—Limitation on Credit

26 CFR 1.904(f)-2T: Recapture of overall foreign loss (temporary).

### T.D. 9371

#### Department of the Treasury Internal Revenue Service 26 CFR Part I

#### Treatment of Overall Foreign and Domestic Losses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

**SUMMARY:** This document contains final and temporary regulations under section 904(g) of the Internal Revenue Code (Code) relating to the recapture of overall domestic losses. Section 402 of the American Jobs Creation Act of 2004 (AJCA) enacted new section 904(g) of the Code to provide for the recapture of overall domestic losses. These regulations provide guidance needed to comply with these changes, as well as updated guidance with respect to overall foreign losses and separate limitation losses, and affect individuals and corporations claiming foreign tax credits. The text of these temporary regulations also serves as the text of the proposed regulations (REG-141399-07) published in this issue of the Bulletin.

**DATES:** *Effective Date:* These regulations are effective on December 21, 2007.

*Applicability Dates:* For dates of applicability, see §§1.904(f)-1T(g), 1.904(f)-2T(e), 1.904(f)-7T(f), 1.904(f)-8T(c), 1.904(g)-1T(f), 1.904(g)-2T(d), 1.904(g)-3T(i), and 1.1502-9T(e).

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Parry, (202) 622-3850 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 402 of the AJCA enacted new section 904(g) of the Code to provide for the recharacterization of U.S. source income as foreign source income where a taxpayer's foreign tax credit limitation has been reduced as a result of an overall domestic loss. See Public Law 108-357, 118 Stat. 1418 (October 22, 2004), as corrected by the Gulf Opportunity Zone Act of 2005, Public Law 109-135, 119 Stat. 2577 (December 22, 2005). The primary reason for enacting these provisions was "to create parity in the treatment of overall domestic losses and overall foreign losses in order to prevent the double taxation of income." H.R. Rep. No. 108-548, at 187 (June 16, 2004); see also S. Rep. No. 108-192, at 19-20 (November 7, 2003).

When a U.S. source loss is allocated to reduce foreign source income, the foreign tax credit limitation is reduced for the taxable year, which may result in excess foreign tax credits. Any such excess foreign taxes may be credited, if at all, in a subsequent (or the preceding) taxable year. In addition, U.S. source taxable income in a subsequent taxable year is not offset by the U.S. source loss allocated to foreign source income in the prior taxable year, and U.S. tax on such U.S. source taxable income cannot be offset by the foreign tax credit carryforward. This may lead to the double taxation of foreign source income over time. The overall domestic loss recapture provisions amend this result.

Section 904(g)(1) generally provides that a portion of a taxpayer's U.S. source income is recharacterized as foreign source income in an amount equal to the lesser of (1) the amount of the overall domestic loss for years prior to such taxable year and (2) fifty percent of the taxpayer's U.S. source income for such taxable year. Section 904(g)(2) generally defines an overall domestic loss for this purpose as any domestic loss to the extent it offsets foreign source taxable income for the current year or any preceding taxable year by reason of a carryback. Section 904(g)(4) provides that the Secretary of the Treasury

shall prescribe such regulations as may be necessary to coordinate the overall domestic loss provisions with the overall foreign loss provisions.

Similar rules were first enacted as a part of the Tax Reform Act of 1976, Public Law 94-455, 90 Stat. 1531 (1976), in section 904(f) to deal with overall foreign losses. Under the overall foreign loss provisions, a portion of foreign source taxable income earned after an overall foreign loss year is recharacterized as U.S. source taxable income for foreign tax credit purposes. Unless a taxpayer elects a higher percentage, generally no more than 50 percent of the foreign source taxable income earned in any particular taxable year is recharacterized as U.S. source taxable income. Recapturing the overall foreign loss reduces the foreign tax credit limitation in one or more years following an overall foreign loss.

The separate limitation loss provisions of section 904(f)(5) were added by the Tax Reform Act of 1986, Public Law 99-514, 100 Stat. 2085 (1986) (the 1986 Act) and amended by the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, 102 Stat. 3342 (1988). Other amendments to the overall foreign loss provisions were made by the AJCA as well.

Regulations addressing overall foreign losses under section 904(f) were published in the **Federal Register** (T.D. 8153, 1987-2 C.B. 174 [52 FR 31992]) on August 25, 1987 (the 1987 regulations) and updated by regulations published in the **Federal Register** (T.D. 9260, 2006-1 C.B. 1001 [71 FR 24516]) on April 25, 2006 (the 2006 regulations). Additional guidance was provided in Notice 89-3, 1989-1 C.B. 623, regarding ordering rules for the allocation of net operating losses, overall foreign losses, and separate limitation losses; the recapture of overall foreign losses and separate limitation losses; and the allocation of U.S. source losses. The section 904(f) regulations have not been amended to reflect changes to the Code since the Tax Reform Act of 1976 or to incorporate the rules of Notice 89-3. See §601.601(d)(2)(ii)(b).

These temporary regulations provide guidance needed to comply with enactment of the overall domestic loss regime, as well as provide updated guidance with respect to overall foreign losses and separate limitation losses.

## Explanation of Provisions

### I. Overall Domestic Losses

The temporary regulations include rules in §§1.904(g)-1T and 1.904(g)-2T which address the establishment, maintenance, and recapture of overall domestic loss accounts.

#### A. Overall domestic loss accounts

Section 1.904(g)-1T(b)(1) provides that taxpayers must establish overall domestic loss accounts for an overall domestic loss. It further provides that a separate overall domestic loss account must be maintained for each separate category of foreign source income that is offset by a domestic loss.

Section 1.904(g)-1T(b)(2) explains when an overall domestic loss is sustained. Generally, an overall domestic loss is treated as sustained in the later of the taxable years in which the domestic loss is incurred or the foreign source income offset by the domestic loss is earned. Accordingly, in the case of a domestic loss that is carried back to offset foreign source income in a prior taxable year in which the taxpayer elects to credit foreign taxes, the resulting overall domestic loss is treated as sustained in the taxable year the domestic loss is incurred, not in the prior taxable year in which the domestic loss offsets foreign source income. In the case of a domestic loss that is carried forward to offset foreign source income in a later taxable year, however, the overall domestic loss is treated as sustained in the year in which the domestic loss offsets foreign source income, not the earlier year in which the domestic loss is incurred. Accordingly, if a taxpayer incurs a domestic loss in a pre-2007 taxable year, and the loss is carried forward as part of a net operating loss and applied to offset foreign source income in a post-2006 taxable year, the resulting overall domestic loss is treated as sustained in the post-2006 taxable year.

Section 1.904(g)-1T(c) provides that an overall domestic loss is sustained when

a domestic loss offsets foreign source taxable income in the same taxable year or a preceding taxable year by reason of a carryback, provided the taxpayer has elected to take a credit for its foreign taxes in the year of the offset. A domestic loss is the amount by which U.S. source gross income is exceeded by deductions properly allocated and apportioned thereto. See §1.904(g)-1T(c).

Section 1.904(g)-1T(d) describes additions to overall domestic loss accounts. This includes any overall domestic losses of the taxpayer, as determined above, as well as any allocation from another taxpayer of an overall domestic loss account under §1.1502-9T, described in Part V of this preamble, and certain adjustments for capital gains and losses. Section 1.904(g)-1T(e) describes reductions to overall domestic loss accounts, including reductions for recaptured amounts and any allocation to another taxpayer of an overall domestic loss account under §1.1502-9T.

#### B. Recapture of overall domestic losses

Section 1.904(g)-2T provides that overall domestic losses are recaptured by treating a portion of a taxpayer's U.S. source taxable income as foreign source income. If the taxpayer has overall domestic loss accounts attributable to more than one separate category, the recharacterized income will be allocated among those categories on a *pro rata* basis. The amount of U.S. source income subject to recapture is the lesser of the aggregate balance in the overall domestic loss account, or fifty percent of the taxpayer's U.S. source taxable income. Unlike the overall foreign loss recapture provisions in section 904(f), section 904(g) does not permit a taxpayer to elect to recharacterize more than fifty percent of its U.S. source taxable income. Recapture continues until the balance in the overall domestic loss account has been reduced to zero.

### II. Separate Limitation Losses

As discussed below, the 1987 regulations do not reflect the enactment of the separate limitation loss provisions of section 904(f)(5) as part of the 1986 Act. These temporary regulations include new provisions regarding the establishment and recapture of separate limitation loss accounts. Section 1.904(f)-7T provides that

taxpayers must establish a separate limitation loss account with respect to a separate category to the extent a foreign source loss in that category offsets foreign source income in another separate category. This section also provides definitions and rules relating to the maintenance of these accounts.

Section 1.904(f)-8T provides rules for the recapture of separate limitation loss accounts. Separate limitation loss accounts are recaptured by recharacterizing a portion of the foreign source income in the separate category with the loss account as income in the separate category in which foreign source income of a prior year was offset to create the loss account. The amount of foreign source income subject to recharacterization is the lesser of the balance in a separate limitation loss account or the amount of foreign source income for the taxable year in that same separate category. There is no fifty-percent limitation with respect to separate limitation loss account recapture. If there is more than one separate limitation loss account in a single separate category and the aggregate balance in all those loss accounts exceeds the income in the separate category, income is recharacterized in proportion to the balance in each account. Recapture with respect to a particular separate limitation loss account continues until the balance in the separate limitation loss account has been reduced to zero.

### III. Overall Foreign Loss

The 1987 regulations set forth rules governing the determination and maintenance of overall foreign loss accounts, as well as the recapture of overall foreign losses and the allocation of net operating losses and net capital losses. The regulations do not reflect changes made to the overall foreign loss rules of section 904(f) as part of the 1986 Act and certain subsequent changes to section 904(f), such as the enactment in the AJCA of section 904(f)(3)(D), addressing dispositions of stock in controlled foreign corporations. These temporary regulations update the existing regulations to take into account certain changes made to the overall foreign loss rules since the 1987 regulations were promulgated.

Section 1.904(f)-1(a) states that the 1987 regulations apply to taxpayers that

sustain overall foreign losses (as defined in paragraph (c) of that section) in taxable years beginning after December 31, 1975. However, paragraph (c) of that section only defines overall foreign losses for taxable years beginning after December 31, 1982, and before January 1, 1987.

While it is beyond the scope of this project to undertake a full revision of the 1987 regulations to reflect all intervening statutory changes made to section 904(f), the Treasury Department and the IRS believe that as part of this regulations project the principles of the 1987 regulations should be extended to apply to overall foreign losses sustained in taxable years beginning after December 31, 1986, modified so as to take into account statutory amendments. New §1.904(f)-1T(a)(2) adopts such a rule.

The Treasury Department and the IRS believe the application of the fifty-percent limitation on the amount of foreign source income subject to recapture in a taxable year under the overall foreign loss recapture provisions also needs to be clarified as part of this regulations project. Section 1.904(f)-2(c)(1) provides that the amount of foreign source taxable income subject to recapture in a taxable year is the lesser of the balance in the applicable overall foreign loss account in a given separate category or fifty percent of the taxpayer's foreign source taxable income in that same separate category. For example, recapture of a general category overall foreign loss would be limited to the lesser of the balance in the general category overall foreign loss account or fifty percent of the general category taxable income for the taxable year.

The legislative history to the 1986 Act clarifies that the fifty-percent limitation is to be applied to the full amount of the taxpayer's foreign source income, not on a separate-category-by-separate-category basis. See H.R. Conf. Rep. No. 99-841 at II-590 (1986). This clarification was incorporated by reference into Notice 89-3, paragraph 3(b), and reflected in instructions to Form 1118 (*Foreign Tax Credit — Corporations*). The temporary regulations modify the fifty-percent limitation to reflect this clarification.

Section 1.904(f)-2T(c)(1) provides that the foreign source taxable income subject to recharacterization is the lesser of the aggregate amount of maximum potential

recapture in all overall foreign loss accounts or fifty percent of the taxpayer's total foreign source income. If the aggregate amount of maximum potential recapture in all overall foreign loss accounts exceeds fifty percent of the taxpayer's total foreign source taxable income, foreign source taxable income in each separate category with an overall foreign loss account is recharacterized in an amount equal to the separate category's allocable portion of the section 904(f)(1) recapture amount. The maximum potential recapture from any separate category is the lesser of the balance in the overall foreign loss account or the foreign source taxable income for the current year in the same separate category.

Other revisions to the 1987 regulations include updating provisions to reflect statutory and regulatory changes affecting capital gains and losses, in particular those provisions that were superseded by the regulations promulgated under section 904(b) in T.D. 9141, 2004-2 C.B. 359 (July 20, 2004). In addition, §1.904(f)-3 is made obsolete by the ordering rules added in §1.904(g)-3T and is removed accordingly.

#### *IV. Coordination of Overall Foreign Losses, Separate Limitation Losses, and Overall Domestic Losses*

Under the specific grant of regulatory authority in section 904(g)(4), these temporary regulations provide ordering rules for coordinating the section 904(f) overall foreign loss and separate limitation loss provisions and the section 904(g) overall domestic loss provisions.

Section 1.904(g)-3T provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and the recapture of separate limitation losses, overall foreign losses, and overall domestic losses. While these rules generally follow the ordering rules set forth in Notice 89-3, some changes were appropriate to take into account the enactment of the overall domestic loss provisions.

##### *A. Step One: Allocation of net operating loss and net capital loss carryovers*

These temporary regulations generally follow the rules of Notice 89-3 for the carryover and carryback of net operating

losses. Under §1.904(g)-3T(b)(1), net operating losses that are carried back to a prior year are allocated to income in the carryback year in accordance with the allocation rules for absorbing and allocating net operating loss carryovers. However, the income against which the net operating loss is allocated is the income after application of the overall foreign loss, separate limitation loss and overall domestic loss allocation and recapture rules for the carryback year.

The rules for net operating loss carryforwards vary for full and partial carryovers of the net operating loss. In the case of a full net operating loss carryover, the U.S. source losses and foreign losses in separate categories that are part of the net operating loss are carried forward and combined with U.S. source income or loss and foreign source income or loss in the same categories as the respective portions of the net operating loss.

In the case of a partial net operating loss carryover, several steps apply. In applying these steps it is important to distinguish the net operating loss, which is the total net operating loss, and the net operating loss carryover, which is the portion of the net operating loss that is absorbed in the carryover year. First, the U.S. source portion of the net operating loss (but not in excess of the net operating loss carryover) is carried over to the extent of U.S. source income in the carryover year. Second, the separate limitation losses that are part of the net operating loss are tentatively carried to the extent of taxable income in the same separate category. This amount is tentative because the total amount of matching net operating losses and separate limitation income may exceed the net operating loss carryover amount remaining after the first step. To the extent the total amount of these tentative loss carryovers is in fact limited by the amount of the remaining net operating loss carryover, then the tentative carryovers in each separate category are reduced on a *pro rata* basis so that their sum equals the amount of the remaining net operating loss carryover amount.

Third, any net operating loss carryover remaining after the first and second steps is carried over proportionately from any remaining loss in each separate category and combined with foreign source loss, if any, in the same separate categories in the carryover year. Finally, any remaining U.S.

source loss is carried over to the extent of the net operating loss carryover remaining after the third step, if any, and combined with U.S. source loss, if any, in the carry-over year.

The temporary regulations deviate from the net operating loss rules of Notice 89-3 in the final two steps. The temporary regulations require the U.S. source loss and foreign source losses in the separate categories that are carried over to be combined with U.S. source income or loss and foreign source income or loss in the same categories as the respective portions of the net operating loss. Then, the temporary regulations provide these losses are allocated against other income as part of the general loss allocation rules for current year losses. Notice 89-3, however, requires the allocation of the net operating loss against income in other separate categories before allocation of current year losses. The Treasury Department and the IRS believe there is no difference in result whether the net operating losses carried into a taxable year are allocated before or at the same time as current year losses, given the treatment of U.S. losses in §1.904(g)-3T. However, the approach of the temporary regulations provides added simplicity in application of the ordering rules as well as greater consistency with the rules for full net operating loss carryovers.

The rules for the allocation of net operating losses apply similarly to net capital loss carryovers.

#### *B. Step Two: Allocation of separate limitation losses*

Separate limitation losses are first allocated to separate limitation income for the taxable year in other separate categories on a proportionate basis. Separate limitation loss accounts are increased as a result of any such allocations. To the extent the separate limitation losses exceed separate limitation income for the year, those losses are allocated against U.S. income, if any, for the taxable year and overall foreign loss accounts are increased.

Unlike Notice 89-3, the temporary regulations also provide that offsetting separate limitation loss accounts are netted against one another. For example, if a taxpayer has a separate limitation loss account in the general category with respect to passive category income, and in the

next year incurs a passive category separate limitation loss that offsets general category income, the two accounts will be netted against each other, rather than both being carried forward until each one is recaptured.

#### *C. Step Three: Allocation of U.S. source loss*

U.S. source losses are allocated against separate limitation income on a proportionate basis, and overall domestic loss accounts are increased appropriately. Under the ordering rules in Notice 89-3, U.S. losses sustained in the current taxable year are allocated after all other losses are allocated and after separate limitation losses and overall foreign losses are recaptured. With the addition of section 904(g), Congress expressed that domestic losses and foreign source losses should be treated with greater parity. To that end, the Treasury Department and the IRS believe the ordering rules of Notice 89-3 should be amended. Accordingly, the temporary regulations provide that U.S. losses are allocated in the same manner as foreign losses, before any income is recharacterized.

#### *D. Step Four: Recapture of overall foreign loss accounts*

To the extent a taxpayer has any separate limitation income for the taxable year after losses are allocated in steps one through three, a portion of such income will be subject to recharacterization in order to recapture prior year overall foreign losses, if any.

#### *E. Step Five: Recapture of separate limitation loss accounts*

To the extent a taxpayer has any separate limitation income for the taxable year after overall foreign losses are recaptured in step four, then such income will be subject to recharacterization in order to recapture prior year separate limitation losses, if any.

#### *F. Step Six: Recapture of overall domestic loss accounts*

To the extent a taxpayer has any U.S. source income after losses are allocated in

steps one through three, but not taking into account any foreign source income that is recharacterized as U.S. source income under step four, then a portion of such income will be subject to recharacterization in order to recapture prior year overall domestic losses, if any.

The temporary regulations coordinate the overall foreign loss and overall domestic loss regimes by providing that the recapture of overall foreign and domestic loss accounts is done independently. Accordingly, income recharacterized under one recapture provision is not taken into account in determining the amount of income subject to recharacterization under the other recapture provision. For example, foreign source income that is recharacterized as U.S. source income in order to recapture an overall foreign loss account will not then be included in the determination of U.S. source income subject to recharacterization as foreign source income in order to recapture an overall domestic loss account.

#### *V. Consolidated Overall Domestic Loss Accounts—§1.1502-9T*

Section 1.1502-9T revises §1.1502-9 to include rules for the application of section 904(g) to consolidated groups and their members. Section 1.1502-9 provides rules only for the application of section 904(f) to consolidated groups and their members. Under those rules, consolidated overall foreign loss (COFL) accounts and consolidated separate limitation loss (CSLL) accounts are determined by the consolidated group on an aggregate basis under the principles of §§1.1502-11 and 1.1502-12. When a new member joins the group, its separate overall foreign loss and separate limitation loss accounts are combined with the appropriate COFL and CSLL accounts of the group. When a member leaves the group, it is allocated a *pro rata* portion of each of the group's COFL and CSLL accounts based on the member's share of the group's assets that generate income subject to recharacterization under the corresponding loss account. The temporary regulations do not alter these provisions addressing COFL and CSLL accounts. The revisions simply extend these principles to provide parallel treatment for consolidated overall domestic loss accounts.

## Effective/Applicability Dates

The effective date for these regulations is December 21, 2007. The regulations generally apply to taxable years beginning after December 21, 2007. However, taxpayers may choose to apply the overall domestic loss provisions of the regulations in other taxable years beginning after December 31, 2006. In the alternative, taxpayers may use any reasonable method consistently applied for those years, including one based on the ordering rules of Notice 89-3.

## 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. For applicability of the Regulatory Flexibility Act, see the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the Bulletin. Pursuant to section 7805(f), these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

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

\* \* \* \* \*

## Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

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

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

Section 1.904(g)-3T also issued under 26 U.S.C. 904(g)(4). \* \* \*

Par. 2. Section 1.904-0 is amended by revising the section heading and introductory text to read as follows:

### *§1.904-0 Outline of regulation provisions.*

This section lists the headings for §§1.904-1 through 1.904-7.

\* \* \* \* \*

Par. 3. Section 1.904(b)-0 is added. The entries for §§1.904(b)-1 and 1.904(b)-2 in §1.904-0 are redesignated as entries in new §1.904(b)-0.

### *§1.904(b)-0 Outline of regulation provisions.*

This section lists the headings for §§1.904(b)-1 and 1.904(b)-2.

Par. 4. Section 1.904(f)-0 is added and amended as follows:

1. The entries for §§1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, 1.904(f)-5, 1.904(f)-6 and 1.904(f)-12 in §1.904-0 are redesignated as entries in new §1.904(f)-0.

2. The entry for §1.904(f)-1(a) is redesignated as §1.904(f)-1(a)(1) and a new entry for §1.904(f)-1(a)(2) is added.

3. The entries for §1.904(f)-1(d)(2), (d)(3), and (d)(4) are revised and the entry for §1.904(f)-1(d)(5) is removed.

4. The entries for §1.904(f)-2(c) and (c)(1) are revised.

5. The entries for §1.904(f)-3 are removed.

6. New entries for §§1.904(f)-7 and 1.904(f)-8 are added.

The additions and revisions read as follows:

### *§1.904(f)-0 Outline of regulation provisions.*

This section lists the headings for §§1.904(f)-1 through 1.904(f)-8 and 1.904(f)-12.

### *§1.904(f)-1 Overall foreign loss and the overall foreign loss account.*

(a)(1) Overview of regulations.

(2) [Reserved]. For further guidance, see the entry for §1.904(f)-1T(a)(2) in §1.904(f)-0T.

\* \* \* \* \*

(d) \* \* \*

(2) Overall foreign losses of another taxpayer.

(3) Additions to overall foreign loss account created by loss carryovers.

(4) [Reserved]. For further guidance, see the entry for §1.904(f)-1T(d)(4) in §1.904(f)-0T.

\* \* \* \* \*

### *§1.904(f)-2 Recapture of overall foreign losses.*

\* \* \* \* \*

(c) and (c)(1) [Reserved]. For further guidance, see the entries for §1.904(f)-2T(c) and (c)(1) in §1.904(f)-0T.

\* \* \* \* \*

### *§1.904(f)-7 Separate limitation loss and the separate limitation loss account.*

[Reserved]. For further guidance, see the entries for §1.904(f)-7T in §1.904(f)-0T.

### *§1.904(f)-8 Recapture of separate limitation loss accounts.*

[Reserved]. For further guidance, see the entries for §1.904(f)-8T in §1.904(f)-0T.

Par. 5. Section 1.904(f)-0T is added to read as follows:

### *§1.904(f)-0T Outline of regulation provisions (temporary).*

This section lists the headings for §§1.904(f)-1T, 1.904(f)-2T, 1.904(f)-7T and 1.904(f)-8T.

### *§1.904(f)-1T Overall foreign loss and the overall foreign loss account (temporary).*

(a)(1) [Reserved]. For further guidance, see the entry for §1.904(f)-1(a)(1) in §1.904(f)-0.

(2) Application to post-1986 taxable years.

(b) through (d)(3) [Reserved]. For further guidance, see the entries for §1.904(f)-1(b) through (d)(3) in §1.904(f)-0.

(d)(4) Adjustments for capital gains and losses.

(e) through (f) [Reserved]. For further guidance, see the entries for §1.904(f)-1(e) through (f) in §1.904(f)-0.

(g) Effective/applicability date.

(h) Expiration date.

*§1.904(f)-2T Recapture of overall foreign loss (temporary).*

(a) and (b) [Reserved]. For further guidance, see the entries for §1.904(f)-2(a) and (b) in §1.904(f)-0.

(c) Section 904(f)(1) recapture.

(1) In general.

(c)(2) through (d) [Reserved]. For further guidance, see the entries for §1.904(f)-2(c)(2) through (d) in §1.904(f)-0.

(e) Effective/applicability date.

(f) Expiration date.

*§1.904(f)-7T Separate limitation loss and the separate limitation loss account (temporary).*

(a) Overview of regulations.

(b) Definitions.

(1) Separate category.

(2) Separate limitation income.

(3) Separate limitation loss.

(c) Separate limitation loss account.

(d) Additions to separate limitation loss accounts.

(1) General rule.

(2) Separate limitation losses of another taxpayer.

(3) Additions to separate limitation loss account created by loss carryovers.

(e) Reductions of separate limitation loss accounts.

(1) Pre-recapture reduction for amounts allocated to other taxpayers.

(2) Reduction for offsetting loss accounts.

(3) Reduction for amounts recaptured.

(f) Effective/applicability date.

(g) Expiration date.

*§1.904(f)-8T Recapture of separate limitation loss accounts (temporary).*

(a) In general.

(b) Effect of recharacterization of separate limitation income on associated taxes.

(c) Effective/applicability date.

(d) Expiration date.

Par. 6. Section 1.904(f)-1 is amended as follows:

1. Redesignate paragraph (a) as (a)(1).

2. Add a new paragraph (a)(2).

3. In paragraph (d)(1), remove the language “paragraph (d)(4) of this section” and add the language “paragraph (d)(3) of this section” in its place.

4. Remove paragraphs (d)(2), (d)(5), and *Example 4* and *Example 5* in paragraph (f).

5. Redesignate paragraph (d)(3) as paragraph (d)(2), and paragraph (d)(4) as paragraph (d)(3).

6. In newly-redesignated paragraph (d)(3), remove the language “§1.904(f)-1(d)(5)” and add the language “§1.904(f)-1(d)(4)” in its place.

7. Add new paragraphs (d)(4) and (g).

The revisions and additions read as follows:

*§1.904(f)-1 Overall foreign loss and the overall foreign loss account.*

\*\*\*\*\*

(a) \*\*\*

(2) [Reserved]. For further guidance, see §1.904(f)-1T(a)(2).

\*\*\*\*\*

(d) \*\*\*

(4) [Reserved]. For further guidance, see §1.904(f)-1T(d)(4).

\*\*\*\*\*

(g) [Reserved]. For further guidance, see §1.904(f)-1T(g).

Par. 7. Section 1.904(f)-1T is added to read as follows:

*§1.904(f)-1T Overall foreign loss and the overall foreign loss account (temporary).*

(a)(1) [Reserved]. For further guidance, see §1.904(f)-1(a)(1).

(2) *Application to post-1986 taxable years.* The principles of §§1.904(f)-1 through 1.904(f)-5 shall apply to overall foreign loss sustained in taxable years beginning after December 31, 1986, modified so as to take into account the effect of statutory amendments.

(b) through (d)(3) [Reserved]. For further guidance, see §1.904(f)-1(b) through (d)(3).

(d)(4) *Adjustments for capital gains and losses.* If a taxpayer has capital gains or losses, the taxpayer shall make adjustments to such capital gains and losses to the extent required under section 904(b)(2) and §1.904(b)-1 before applying the provisions of §1.904(f)-1T. See §1.904(b)-1(h).

(e) and (f) [Reserved]. For further guidance, see §1.904(f)-1(e) and (f).

(g) *Effective/applicability date.* This section applies to taxable years beginning after December 21, 2007.

(h) *Expiration date.* The applicability of this section expires on December 20, 2010.

Par. 8. Section 1.904(f)-2 is amended as follows:

1. Revise paragraph (c)(1).

2. Revise paragraph (c)(5) *Example 4*.

3. Add a new paragraph (e).

The revisions and addition read as follows:

*§1.904(f)-2 Recapture of overall foreign losses.*

\*\*\*\*\*

(c) \*\*\* (1) [Reserved]. For further guidance, see §1.904(f)-2T(c)(1).

(5) \*\*\*

*Example 4.* [Reserved]. For further guidance see §1.904(f)-2T(c)(5) *Example 4*.

\*\*\*\*\*

(e) [Reserved]. For further guidance, see §1.904(f)-2T(e).

Par. 9. Section 1.904(f)-2T is added to read as follows:

*§1.904(f)-2T Recapture of overall foreign losses (temporary).*

(a) and (b) [Reserved]. For further guidance, see §1.904(f)-2(a) and (b).

(c) *Section 904(f)(1) recapture—(1) In general.* In a year in which a taxpayer elects the benefits of section 901 or 30A, the amount of foreign source taxable income subject to recharacterization in a taxable year in which paragraph (a) of this section is applicable is the lesser of the aggregate amount of maximum potential recapture in all overall foreign loss accounts or fifty percent of the taxpayer's total foreign source taxable income. If the aggregate amount of maximum potential recapture in all overall foreign loss accounts exceeds fifty percent of the taxpayer's total foreign source taxable income, foreign source taxable income in each separate category with an overall foreign loss account is recharacterized in an amount equal to the section 904(f)(1) recapture amount, multiplied by the maximum potential recapture in the overall foreign loss account, divided by the aggregate amount of maxi-

imum potential recapture in all overall foreign loss accounts. The maximum potential recapture in any account is the lesser of the balance in that overall foreign loss account (after reduction of such accounts in accordance with §1.904(f)-1(e)) or the foreign source taxable income for the year in the same separate category as the loss account. If, in any year, in accordance with section 164(a) and section 275(a)(4)(A), a taxpayer deducts rather than credits its foreign taxes, recapture is applied to the extent of the lesser of—

(i) The balance in the overall foreign loss account in each separate category; or

(ii) Foreign source taxable income minus foreign taxes in each separate category.

(c)(2) through (5) *Example 3* [Reserved]. For further guidance, see §1.904(f)-2(c)(2) through (5) *Example 3*.

*Example 4.* Y Corporation is a domestic corporation that does business in the United States and abroad. On December 31, 2007, the balance in Y's general category overall foreign loss account is \$500, all of which is attributable to a loss incurred in 2007. Y has no other loss accounts subject to recapture. For 2008, Y has U.S. source taxable income of \$400 and foreign source taxable income of \$300 in the general category and \$900 in the passive category. Under paragraph (c)(1) of this section, the amount of Y's general category income subject to recharacterization is the lesser of the aggregate maximum potential recapture or 50 percent of the total foreign source taxable income. In this case Y's aggregate maximum potential recapture is \$300 (the lesser of the \$500 balance in the general category overall foreign loss account or \$300 foreign source income in the general category for the year), which is less than \$600, or 50 percent of total foreign source taxable income (\$1200 x 50%). Therefore, pursuant to paragraph (c) of this section, \$300 of foreign source income in the general category is recharacterized as U.S. source income. The balance in Y's general category overall foreign loss account is reduced by \$300 to \$200 in accordance with §1.904(f)-1(e)(2).

(c)(5) *Example 5* through (d) [Reserved]. For further guidance, see §1.904(f)-2(c)(5) *Example 5* through §1.904(f)-2(d).

(e) *Effective/applicability date.* This section applies to taxable years beginning after December 21, 2007.

(f) *Expiration date.* The applicability of this section expires on December 20, 2010.

Par. 10. Section 1.904(f)-3 is revised to read as follows:

*§1.904(f)-3 Allocation of net operating losses and net capital losses.* For rules relating to the allocation of net operating losses and net capital losses, see §1.904(g)-3T.

Par. 11. Sections 1.904(f)-7, 1.904(f)-7T, 1.904(f)-8, and 1.904(f)-8T are added to read as follows:

*§1.904(f)-7 Separate limitation loss and the separate limitation loss account.*

[Reserved]. For further guidance, see §1.904(f)-7T.

*§1.904(f)-7T Separate limitation loss and the separate limitation loss account (temporary).*

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's separate limitation losses, for establishing separate limitation loss accounts, and for making additions to and reductions from such accounts for purposes of section 904(f). Section 1.904(f)-8T provides rules for recharacterizing the balance in any separate limitation loss account under the general recharacterization rule of section 904(f)(5)(C).

(b) *Definitions.* The definitions in paragraphs (b)(1) through (4) of this section apply for purposes of this section and §§1.904(f)-8T and 1.904(g)-3T.

(1) *Separate category* means each separate category of income described in section 904(d) and any other category of income described in §1.904-4(m). For example, income subject to section 901(j) or 904(h)(10) is income in a separate category.

(2) *Separate limitation income* means, with respect to any separate category, the taxable income from sources outside the United States, separately computed for that category for the taxable year. Separate limitation income shall be determined by taking into account any adjustments for capital gains and losses under section 904(b)(2) and §1.904(b)-1. See §1.904(b)-1(h)(1)(i).

(3) *Separate limitation loss* means, with respect to any separate category, the amount by which the foreign source gross income in that category is exceeded by the sum of expenses, losses and other deductions (not including any net operating loss deduction under section 172(a) or any expropriation loss or casualty loss described in section 907(c)(4)(B)(iii)) properly allocated and apportioned thereto for the taxable year. Separate limitation losses are determined separately for each separate category. Accordingly, income

and deductions attributable to a separate category are not netted with income and deductions attributable to another separate category for purposes of determining the amount of a separate limitation loss. Separate limitation losses shall be determined by taking into account any adjustments for capital gains and losses under section 904(b)(2) and §1.904(b)-1. See §1.904(b)-1(h)(1)(i).

(c) *Separate limitation loss account.* Any taxpayer that sustains a separate limitation loss that is allocated to reduce separate limitation income of the taxpayer under the rules of §1.904(g)-3T must establish a separate limitation loss account for the loss. The taxpayer must establish separate loss accounts for each separate category in which a separate limitation loss is incurred that is allocated to reduce other separate limitation income. A separate account must then be established for each separate category to which a portion of the loss is allocated. The balance in any separate limitation loss account represents the amount of separate limitation income that is subject to recharacterization (as income in another separate category) in a subsequent year pursuant to §1.904(f)-8T and section 904(f)(5)(F). From year to year, amounts may be added to or subtracted from the balance in such loss accounts, as provided in paragraphs (d) and (e) of this section.

(d) *Additions to separate limitation loss accounts—(1) General rule.* A taxpayer's separate limitation loss as defined in paragraph (b)(3) of this section shall be added to the applicable separate limitation loss accounts at the end of the taxable year to the extent that the separate limitation loss has reduced separate limitation income in one or more other separate categories of the taxpayer during the taxable year. For rules with respect to net operating loss carryovers, see paragraph (d)(3) of this section and §1.904(g)-3T.

(2) *Separate limitation losses of another taxpayer.* If any portion of any separate limitation loss account of another taxpayer is allocated to the taxpayer in accordance with §1.1502-9T (relating to consolidated separate limitation losses) the taxpayer shall add such amount to its applicable separate limitation loss account.

(3) *Additions to separate limitation loss account created by loss carryovers.* The

taxpayer shall add to each separate limitation loss account all net operating loss carryovers to the current taxable year to the extent that separate limitation losses included in the net operating loss carryovers reduced foreign source income in other separate categories for the taxable year.

(e) *Reductions of separate limitation loss accounts.* The taxpayer shall subtract the following amounts from its separate limitation loss accounts at the end of its taxable year in the following order as applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* A separate limitation loss account is reduced by the amount of any separate limitation loss account which is allocated to another taxpayer in accordance with §1.1502-9T (relating to consolidated separate limitation losses).

(2) *Reduction for offsetting loss accounts.* A separate limitation account is reduced to take into account any netting of separate limitation loss accounts under §1.904(g)-3T(c).

(3) *Reduction for amounts recaptured.* A separate limitation loss account is reduced by the amount of any separate limitation income that is earned in the same separate category as the separate limitation loss that resulted in the account and that is recharacterized in accordance with §1.904(f)-8T (relating to recapture of separate limitation losses) or section 904(f)(5)(F) (relating to recapture of separate limitation loss accounts out of gain realized from dispositions).

(f) *Effective/applicability date.* This section applies to taxpayers that sustain separate limitation losses in taxable years beginning after December 21, 2007. For taxable years beginning after December 31, 1986, and on or before December 21, 2007, see section 904(f)(5).

(g) *Expiration date.* The applicability of this section expires on December 20, 2010.

*§1.904(f)-8 Recapture of separate limitation loss accounts.*

[Reserved]. For further guidance, see §1.904(f)-8T.

*§1.904(f)-8T Recapture of separate limitation loss accounts (temporary).*

(a) *In general.* A taxpayer shall recapture a separate limitation loss account as provided in this section. If the taxpayer has a separate limitation loss account or accounts in any separate category (the "loss category") and the loss category has income in a subsequent taxable year, the income shall be recharacterized as income in that other category or categories. The amount of income recharacterized shall not exceed the separate limitation loss accounts for the loss category as determined under §1.904(f)-7T, including the aggregate separate limitation loss accounts from the loss category not previously recaptured under this paragraph (a). If the taxpayer has more than one separate limitation loss account in a loss category, and there is not enough income in the loss category to recapture the entire amount in all the loss accounts, then separate limitation income in the loss category shall be recharacterized as separate limitation income in the separate limitation loss categories on a proportionate basis. This is determined by multiplying the total separate limitation income subject to recapture by a fraction, the numerator of which is the amount in a particular loss account and the denominator of which is the total amount in all loss accounts for the separate category.

(b) *Effect of recapture of separate limitation income on associated taxes.* Recharacterization of income under paragraph (a) of this section shall not result in the recharacterization of any tax. The rules of §1.904-6, including the rules that the taxes are allocated on an annual basis and that foreign taxes paid on U.S. source income shall be allocated to the separate category that includes that U.S. source income (see §1.904-6(a)), shall apply for purposes of allocating taxes to separate categories. Allocation of taxes pursuant to §1.904-6 shall be made before the recapture of any separate limitation loss accounts of the taxpayer pursuant to the rules of this section.

(c) *Effective/applicability date.* This section applies to taxpayers that sustain separate limitation losses in taxable years beginning after December 21, 2007. For taxable years beginning after December

31, 1986, and on or before December 21, 2007, see section 904(f)(5).

(d) *Expiration date.* The applicability of this section expires on December 20, 2010.

Par. 12. Section 1.904(g)-0 is added to read as follows:

*§1.904(g)-0 Outline of regulation provisions.*

This section lists the headings for §§1.904(g)-1 through 1.904(g)-3.

*§1.904(g)-1 Overall domestic loss and the overall domestic loss account.*

[Reserved]. For further guidance, see the entries for §1.904(g)-1T in §1.904(g)-0T.

*§1.904(g)-2 Recapture of overall domestic losses.*

[Reserved]. For further guidance, see the entries for §1.904(g)-2T in §1.904(g)-0T.

*§1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses.*

[Reserved]. For further guidance, see the entries for §1.904(g)-3T in §1.904(g)-0T.

Par. 13. Section 1.904(g)-0T is added to read as follows:

*§1.904(g)-0T Outline of regulation provisions (temporary).*

This section lists the headings for §§1.904(g)-1T through 1.904(g)-3T.

*§1.904(g)-1T Overall domestic loss and the overall domestic loss account (temporary).*

- (a) Overview of regulations.
- (b) Overall domestic loss accounts.
  - (1) In general.
  - (2) Taxable year in which overall domestic loss is sustained.
- (c) Determination of a taxpayer's overall domestic loss.
  - (1) Overall domestic loss defined.

- (2) Domestic loss defined.
- (3) Qualified taxable year defined.
- (4) Method of allocation and apportionment of deductions.

(d) Additions to overall domestic loss accounts.

- (1) General rule.
- (2) Overall domestic loss of another taxpayer.

(3) Adjustments for capital gains and losses.

(e) Reductions of overall domestic loss accounts.

(1) Pre-recapture reduction for amounts allocated to other taxpayers.

(2) Reduction for amounts recaptured.

(f) Effective/applicability date.

(g) Expiration date.

*§1.904(g)–2T Recapture of overall domestic losses (temporary).*

(a) In general.

(b) Determination of U.S. source taxable income for purposes of recapture.

(c) Section 904(g)(1) recapture.

(d) Effective/applicability date.

(e) Expiration date.

*§1.904(g)–3T Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses (temporary).*

(a) In general.

(b) Step One: Allocation of net operating loss and net capital loss carryovers.

(1) In general.

(2) Full net operating loss carryover.

(3) Partial net operating loss carryover.

(4) Net capital loss carryovers.

(c) Step Two: Allocation of separate limitation losses.

(d) Step Three: Allocation of U.S. source losses.

(e) Step Four: Recapture of overall foreign loss accounts.

(f) Step Five: Recapture of separate limitation loss accounts.

(g) Step Six: Recapture of overall domestic loss accounts.

(h) Examples.

(i) Effective/applicability date.

(j) Expiration date.

Par. 14. Sections 1.904(g)–1, 1.904(g)–1T, 1.904(g)–2, 1.904(g)–2T,

1.904(g)–3, and 1.904(g)–3T are added to read as follows:

*§1.904(g)–1 Overall domestic loss and the overall domestic loss account.*

[Reserved]. For further guidance, see §1.904(g)–1T.

*§1.904(g)–1T Overall domestic loss and the overall domestic loss account (temporary).*

(a) *Overview of regulations.* This section provides rules for determining a taxpayer's overall domestic losses, for establishing overall domestic loss accounts, and for making additions to and reductions from such accounts for purposes of section 904(g). Section 1.904(g)–2T provides rules for recapturing the balance in any overall domestic loss account under the general recharacterization rule of section 904(g)(1). Section 1.904(g)–3T provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and the recapture of separate limitation losses, overall foreign losses and overall domestic losses.

(b) *Overall domestic loss accounts—(1) In general.* Any taxpayer that sustains an overall domestic loss under paragraph (c) of this section must establish an account for such loss. Separate overall domestic loss accounts must be maintained with respect to each separate category in which foreign source income is offset by the domestic loss. The balance in each overall domestic loss account represents the amount of such overall domestic loss subject to recapture in a given year. From year to year, amounts may be added to or subtracted from the balances in such accounts as provided in paragraphs (d) and (e) of this section.

(2) *Taxable year in which overall domestic loss is sustained.* When a taxpayer incurs a domestic loss that is carried back as part of a net operating loss to offset foreign source income in a qualified taxable year, as defined in paragraph (c)(3) of this section, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss was incurred and not in the earlier year in which the loss offset foreign source income. Similarly, when a taxpayer incurs a domestic loss that is

carried forward as part of a net operating loss and applied to offset foreign source income in a later taxable year, the resulting overall domestic loss is treated as sustained in the later year in which the domestic loss offsets foreign source income and not in the earlier year in which the loss was incurred. For example, if a taxpayer incurs a domestic loss in the 2007 taxable year that is carried back to the 2006 qualified taxable year and offsets foreign source income in 2006, the resulting overall domestic loss is treated as sustained in the 2007 taxable year. If a taxpayer incurs a domestic loss in a pre-2007 taxable year that is carried forward to a post-2006 qualified taxable year and offsets foreign source income in the post-2006 year, the resulting overall domestic loss is treated as sustained in the post-2006 year. The overall domestic loss account is established at the end of the later of the taxable year in which the domestic loss arose or the qualified taxable year to which the loss is carried and applied to offset foreign source income, and will be recaptured from U.S. source income arising in subsequent taxable years.

(c) *Determination of a taxpayer's overall domestic loss—(1) Overall domestic loss defined.* For taxable years beginning after December 31, 2006, a taxpayer sustains an overall domestic loss—

(i) In any qualified taxable year in which its domestic loss for such taxable year offsets foreign source taxable income for the taxable year or for any preceding qualified taxable year by reason of a carryback; and

(ii) In any other taxable year in which the domestic loss for such taxable year offsets foreign source taxable income for any preceding qualified taxable year by reason of a carryback.

(2) *Domestic loss defined.* For purposes of this section and §§1.904(g)–2T and 1.904(g)–3T, the term *domestic loss* means the amount by which the U.S. source gross income for the taxable year is exceeded by the sum of the expenses, losses and other deductions properly apportioned or allocated to such income, taking into account any net operating loss carried forward from a prior taxable year, but not any loss carried back. If a taxpayer has any capital gains or losses, the amount of the taxpayer's domestic loss shall be determined by taking into account adjustments under

section 904(b)(2) and §1.904(b)-1. See §1.904(b)-1(h)(1)(iii).

(3) *Qualified taxable year defined.* For purposes of this section and §§1.904(g)-2T and 1.904(g)-3T, the term *qualified taxable year* means any taxable year for which the taxpayer chooses the benefits of section 901.

(4) *Method of allocation and apportionment of deductions.* In determining its overall domestic loss, a taxpayer shall allocate and apportion expenses, losses, and other deductions to U.S. gross income in accordance with sections 861(b) and 865 and the regulations thereunder, including §§1.861-8T through 1.861-14T.

(d) *Additions to overall domestic loss accounts*—(1) *General rule.* A taxpayer's overall domestic loss as determined under paragraph (c) of this section shall be added to the applicable overall domestic loss account at the end of its taxable year to the extent that the overall domestic loss either reduces foreign source income for the year (but only if such year is a qualified taxable year) or reduces foreign source income for a qualified taxable year to which the loss has been carried back.

(2) *Overall domestic loss of another taxpayer.* If any portion of any overall domestic loss of another taxpayer is allocated to the taxpayer in accordance with §1.1502-9T (relating to consolidated overall domestic losses) the taxpayer shall add such amount to its applicable overall domestic loss account.

(3) *Adjustments for capital gains and losses.* If the taxpayer has capital gains or losses, the amount by which an overall domestic loss reduces foreign source income in a taxable year shall be determined in accordance with §1.904(b)-1(h)(1)(i) and (iii).

(e) *Reductions of overall domestic loss accounts.* The taxpayer shall subtract the following amounts from its overall domestic loss accounts at the end of its taxable year in the following order, if applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* An overall domestic loss account is reduced by the amount of any overall domestic loss which is allocated to another taxpayer in accordance with §1.1502-9T (relating to consolidated overall domestic losses).

(2) *Reduction for amounts recaptured.* An overall domestic loss account is reduced by the amount of any U.S. source in-

come that is recharacterized in accordance with §1.904(g)-2T(c) (relating to recapture under section 904(g)(1)).

(f) *Effective/applicability date.* This section applies to any taxpayer that sustains an overall domestic loss for a taxable year beginning after December 21, 2007. Taxpayers may choose to apply this section to overall domestic losses sustained in other taxable years beginning after December 31, 2006, as well.

(g) *Expiration date.* The applicability of this section expires on December 20, 2010.

#### *§1.904(g)-2 Recapture of overall domestic losses.*

[Reserved]. For further guidance, see §1.904(g)-2T.

#### *§1.904(g)-2T Recapture of overall domestic losses (temporary).*

(a) *In general.* A taxpayer shall recapture an overall domestic loss as provided in this section. Recapture is accomplished by treating a portion of the taxpayer's U.S. source taxable income as foreign source income. The recharacterized income is allocated among and increases foreign source income in separate categories in proportion to the balances of the overall domestic loss accounts with respect to those separate categories. As a result, if the taxpayer elects the benefits of section 901, the taxpayer's foreign tax credit limitation is increased. As provided in §1.904(g)-1T(f)(2), the balance in a taxpayer's overall domestic loss account with respect to a separate category is reduced at the end of each taxable year by the amount of loss recaptured during that taxable year. Recapture continues until such time as the amount of U.S. source income recharacterized as foreign source income equals the amount in the overall domestic loss account.

(b) *Determination of U.S. source taxable income for purposes of recapture.* For purposes of determining the amount of an overall domestic loss subject to recapture, the taxpayer's taxable income from U.S. sources shall be computed in accordance with the rules set forth in §1.904(g)-1T(c)(4).

(c) *Section 904(g)(1) recapture.* The amount of any U.S. source taxable income subject to recharacterization in a taxable

year in which paragraph (a) of this section is applicable is the lesser of the aggregate balance in taxpayer's overall domestic loss accounts in each separate category (after reduction of such account in accordance with §1.904(g)-1T(e)) or fifty percent of the taxpayer's U.S. source taxable income (as determined under paragraph (b) of this section).

(d) *Effective/applicability date.* This section applies to any taxpayer that sustains an overall domestic loss for a taxable year beginning after December 21, 2007. Taxpayers may choose to apply this section to overall domestic losses sustained in other taxable years beginning after December 31, 2006, as well.

(e) *Expiration date.* The applicability of this section expires on December 20, 2010.

#### *§1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses.*

[Reserved]. For further guidance, see §1.904(g)-3T.

#### *§1.904(g)-3T Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses (temporary).*

(a) *In general.* This section provides ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses. The rules must be applied in the order set forth in paragraphs (b) through (g) of this section.

(b) *Step One: Allocation of net operating loss and net capital loss carryovers*—(1) *In general.* Net operating losses from a current taxable year are carried forward or back to a taxable year in the following manner. Net operating losses that are carried forward pursuant to section 172 are combined with income or loss in the carryover year in the manner described in this paragraph (b). The

combined amounts are then subject to the ordering rules provided in paragraphs (c) through (g) of this section. Net operating losses that are carried back to a prior taxable year pursuant to section 172 are allocated to income in the carryback year in the manner set forth in paragraphs (b)(2) and (3), (c), and (d) of this section. The income in the carryback year to which the net operating loss is allocated is the foreign source income in each separate category and the U.S. source income after the application of sections 904(f) and 904(g) to income and loss in that previous year, including as a result of net operating loss carryovers or carrybacks from taxable years prior to the current taxable year.

(2) *Full net operating loss carryover.* If the full net operating loss (that remains after carryovers to other taxable years) is less than or equal to the taxable income in a particular taxable year (carryover year), and so can be carried forward in its entirety to such carryover year, U.S. source losses and foreign source losses in separate categories that are part of a net operating loss from a particular taxable year that is carried forward in its entirety shall be combined with the U.S. income or loss and the foreign source income or loss in the same separate categories in the carryover year.

(3) *Partial net operating loss carryover.* If the full net operating loss (that remains after carryovers to other taxable years) exceeds the taxable income in a carryover year, and so cannot be carried forward in its entirety to such carryover year, the following rules apply:

(i) First, any U.S. source loss (not to exceed the net operating loss carryover) shall be carried over to the extent of any U.S. source income in the carryover year.

(ii) If the net operating loss carryover exceeds the U.S. source loss carryover determined under paragraph (b)(3)(i) of this section, then separate limitation losses that are part of the net operating loss shall be tentatively carried over to the extent of separate limitation income in the same separate category in the carryover year. If the sum of the potential separate limitation loss carryovers determined under the preceding sentence exceeds the amount of the net operating loss carryover reduced by any U.S. source loss carried over under paragraph (b)(3)(i) of this section, then the potential separate limitation loss carry-

overs shall be reduced *pro rata* so that their sum equals such amount.

(iii) If the net operating loss carryover exceeds the sum of the U.S. and separate limitation loss carryovers determined under paragraphs (b)(3)(i) and (ii) of this section, then a proportionate part of the remaining loss from each separate category shall be carried over to the extent of such excess and combined with the foreign source loss, if any, in the same separate categories in the carryover year.

(iv) If the net operating loss carryover exceeds the sum of all the loss carryovers determined under paragraphs (b)(3)(i), (ii), and (iii) of this section, then any U.S. source loss not carried over under paragraph (b)(3)(i) of this section shall be carried over to the extent of such excess and combined with the U.S. source loss, if any, in the carryover year.

(4) *Net capital loss carryovers.* Rules similar to the rules of paragraphs (b)(1) through (3) of this section apply for purposes of determining the components of a net capital loss carryover to a taxable year.

(c) *Step Two: Allocation of separate limitation losses.* The taxpayer shall allocate separate limitation losses sustained during the taxable year (increased, if appropriate, by any losses carried over under paragraph (b) of this section), in the following manner:

(1) the taxpayer shall allocate its separate limitation losses for the year to reduce its separate limitation income in other separate categories on a proportionate basis, and increase its separate limitation loss accounts appropriately. To the extent a separate limitation loss in one separate category is allocated to reduce separate limitation income in a second separate category, and the second category has a separate limitation loss account from a prior taxable year with respect to the first category, the two separate limitation loss accounts shall be netted one against the other.

(2) If the taxpayer's separate limitation losses for the taxable year exceed the taxpayer's separate limitation income for the year, so that the taxpayer has separate limitation losses remaining after the application of paragraph (c)(1) of this section, the taxpayer shall allocate those losses to its U.S. source income for the taxable year, to the extent thereof, and shall increase

its overall foreign loss accounts appropriately.

(d) *Step Three: Allocation of U.S. source losses.* The taxpayer shall allocate U.S. source losses sustained during the taxable year (increased, if appropriate, by any losses carried over under paragraph (b) of this section) to separate limitation income on a proportionate basis, and shall increase its overall domestic loss accounts appropriately.

(e) *Step Four: Recapture of overall foreign loss accounts.* If the taxpayer's separate limitation income for the taxable year (reduced by any losses carried over under paragraph (b) of this section) exceeds the sum of the taxpayer's U.S. source loss and separate limitation losses for the year, so that the taxpayer has separate limitation income remaining after the application of paragraphs (c)(1) and (d) of this section, then the taxpayer shall recapture prior year overall foreign losses, if any, in accordance with §§1.904(f)-2 and 1.904(f)-2T.

(f) *Step Five: Recapture of separate limitation loss accounts.* To the extent the taxpayer has remaining separate limitation income for the year after the application of paragraph (e) of this section, then the taxpayer shall recapture prior year separate limitation loss accounts, if any, in accordance with §1.904(f)-8T.

(g) *Step Six: Recapture of overall domestic loss accounts.* If the taxpayer's U.S. source income for the year (reduced by any losses carried over under paragraph (b) of this section or allocated under paragraph (c) of this section, but not increased by any recapture of overall foreign loss accounts under paragraph (e) of this section) exceeds the taxpayer's separate limitation losses for the year, so that the taxpayer has U.S. source income remaining after the application of paragraph (c)(2) of this section, then the taxpayer shall recapture its prior year overall domestic losses, if any, in accordance with §1.904(g)-2T.

(h) *Examples.* The following examples illustrate the rules of this section. Unless otherwise noted, all corporations use the calendar year as the U.S. taxable year.

*Example 1.* (i) *Facts.* (A) Z Corporation is a domestic corporation with foreign branch operations in Country B. For 2009, Z has a net operating loss of (\$500), determined as follows:

<i>General</i>	<i>Passive</i>	<i>US</i>
(\$300)	\$0	(\$200)

(B) For 2008, Z had the following taxable income and losses after application of section 904(f) and (g) to income and loss in 2008:

General	Passive	US
\$400	\$200	\$110

(ii) *Net operating loss allocation.* Because Z's taxable income for 2008 exceeds its total net operating loss for 2009, the full net operating loss is carried back. Under Step 1, each component of the net operating loss is carried back and combined with its same category in 2008. See paragraph (b)(2) of this section. After allocation of the net operating loss, Z has the following taxable income and losses for 2008:

General	Passive	US
\$100	\$200	(\$90)

(iii) *Loss allocation.* Under Step 3, the (\$90) of U.S. loss is allocated proportionately to reduce the general category and passive category income. Accordingly, \$30 ( $\$90 \times \$100/\$300$ ) of the U.S. loss is allocated to general category income and \$60 ( $\$90 \times \$200/\$300$ ) of the U.S. loss is allocated to passive category income, with a corresponding creation or increase to Z's overall domestic loss accounts.

*Example 2. (i) Facts.* (A) X Corporation is a domestic corporation with foreign branch operations in Country C. As of January 1, 2007, X has no loss accounts subject to recapture. For 2007, X has a net operating loss of (\$1400), determined as follows:

General	Passive	US
(\$400)	(\$200)	(\$800)

(B) X has no taxable income in 2005 or 2006 available for offset by a net operating loss carryback. For 2008, X has the following taxable income and losses:

General	Passive	US
\$500	(\$100)	\$1200

(ii) *Net operating loss allocation.* Under Step 1, because X's total taxable income for 2008 of \$1600 ( $\$1200 + \$500 - \$100$ ) exceeds the total 2007 net operating loss, the full \$1400 net operating loss is carried forward. Under paragraph (b)(2) of this section, each component of the net operating loss is carried forward and combined with its same category in 2008. After allocation of the net operating loss, X has the following taxable income and losses:

General	Passive	US
\$100	(\$300)	\$400

(iii) *Loss allocation.* Under Step 2, \$100 of the passive category loss offsets the \$100 of general category income, resulting in a passive category separate limitation loss account with respect to general category income, and the other \$200 of passive category loss offsets \$200 of the U.S. source taxable income, resulting in the creation of an overall foreign loss account in the passive category.

*Example 3. (i) Facts.* Assume the same facts as in Example 2, except that in 2008, X had the following taxable income and losses:

General	Passive	US
\$200	(\$100)	\$1200

(ii) *Net operating loss allocation.* Under Step 1, because the total net operating loss for 2007 of (\$1400) exceeds total taxable income for 2008 of \$1300 ( $\$1200 + \$200 - \$100$ ), X has a partial net operating loss carryover to 2008 of \$1300. Under paragraph (b)(3)(i) of this section, first, the \$800 U.S. source component of the net operating loss is allocated to U.S. income for 2008. The tentative general category carryover under paragraph (b)(3)(ii) of this section (\$200) does not exceed the remaining net operating loss carryover amount (\$500). Therefore, \$200 of the general category component of the net operating loss is next allocated to the general category income for 2008. Under paragraph (b)(3)(iii) of this section, the remaining \$300 of net operating loss carryover ( $\$1300 - \$800 - \$200$ ) is carried over proportionally from the remaining net operating loss components in the general category (\$200, or \$400 total general category loss -\$200 general category loss already allocated) and passive category (\$200). Therefore, \$150 ( $\$300 \times \$200/\$400$ ) of the remaining net operating loss carryover is carried over from the general category for 2007 and combined with the general category for 2008, and \$150 ( $\$300 \times \$200/\$400$ ) of the remaining net operating loss carryover is carried over from the passive category for 2007 and combined with the passive category for 2008. After allocation of the net operating loss carryover from 2007 to the appropriate categories for 2008, X has the following taxable income and losses:

General	Passive	US
(\$150)	(\$250)	\$400

(iii) *Loss allocation.* Under Step 2, the losses in the general and passive categories fully offset the U.S. source income, resulting in the creation of general category and passive category overall foreign loss accounts.

*Example 4. (i) Facts.* Assume the same facts as in Example 2, except that in 2008, X has the following taxable income and losses:

General	Passive	US
\$200	\$200	(\$200)

(ii) *Net operating loss allocation.* Under Step 1, because the total net operating loss of (\$1400) exceeds total taxable income for 2008 of \$200 ( $\$200 + \$200 - \$200$ ), X has a partial net operating loss carryover to 2008 of \$200. Because X has no U.S. source income in 2008, under paragraph (b)(3)(i) of this section no portion of the U.S. source component of the net operating loss is initially carried into 2008. Because the total tentative carryover under paragraph (b)(3)(ii) of this section of \$400 (\$200 in each of the general and passive categories) exceeds the net operating loss carryover amount, the tentative carryover from each separate category is reduced proportionately by \$100 ( $\$200 \times \$200/\$400$ ). Accordingly, \$100 ( $\$200 - \$100$ ) of the general category component of the net operating loss is carried forward and \$100 ( $\$200 - \$100$ ) of the passive category component of the net operating loss is carried forward and combined with income in the same respective cate-

gories for 2008. After allocation of the net operating loss carryover from 2007, X has the following taxable income and losses:

General	Passive	US
\$100	\$100	(\$200)

(iii) *Loss allocation.* Under Step 3, the \$200 U.S. source loss offsets the remaining \$100 of general category income and \$100 of passive category income, resulting in the creation of overall domestic loss accounts with respect to the general and passive categories.

*Example 5. (i) Facts.* Assume the same facts as in Example 2, except that in 2008, X has the following taxable income and losses:

General	Passive	US
\$800	(\$100)	\$100

(ii) *Net operating loss allocation.* Under Step 1, because X's total net operating loss in 2007 of (\$1400) exceeds its total taxable income for 2008 of \$800 ( $\$100 + \$800 - \$100$ ), X has a partial net operating loss carryover to 2008 of \$800. Under paragraph (b)(3)(i) of this section, \$100 of the U.S. source component of the net operating loss is allocated to U.S. income for 2008. The tentative general category carryover under paragraph (b)(3)(ii) of this section does not exceed the remaining net operating loss carryover amount. Therefore, \$400 of the general category component of the net operating loss is allocated to reduce general category income in 2008. Under paragraph (b)(3)(iii) of this section, of the remaining \$300 of net operating loss carryover ( $\$800 - \$100 - \$400$ ), \$200 is carried forward from the passive category component of the net operating loss and combined with the passive category for 2008. Under paragraph (b)(3)(iv) of this section, the remaining \$100 ( $\$300 - \$200$ ) of net operating loss carryover is carried forward from the U.S. source component of the net operating loss and combined with the U.S. source income (loss) for 2008. After allocation of the net operating loss carryover from 2007, X has the following taxable income and losses:

General	Passive	US
\$400	(\$300)	(\$100)

(iii) *Loss allocation.* (A) Under Step 2, the \$300 passive category loss offsets the \$300 of income in the general category, resulting in the creation of a passive category separate limitation loss account with respect to the general category.

(B) Under Step 3, the \$100 U.S. source loss offsets the remaining \$100 of the general category income, resulting in the creation of an overall domestic loss account with respect to the general category.

*Example 6. (i) Facts.* (A) Y Corporation is a domestic corporation with foreign branch operations in Country D. Y has no net operating losses and does not make an election to recapture more than the required amount of overall foreign losses. As of January 1, 2007, Y has a (\$200) general category overall foreign loss (OFL) account and a (\$200) general category separate limitation loss (SLL) account with respect to the passive category. For 2007, Y has \$400 of passive category income that is fully offset by a (\$400) domestic loss in that taxable year, giving rise

to the creation of an overall domestic loss (ODL) account with respect to the passive category. As of January 1, 2008, Y has the following balances in its OFL, SLL, and ODL accounts:

General		US
OFL	Passive SLL	Passive ODL
\$200	\$200	\$400

(B) In 2008, Y has the following taxable income and losses:

General	Passive	US
\$400	(\$100)	\$600

(ii) *Loss allocation.* Under Step 2, the \$100 of passive category loss offsets \$100 of the general category income, creating a passive category SLL account of \$100 with respect to the general category. Because there is an offsetting general category SLL account of \$200 with respect to the passive category from a prior taxable year, the two accounts are netted against each other so that all that remains is a \$100 general category SLL account with respect to the passive category.

(iii) *OFL account recapture.* Under Step 4, 50 percent of the remaining \$300, or \$150, of income in the general category is subject to recharacterization as U.S. source income as a recapture of part of the OFL account in the general category.

(iv) *SLL account recapture.* Under Step 5, \$100 of the remaining \$150 of income in the general category is recharacterized as passive category income as a recapture of the general category SLL account with respect to the passive category.

(v) *ODL account recapture.* Under Step 6, 50 percent of the \$600, or \$300, of U.S. source income is subject to recharacterization as foreign source passive category income as a recapture of a part of the ODL account with respect to the passive category. None of the \$150 of general category income that was recharacterized as U.S. source income under Step 5 is included here as income subject to recharacterization in connection with recapture of the overall domestic loss account.

(vi) *Results.* (A) After the allocation of loss and recapture of loss accounts, X has the following taxable income and losses for 2008:

General	Passive	US
\$50	\$400	\$450

(B) As of January 1, 2009, Y has the following balances in its OFL, SLL and ODL accounts:

General		Passive		US
OFL	Passive SLL	General SLL	Passive ODL	
\$50	\$0	\$0	\$100	

(i) *Effective/applicability date.* This section applies to taxable years beginning after December 21, 2007. Taxpayers may choose to apply this section to other taxable years beginning after December 31, 2006, as well.

(j) *Expiration date.* The applicability of this section expires on December 20, 2010.

Par. 15. Section 1.904(i)-0 is added. The entries for §1.904(i)-1 in §1.904-0 are redesignated as entries for new §1.904(i)-0.

*§1.904(i)-0 Outline of regulation provisions.*

This section lists the headings for §1.904(i)-1.

Par. 16. Section 1.904(j)-0 is added. The entries for §1.904(j)-1 in §1.904-0 are redesignated as entries for new §1.904(j)-0.

*§1.904(j)-0 Outline of regulation provisions.*

This section lists the headings for §1.904(j)-1.

Par. 17. Section 1.1502-9 is revised to read as follows:

*§1.1502-9 Consolidated overall foreign losses, separate limitation losses, and overall domestic losses.*

[Reserved]. For further guidance, see §1.1502-9T.

Par. 18. Section 1.1502-9T is added to read as follows:

*§1.1502-9T Consolidated overall foreign losses, separate limitation losses, and overall domestic losses (temporary).*

(a) *In general.* This section provides rules for applying section 904(f) and (g) (including its definitions and nomenclature) to a group and its members. Generally, section 904(f) concerns rules relating to overall foreign losses (OFLs) and separate limitation losses (SLLs) and the consequences of such losses. Under section 904(f)(5), losses are computed separately in each category of income described in section 904(d)(1) or §1.904-4(m) (separate category). Section 904(g) concerns rules relating to overall domestic losses (ODLs) and the consequences of such losses. Paragraph (b) of this section defines terms and provides computational and accounting rules, including rules regarding recapture. Paragraph (c) of this section provides rules that apply to OFLs, SLLs, and ODLs when a member becomes or ceases to be a member of a group. Paragraph (d) of this section provides a

predecessor and successor rule. Paragraph (e) of this section provides effective dates.

(b) *Consolidated application of section 904(f) and (g).* A group applies section 904(f) and (g) for a consolidated return year in accordance with that section, subject to the following rules:

(1) *Computation of CSLI or CSLL and consolidated U.S.-source taxable income or CDL.* The group computes its consolidated separate limitation income (CSLI) or consolidated separate limitation loss (CSLL) for each separate category under the principles of §1.1502-11 by aggregating each member's foreign-source taxable income or loss in such separate category computed under the principles of §1.1502-12, and taking into account the foreign portion of the consolidated items described in §1.1502-11(a)(2) through (8) for such separate category. The group computes its consolidated U.S.-source taxable income or consolidated domestic loss (CDL) under similar principles.

(2) *Netting CSLLs, CSLIs, and consolidated U.S.-source taxable income.* The group applies section 904(f)(5) to determine the extent to which a CSLL for a separate category reduces CSLI for another separate category or consolidated U.S.-source taxable income.

(3) *Netting CDL and CSLI.* The group applies section 904(g)(2) to determine the extent to which a CDL reduces CSLI.

(4) *CSLL, COFL, and CODL accounts.* To the extent provided in section 904(f), the amount by which a CSLL for a separate category (the loss category) reduces CSLI for another separate category (the income category) shall result in the creation of (or addition to) a CSLL account for the loss category with respect to the income category. Likewise, the amount by which a CSLL for a loss category reduces consolidated U.S.-source taxable income will create (or add to) a consolidated overall foreign loss account (a COFL account). To the extent provided in section 904(g), the amount by which a CDL reduces CSLI shall result in the creation of (or addition to) a consolidated overall domestic loss (CODL) account for the income category reduced by the CDL.

(5) *Recapture of COFL, CSLL, and CODL accounts.* In the case of a COFL account for a loss category, section 904(f)(1) and (3) recharacterizes some or all of the foreign-source income in the loss category

as U.S.-source income. In the case of a CSLL account for a loss category with respect to an income category, section 904(f)(5)(C) and (F) recharacterizes some or all of the foreign-source income in the loss category as foreign-source income in the income category. In the case of a CODL account, section 904(g)(3) recharacterizes some of the U.S.-source income as foreign-source income in the separate category that was offset by the CDL. The COFL account, CSLL account, or CODL account is reduced to the extent income is recharacterized with respect to such account.

(6) *Intercompany transactions—(i) Nonapplication of section 904(f) disposition rules.* Neither section 904(f)(3) (in the case of a COFL account) nor section 904(f)(5)(F) (in the case of a CSLL account) applies at the time of a disposition that is an intercompany transaction to which §1.1502-13 applies. Instead, section 904(f)(3) and (5)(F) applies only at such time and only to the extent that the group is required under §1.1502-13 (without regard to section 904(f)(3) and (5)(F)) to take into account any intercompany items resulting from the disposition, based on the COFL or CSLL account existing at the end of the consolidated return year during which the group takes the intercompany items into account.

(ii) *Examples.* Paragraph (b)(6)(i) of this section is illustrated by the following examples. The identity of the parties and the basic assumptions set forth in §1.1502-13(c)(7)(i) apply to the examples. Except as otherwise stated, assume further that the consolidated group recognizes no foreign-source income other than as a result of the transactions described. The examples are as follows:

*Example 1.* (i) On June 10, year 1, S transfers nondepreciable property with a basis of \$100 and a fair market value of \$250 to B in a transaction to which section 351 applies. The property was predominantly used without the United States in a trade or business, within the meaning of section 904(f)(3). B continues to use the property without the United States. The group has a COFL account in the relevant loss category of \$120 as of December 31, year 1.

(ii) Because the contribution from S to B is an intercompany transaction, section 904(f)(3) does not apply to result in any gain recognition in year 1. See paragraph (b)(5)(i) of this section.

(iii) On January 10, year 4, B ceases to be a member of the group. Because S did not recognize gain in year 1 under section 351, no gain is taken into account in year 4 under §1.1502-13. Thus, no portion

of the group's COFL account is recaptured in year 4. For rules requiring apportionment of a portion of the COFL account to B, see paragraph (c)(2) of this section.

*Example 2.* (i) The facts are the same as in paragraph (i) of *Example 1*. On January 10, year 4, B sells the property to X for \$300. As of December 31, year 4, the group's COFL account is \$40. (The COFL account was reduced between year 1 and year 4 due to unrelated foreign-source income taken into account by the group.)

(ii) B takes into account gain of \$200 in year 4. The \$40 COFL account in year 4 recharacterizes \$40 of the gain as U.S. source. See section 904(f)(3).

*Example 3.* (i) On June 10, year 1, S sells nondepreciable property with a basis of \$100 and a fair market value of \$250 to B for \$250 cash. The property was predominantly used without the United States in a trade or business, within the meaning of section 904(f)(3). The group has a COFL account in the relevant loss category of \$120 as of December 31, year 1. B predominantly uses the property in a trade or business without the United States.

(ii) Because the sale is an intercompany transaction, section 904(f)(3) does not require the group to take into account any gain in year 1. Thus, under paragraph (b)(5)(i) of this section, the COFL account is not reduced in year 1.

(iii) On January 10, year 4, B sells the property to X for \$300. As of December 31, year 4, the group's COFL account is \$60. (The COFL account was reduced between year 1 and year 4 due to unrelated foreign-source income taken into account by the group.)

(iv) In year 4, S's \$150 intercompany gain and B's \$50 corresponding gain are taken into account to produce the same effect on consolidated taxable income as if S and B were divisions of a single corporation. See §1.1502-13(c). All of B's \$50 corresponding gain is recharacterized under section 904(f)(3). If S and B were divisions of a single corporation and the intercompany sale were a transfer between the divisions, B would succeed to S's \$100 basis in the property and would have \$200 of gain (\$60 of which would be recharacterized under section 904(f)(3)), instead of a \$50 gain. Consequently, S's \$150 intercompany gain and B's \$50 corresponding gain are taken into account, and \$10 of S's gain is recharacterized under section 904(f)(3) as U.S. source income to reflect the \$10 difference between B's \$50 recharacterized gain and the \$60 recomputed gain that would have been recharacterized.

(c) *Becoming or ceasing to be a member of a group—(1) Adding separate accounts on becoming a member.* At the time that a corporation becomes a member of a group (a new member), the group adds to the balance of its COFL, CSLL or CODL account the balance of the new member's corresponding OFL account, SLL account or ODL account. A new member's OFL account corresponds to a COFL account if the account is for the same loss category. A new member's SLL account corresponds to a CSLL account if the account is for the same loss category and with respect to the same income category. A new member's

ODL account corresponds to a CODL account if the account is with respect to the same income category. If the group does not have a COFL, CSLL or CODL account corresponding to the new member's account, it creates a COFL, CSLL or CODL account with a balance equal to the balance of the member's account.

(2) *Apportionment of consolidated account to departing member—(i) In general.* A group apportions to a member that ceases to be a member (a departing member) a portion of each COFL, CSLL and CODL account as of the end of the year during which the member ceases to be a member and after the group makes the additions or reductions to such account required under paragraphs (b)(4), (b)(5) and (c)(1) of this section (other than an addition under paragraph (c)(1) of this section attributable to a member becoming a member after the departing member ceases to be a member). The group computes such portion under paragraph (c)(2)(ii) of this section, as limited by paragraph (c)(2)(iii) of this section. The departing member carries such portion to its first separate return year after it ceases to be a member. Also, the group reduces each account by such portion and carries such reduced amount to its first consolidated return year beginning after the year in which the member ceases to be a member. If two or more members cease to be members in the same year, the group computes the portion allocable to each such member (and reduces its accounts by such portion) in the order that the members cease to be members.

(ii) *Departing member's portion of group's account.* A departing member's portion of a group's COFL, CSLL or CODL account for a loss category is computed based upon the member's share of the group's assets that generate income subject to recapture at the time that the member ceases to be a member. Under the characterization principles of §§1.861-9T(g)(3) and 1.861-12T, the group identifies the assets of the departing member and the remaining members that generate U.S.-source income (domestic assets) and foreign-source income (foreign assets) in each separate category. The assets are characterized based upon the income that the assets are reasonably expected to generate after the member ceases to be a member. The member's portion of a group's COFL or CSLL ac-

count for a loss category is the group's COFL or CSLL account, respectively, multiplied by a fraction, the numerator of which is the value of the member's foreign assets for the loss category and the denominator of which is the value of the foreign assets of the group (including the departing member) for the loss category. The member's portion of a group's CODL account for each income category is the group's CODL account multiplied by a fraction, the numerator of which is the value of the member's domestic assets and the denominator of which is the value of the domestic assets of the group (including the departing member). The value of the domestic and foreign assets is determined under the asset valuation rules of §1.861-9T(g)(1) and (2) using either tax book value or fair market value under the method chosen by the group for purposes of interest apportionment as provided in §1.861-9T(g)(1)(ii). For purposes of this paragraph (c)(2)(ii), §1.861-9T(g)(2)(iv) (assets in intercompany transactions) shall apply, but §1.861-9T(g)(2)(iii) (adjustments for directly allocated interest) shall not apply. If the group uses the tax book value method, the member's portions of COFL, CSLL, and CODL accounts are limited by paragraph (c)(2)(iii) of this section. In addition, for purposes of this paragraph (c)(2)(ii), the tax book value of assets transferred in intercompany transactions shall be determined without regard to previously deferred gain or loss that is taken into account by the group as a result of the transaction in which the member ceases to be a member. The assets should be valued at the time the member ceases to be a member, but values on other dates may be used unless this creates substantial distortions. For example, if a member ceases to be a member in the middle of the group's consolidated return year, an average of the values of assets at the beginning and end of the year (as provided in §1.861-9T(g)(2)) may be used or, if a member ceases to be a member in the early part of the group's consolidated return year, values at the beginning of the year may be used, unless this creates substantial distortions.

(iii) *Limitation on member's portion for groups using tax book value method.* If a group uses the tax book value method of valuing assets for purposes of paragraph (c)(2)(ii) of this section and the aggregate

of a member's portions of COFL and CSLL accounts for a loss category (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's foreign assets in the loss category, the member's portion of the COFL or CSLL accounts for the loss category shall be reduced (proportionately, in the case of multiple accounts) by such excess. In addition, if the aggregate of a member's portions of CODL accounts (with respect to one or more income categories) determined under paragraph (c)(2)(ii) of this section exceeds 150 percent of the actual fair market value of the member's domestic assets, the member's portion of the CODL accounts shall be reduced (proportionately, in the case of multiple accounts) by such excess. This rule does not apply in the case of COFL or CSLL accounts if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the foreign assets in the loss category. In the case of CODL accounts, this rule does not apply if the departing member and all other members that cease to be members as part of the same transaction own all (or substantially all) the domestic assets.

(iv) *Determination of values of domestic and foreign assets binding on departing member.* The group's determination of the value of the member's and the group's domestic and foreign assets for a loss category is binding on the member, unless the Commissioner concludes that the determination is not appropriate. The common parent of the group must attach a statement to the return for the taxable year that the departing member ceases to be a member of the group that sets forth the name and taxpayer identification number of the departing member, the amount of each COFL and CSLL for each loss category and each CODL that is apportioned to the departing member under this paragraph (c)(2), the method used to determine the value of the member's and the group's domestic and foreign assets in each such loss category, and the value of the member's and the group's domestic and foreign assets in each such loss category. The common parent must also furnish a copy of the statement to the departing member.

(v) *Anti-abuse rule.* If a corporation becomes a member and ceases to be a mem-

ber, and a principal purpose of the corporation becoming and ceasing to be a member is to transfer the corporation's OFL account, SLL account or ODL account to the group or to transfer the group's COFL, CSLL or CODL account to the corporation, appropriate adjustments will be made to eliminate the benefit of such a transfer of accounts. Similarly, if any member acquires assets or disposes of assets (including a transfer of assets between members of the group and the departing member) with a principal purpose of affecting the apportionment of accounts under paragraph (c)(2)(i) of this section, appropriate adjustments will be made to eliminate the benefit of such acquisition or disposition.

(vi) *Examples.* The following examples illustrate the rules of this paragraph (c):

*Example 1.* (i) On November 6, year 1, S, a member of the P group, a consolidated group with a calendar consolidated return year, ceases to be a member of the group. On December 31, year 1, the P group has a \$40 COFL account for the general category, a \$20 CSLL account for the general category (that is, the loss category) with respect to the passive category (that is, the income category), and a \$10 CODL account with respect to the passive category (that is, the income category). No member of the group has foreign-source income or loss in year 1. The group apportions its interest expense according to the tax book value method.

(ii) On November 6, year 1, the group identifies S's assets and the group's assets (including S's assets) expected to produce foreign-source general category income. Use of end-of-the-year values will not create substantial distortions in determining the relative values of S's and the group's relevant assets on November 6, year 1. The group determines that S's relevant assets have a tax book value of \$2,000 and a fair market value of \$2,200. Also, the group's relevant assets (including S's assets) have a tax book value of \$8,000. On November 6, year 1, S has no assets expected to produce U.S. source income.

(iii) Under paragraph (c)(2)(ii) of this section, S takes a \$10 COFL account for the general category ( $\$40 \times \$2000/\$8000$ ) and a \$5 CSLL account for the general category with respect to the passive category ( $\$20 \times \$2000/\$8000$ ). S does not take any portion of the CODL account. The limitation described in paragraph (c)(2)(iii) of this section does not apply because the aggregate of the COFL and CSLL accounts for the general category that are apportioned to S (\$15) is less than 150 percent of the actual fair market value of S's general category foreign assets ( $\$2,200 \times 150\%$ ).

*Example 2.* (i) Assume the same facts as in *Example 1*, except that the fair market value of S's general category foreign assets is \$4 as of November 6, year 1.

(ii) Under paragraph (c)(2)(iii) of this section, S's COFL and CSLL accounts for the general category must be reduced by \$9, which is the excess of \$15 (the aggregate amount of the accounts apportioned under paragraph (c)(2)(ii) of this section) over \$6 (150 percent of the \$4 actual fair market value of S's general

category foreign assets). S thus takes a \$4 COFL account for the general category (\$10 - (\$9 x \$10/\$15)) and a \$2 CSLL account for the general category with respect to the passive category (\$5 - (\$9 x \$5/\$15)).

*Example 3.* (i) Assume the same facts as in *Example 1*, except that S also has assets that are expected to produce U.S. source income.

(ii) On November 6, year 1, the group identifies S's assets and the group's assets (including S's assets) expected to produce U.S. source income. Use of end-of-the-year values will not create substantial distortions in determining the relative values of S's and the group's relevant assets on November 6, year 1. The group determines that S's relevant assets have a tax book value of \$3,000 and a fair market value of \$2,500. Also, the group's relevant assets (including S's assets) have a tax book value of \$6,000.

(iii) Under paragraph (c)(2)(ii) of this section, S takes a \$5 CODL account (\$10 x \$3,000/\$6,000), in addition to the COFL and CSLL accounts determined in *Example 1*. The limitation described in paragraph (c)(2)(iii) of this section does not apply because the CODL account that is apportioned to S (\$5) is less than 150 percent of the actual fair market value of S's U.S. assets (\$2,500 x 150%).

(d) *Predecessor and successor.* A reference to a member includes, as the context may require, a reference to a predecessor or successor of the member. See §1.1502-1(f).

(e) *Effective/applicability date.* This section applies to consolidated return years beginning after December 21, 2007. Taxpayers may choose to apply the provisions of this section relating to overall domestic losses to other consolidated return years beginning after December 31, 2006, as well. For rules relating to overall foreign losses and separate limitation losses in consolidated return years beginning on or before December 21, 2007, see 26 CFR 1.1502-9 (revised as of April 1, 2007).

(f) *Expiration date.* The applicability of this section expires on December 20, 2010.

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

Approved December 14, 2007.

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

(Filed by the Office of the Federal Register on December 20, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 21, 2007, 72 F.R. 72592)

## Section 6103.—Confidentiality and Disclosure of Returns and Return Information

26 CFR 301.6103(j)(1)-1: Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

### T.D. 9372

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

### Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation relating to the list of items of return information disclosed to the Bureau of the Census (Bureau). The regulation adds two items of return information for use in producing demographic statistics programs, including the Bureau's Small Area Income and Poverty Estimates (SAIPE). The final regulation also removes four items that the Bureau has indicated are no longer necessary. This regulation facilitates the assistance of the IRS to the Bureau in its statistics programs and requires no action by taxpayers and has no effect on their tax liabilities.

DATES: *Effective Date:* This regulation is effective on December 27, 2007.

*Applicability Date:* For dates of applicability, see §301.6103(j)(1)-1.

FOR FURTHER INFORMATION CONTACT: Glenn Melcher, (202) 622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

Under section 6103(j)(1), upon written request from the Secretary of Commerce,

the Treasury Secretary is to furnish to the Bureau of the Census (Bureau) return information as may be prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and conducting related statistical activities authorized by law. Section 301.6103(j)(1)-1 of the regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

This document adopts a final regulation that authorizes the IRS to disclose the additional items of return information that have been requested by the Secretary of Commerce in developing and preparing demographic statistics, including statutorily mandated Small Area Income and Poverty Estimates (SAIPE). The final regulation also removes certain items of return information that are authorized to be disclosed in the existing regulation but that the Secretary of Commerce has indicated are no longer needed.

The final regulation in this issue of the Bulletin amends the Procedure and Administration Regulations (26 CFR Part 301) relating to Internal Revenue Code (Code) section 6103(j)(1). The final regulation contains rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and conducting related statistical activities authorized by law.

A notice of proposed rulemaking (REG-147195-04, 2005-1 C.B. 888 [70 FR 12166-01]) was published in the **Federal Register** on March 11, 2005. No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulation is adopted by this Treasury decision.

#### Explanation of Provisions

As duly requested by the Secretary of Commerce and set forth in the proposed regulation, this final regulation permits disclosure to the Bureau of earned income and the number of Earned Income Credit-eligible qualifying children.

The regulation also removes four items of return information that the Bureau indicated it no longer requires. These items are: 1) end-of-year code; 2) months

actively operated; 3) total number of documents and the total amount reported on the Form 1096 (*Annual Summary and Transmittal of U.S. Information Returns*) transmitting Forms 1099-MISC (*Miscellaneous Income*); and 4) Form 941 (*Employer's QUARTERLY Federal Tax Return*) indicator and business address on Schedule C (*Profit or Loss From Business*) of Form 1040. Accordingly, the regulation has removed these items of return information from those that may be disclosed to the Bureau.

### 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 this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

### Drafting Information

The principal author of this regulation is Glenn Melcher, Office of the Associate Chief Counsel (Procedure & Administration).

\* \* \* \* \*

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section 301.6103(j)(1)–1 is amended by:

1. Revising paragraphs (b)(1) introductory text and (b)(3) introductory text,

(b)(3)(xvii), (b)(3)(xviii), (b)(3)(xix), (b)(3)(xx), (b)(3)(xxi), (b)(3)(xxii), (b)(3)(xxiii), (b)(3)(xxiv), and (e).

2. Adding paragraphs (b)(1)(xvi) and (b)(1)(xvii).

3. Removing and reserving paragraph (b)(3)(xxv).

The revisions and additions read as follows:

*§301.6103(j)(1)–1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.*

\* \* \* \* \*

(b) *Disclosure of return information reflected on returns to officers and employees of the Bureau of the Census.* (1) Officers or employees of the Internal Revenue Service will disclose the following return information reflected on returns of individual taxpayers to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, intercensal estimates of population and income for all geographic areas included in the population estimates program and demographic statistics programs, censuses, and related program evaluation:

\* \* \* \* \*

(xvi) Earned Income (as defined in section 32(c)(2)).

(xvii) Number of Earned Income Tax Credit-eligible qualifying children.

\* \* \* \* \*

(b)(3) Officers or employees of the Internal Revenue Service will disclose the following business-related return information reflected on returns of taxpayers to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, demographic and economic statistics programs, censuses, and surveys. (The “returns of taxpayers” include, but are not limited to: Form 941; Form 990 series; Form 1040 series and Schedules C and SE; Form 1065 and all attending schedules and Form 8825; Form 1120 series and all attending schedules and Form 8825; Form 851; Form 1096; and other business returns,

schedules and forms that the Internal Revenue Service may issue.):

\* \* \* \* \*

(xvii) Principal industrial activity code, including the business description.

(xviii) Consolidated return indicator.

(xix) Wages, tips, and other compensation.

(xx) Social Security wages.

(xxi) Deferred wages.

(xxii) Social Security tip income.

(xxiii) Total Social Security taxable earnings.

(xxiv) Gross distributions from employer-sponsored and individual retirement plans from Form 1099-R.

(xxv) [Reserved].

\* \* \* \* \*

(e) *Effective/applicability date.* This section is applicable to disclosures to the Bureau of the Census on or after December 27, 2007.

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

Approved December 18, 2007.

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

(Filed by the Office of the Federal Register on December 26, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 27, 2007, 72 F.R. 73261)

*26 CFR 301.6103(j)(1)–1T: Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities (temporary).*

## T.D. 9373

### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

### Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulation.

**SUMMARY:** This document contains a temporary regulation that adds an additional item of return information that may be disclosed to the Bureau of the Census (Bureau). The regulation adds one item of return information for use in the Bureau's annual Survey of Industrial Research and Development. The temporary regulation provides guidance to IRS personnel responsible for disclosing the information. This regulation facilitates the assistance of the IRS to the Bureau in its statistics programs and requires no action by taxpayers and has no effect on their tax liabilities. The text of the temporary regulation also serves as the text of the proposed regulation (REG-147832-07) set forth in this issue of the Bulletin.

**DATES:** *Effective Date:* This regulation is effective on December 31, 2007.

*Applicability Date:* For dates of applicability, see §301.6103(j)(1)-1T(e).

**FOR FURTHER INFORMATION CONTACT:** Glenn Melcher, (202) 622-4570 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under section 6103(j)(1)(A), upon written request from the Secretary of Commerce, the Treasury Secretary is to furnish to the Bureau of the Census (Bureau) return information as may be prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and conducting related statistical activities authorized by law. Section 301.6103(j)(1)-1 of the regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

This document adopts a temporary regulation that authorizes the IRS to disclose an additional item of return information, which has been requested by the Secretary of Commerce, that is necessary for the Bureau's annual Survey of Industrial Research and Development.

The temporary regulation in this issue of the Bulletin amends the Procedure and Administration Regulations (26 CFR Part 301) relating to Internal Revenue Code (Code) section 6103(j)(1)(A). This amend-

ment to the regulation contains rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and conducting related statistical activities authorized by law.

##### **Explanation of Provisions**

By letter dated February 6, 2006, the Secretary of Commerce requested that an additional item of return information be disclosed to the Bureau for purposes related to the Bureau's annual Survey of Industrial Research and Development. Specifically, the Secretary of Commerce requested categorical information on total qualified research expenses in three ranges: greater than zero, but less than \$1 million; greater than or equal to \$1 million, but less than \$3 million; and, greater than or equal to \$3 million. The request indicates that because of the small number of companies with research and development expenses it is difficult to design an efficient sample that produces reliable estimates. Data on total qualified research expenses from the Form 6765, *Credit for Increasing Research Activities*, will assist the Bureau in identifying companies that are actively engaged in research and development activities for the annual Survey of Industrial Research and Development.

##### **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 this regulation. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

##### **Drafting Information**

The principal author of this temporary regulation is Glenn Melcher, Office of the

Associate Chief Counsel (Procedure & Administration).

\* \* \* \* \*

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

Accordingly, 26 CFR Part 301 is amended as follows:

##### **PART 301—PROCEDURE AND ADMINISTRATION**

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

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

Par. 2. Section 301.6103(j)(1)-1T is amended by revising paragraphs (a), (b), and (e) and removing paragraph (f) to read as follows:

*§301.6103(j)(1)-1T Disclosure of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities (temporary).*

*(a) through (b)(3)(xxiv) [Reserved]. For further guidance, see §301.6103(j)1-1(a) and (b)(1) through (b)(3)(xxiv).*

*(xxv) From Form 6765 (when filed with corporation income tax returns) — total qualified research expenses.*

\* \* \* \* \*

*(e) Effective/applicability date.* This section is applicable to disclosures to the Bureau of Economic Analysis on or after July 6, 2006. The amendment to paragraph (b)(3)(xxv) of this section is applicable to disclosures to the Bureau of the Census on or after December 31, 2007. The applicability of the amendment to paragraph (b)(3)(xxv) expires on or before December 28, 2010.

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

Approved December 18, 2007.

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

(Filed by the Office of the Federal Register on December 28, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 31, 2007, 72 F.R. 74192)

## Part III. Administrative, Procedural, and Miscellaneous

### 2008 Calendar Year Resident Population Estimates

#### Notice 2008-22

This notice informs (1) state and local housing credit agencies that allocate low-income housing tax credits under § 42 of the Internal Revenue Code and (2) states and other issuers of tax-exempt private activity bonds under § 141, of the proper population figures to be used for calculating the 2008 calendar year population-based component of the state housing credit ceiling (Credit Ceiling) under § 42(h)(3)(C)(ii), the 2008 calendar year volume cap (Volume Cap) under § 146, and the 2008 volume limit (Volume Limit) under § 142(k)(5).

The population figures both for the population-based component of the Credit Ceiling and for the Volume Cap are determined by reference to § 146(j). That section provides generally that determina-

tions of population for any calendar year are made on the basis of the most recent census estimate of the resident population of a state (or issuing authority) released by the U.S. Census Bureau before the beginning of such calendar year. Section 142(k)(5) provides that the Volume Limit is based on the State population.

The population-based component of the Credit Ceiling and the Volume Cap are adjusted for inflation pursuant to §§ 42(h)(3)(H) and 146(d)(2), respectively. The adjustments for the 2008 calendar year were published in Rev. Proc. 2007-66, 2007-45 I.R.B. 970. Section 3.08 of Rev. Proc. 2007-66 provides that, for calendar year 2008, the amounts used under § 42(h)(3)(C)(ii) to calculate the Credit Ceiling is the greater of \$2.00 multiplied by the State population (see the resident population figures provided below) or \$2,325,000. Further, section 3.16 of Rev. Proc. 2007-66 provides that the amounts used under § 146(d)(1)

to calculate the Volume Cap for calendar year 2008 is the greater of \$85 multiplied by the State population (see the resident population figures provided below) or \$262,095,000.

The proper population figures for calculating the Credit Ceiling, the Volume Cap, and the Volume Limit for the 2008 calendar year are the estimates of the resident population of the 50 states, the District of Columbia, and Puerto Rico released by the U.S. Census Bureau on December 27, 2007, in Press Release CB07-184. The proper population figures for calculating the Credit Ceiling, the Volume Cap, and the Volume Limit for the 2008 calendar year for the insular areas (American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands) are the figures released electronically by the U.S. Census Bureau on July 17, 2003, and referenced in Census Bureau Tip Sheet TP03-16, dated August 8, 2003. For convenience, these estimates are reprinted below.

---

#### *Resident Population Figures*

Alabama	4,627,851
Alaska	683,478
American Samoa	57,663
Arizona	6,338,755
Arkansas	2,834,797
California	36,553,215
Colorado	4,861,515
Connecticut	3,502,309
Delaware	864,764
D.C.	588,292
Florida	18,251,243
Georgia	9,544,750
Guam	173,456
Hawaii	1,283,388
Idaho	1,499,402
Illinois	12,852,548
Indiana	6,345,289
Iowa	2,988,046
Kansas	2,775,997
Kentucky	4,241,474

---

---

Louisiana	4,293,204
Maine	1,317,207
Maryland	5,618,344
Massachusetts	6,449,755
Michigan	10,071,822
Minnesota	5,197,621
Mississippi	2,918,785
Missouri	5,878,415
Montana	957,861
Nebraska	1,774,571
Nevada	2,565,382
New Hampshire	1,315,828
New Jersey	8,685,920
New Mexico	1,969,915
New York	19,297,729
North Carolina	9,061,032
North Dakota	639,715
Northern Mariana Islands	84,546
Ohio	11,466,917
Oklahoma	3,617,316
Oregon	3,747,455
Pennsylvania	12,432,792
Puerto Rico	3,941,459
Rhode Island	1,057,832
South Carolina	4,407,709
South Dakota	796,214
Tennessee	6,156,719
Texas	23,904,380
U.S. Virgin Islands	108,448
Utah	2,645,330
Vermont	621,254
Virginia	7,712,091
Washington	6,468,424
West Virginia	1,812,035
Wisconsin	5,601,640
Wyoming	522,830

---

The principal authors of this notice are Christopher J. Wilson, Office of the Associate Chief Counsel (Passthroughs and Special Industries) and Timothy L. Jones, Office of the Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, con-

tact Mr. Wilson at (202) 622-3040 (not a toll-free call).

\_\_\_\_\_

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

### **Notice 2008-24**

This notice provides guidance as to the corporate bond weighted average interest

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

**CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE**

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pen-

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

Notice 2004-34, 2004-1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the

monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004-34 continues to apply in determining that rate. See Notice 2006-75, 2006-36 I.R.B. 366.

The composite corporate bond rate for January 2008 is 6.16 percent. Pursuant to Notice 2004-34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

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

For Plan Years Beginning in		Corporate Bond Weighted Average	Permissible Range	
Month	Year		90%	100%
February	2008	5.94	5.34	5.94

**YIELD CURVE AND SEGMENT RATES**

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan's target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates

("segment rates"), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007-81, 2007-44 I.R.B. 899, provides guidelines for determining the

monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007-81, the monthly corporate bond yield curve derived from January 2008 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of January 2008 are, respectively, 4.39, 6.01, and 6.72. The three 24-month average corporate bond segment rates applicable for February 2008 under the election of § 430(h)(2)(G)(iv) are as follows:

First Segment	Second Segment	Third Segment
5.28	5.95	6.45

The transitional segment rates under § 430(h)(2)(G) applicable for February

2008, taking into account the corporate

bond weighted average of 5.94 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	5.72	5.94	6.11

**30-YEAR TREASURY SECURITIES  
INTEREST RATE**

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

for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for January 2008 is 4.33 percent. The Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in May 2037.

**MINIMUM PRESENT VALUE  
SEGMENT RATES**

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a 24 month average. For plan years begin-

ning in 2008 through 2011, the applicable interest rate is the monthly spot segment rate blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for determining the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for January 2008, taking into account the January 2008 30-year Treasury rate of 4.33 stated above, are as follows:

For Plan Years Beginning in	First Segment	Second Segment	Third Segment
2008	4.34	4.67	4.81

**DRAFTING INFORMATION**

The principal author of this notice is Tony Montanaro of the Employee Plans,

Tax Exempt and Government Entities Division. Mr. Montanaro may be e-mailed at *RetirementPlanQuestions@irs.gov*.

**Table I**  
Monthly Yield Curve for January 2008

<i>Maturity</i>	<i>Yield</i>								
0.5	4.06	20.5	6.49	40.5	6.74	60.5	6.83	80.5	6.87
1.0	4.06	21.0	6.51	41.0	6.75	61.0	6.83	81.0	6.87
1.5	4.09	21.5	6.52	41.5	6.75	61.5	6.83	81.5	6.87
2.0	4.16	22.0	6.53	42.0	6.75	62.0	6.83	82.0	6.87
2.5	4.25	22.5	6.54	42.5	6.75	62.5	6.83	82.5	6.88
3.0	4.37	23.0	6.55	43.0	6.76	63.0	6.84	83.0	6.88
3.5	4.51	23.5	6.56	43.5	6.76	63.5	6.84	83.5	6.88
4.0	4.65	24.0	6.57	44.0	6.76	64.0	6.84	84.0	6.88
4.5	4.78	24.5	6.57	44.5	6.77	64.5	6.84	84.5	6.88
5.0	4.92	25.0	6.58	45.0	6.77	65.0	6.84	85.0	6.88
5.5	5.04	25.5	6.59	45.5	6.77	65.5	6.84	85.5	6.88
6.0	5.16	26.0	6.60	46.0	6.77	66.0	6.84	86.0	6.88
6.5	5.27	26.5	6.61	46.5	6.78	66.5	6.84	86.5	6.88
7.0	5.38	27.0	6.61	47.0	6.78	67.0	6.85	87.0	6.88
7.5	5.48	27.5	6.62	47.5	6.78	67.5	6.85	87.5	6.88
8.0	5.57	28.0	6.63	48.0	6.78	68.0	6.85	88.0	6.88
8.5	5.65	28.5	6.63	48.5	6.79	68.5	6.85	88.5	6.88
9.0	5.73	29.0	6.64	49.0	6.79	69.0	6.85	89.0	6.88
9.5	5.80	29.5	6.65	49.5	6.79	69.5	6.85	89.5	6.89
10.0	5.87	30.0	6.65	50.0	6.79	70.0	6.85	90.0	6.89
10.5	5.93	30.5	6.66	50.5	6.79	70.5	6.85	90.5	6.89
11.0	5.99	31.0	6.66	51.0	6.80	71.0	6.85	91.0	6.89
11.5	6.04	31.5	6.67	51.5	6.80	71.5	6.86	91.5	6.89
12.0	6.09	32.0	6.67	52.0	6.80	72.0	6.86	92.0	6.89
12.5	6.13	32.5	6.68	52.5	6.80	72.5	6.86	92.5	6.89
13.0	6.17	33.0	6.68	53.0	6.80	73.0	6.86	93.0	6.89
13.5	6.21	33.5	6.69	53.5	6.81	73.5	6.86	93.5	6.89
14.0	6.24	34.0	6.69	54.0	6.81	74.0	6.86	94.0	6.89
14.5	6.27	34.5	6.70	54.5	6.81	74.5	6.86	94.5	6.89
15.0	6.30	35.0	6.70	55.0	6.81	75.0	6.86	95.0	6.89
15.5	6.32	35.5	6.71	55.5	6.81	75.5	6.86	95.5	6.89
16.0	6.35	36.0	6.71	56.0	6.81	76.0	6.86	96.0	6.89
16.5	6.37	36.5	6.71	56.5	6.82	76.5	6.87	96.5	6.89
17.0	6.39	37.0	6.72	57.0	6.82	77.0	6.87	97.0	6.89
17.5	6.41	37.5	6.72	57.5	6.82	77.5	6.87	97.5	6.90
18.0	6.42	38.0	6.73	58.0	6.82	78.0	6.87	98.0	6.90
18.5	6.44	38.5	6.73	58.5	6.82	78.5	6.87	98.5	6.90
19.0	6.45	39.0	6.73	59.0	6.82	79.0	6.87	99.0	6.90
19.5	6.47	39.5	6.74	59.5	6.83	79.5	6.87	99.5	6.90
20.0	6.48	40.0	6.74	60.0	6.83	80.0	6.87	100.0	6.90

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

### Treatment of Overall Foreign and Domestic Losses

#### REG-141399-07

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations that provide guidance relating to the recapture of overall foreign and domestic losses. Changes to the applicable law were made by the American Jobs Creation Act of 2004, as corrected by the Gulf Opportunity Zone Act of 2005. The temporary regulations provide guidance needed to comply with these changes, as well as updated guidance with respect to overall foreign losses and separate limitation losses, and affect individuals and corporations claiming foreign tax credits. The text of those temporary regulations (T.D. 9371) published in this issue of the Bulletin also serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by March 20, 2008. Outlines of topics to be discussed at the public hearing scheduled for April 10, 2008, at 10 a.m. must be received by March 20, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-141399-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-141399-07), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW,

Washington, DC 20044, or sent electronically, via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS REG-141399-07). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jeffrey L. Parry, (202) 622-3850 (not a toll-free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst, [Richard.A.Hurst@irsounsel.treas.gov](mailto:Richard.A.Hurst@irsounsel.treas.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the Income Tax Regulations (26 CFR Part 1) providing rules relating to the recapture of overall domestic losses under section 904(g) as well as the recapture of overall foreign losses and separate limitation losses under section 904(f). The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations. The regulations affect individuals and corporations claiming foreign tax credits.

#### 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 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), these regulations have been 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 electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. Moreover, the Treasury Department and the IRS are considering providing additional guidance on overall domestic losses and separate limitation losses, as well as further revisions to the overall foreign loss provisions of the 1987 regulations. Comments are welcome on this ongoing project, particularly with regard to the need to provide for guidance on the application of the overall domestic loss provisions to income earned through foreign or domestic trusts, as well as guidance regarding the recapture of overall foreign losses and separate limitation losses on the disposition of property under section 904(f)(3) and (f)(5)(F). In addition, the Treasury Department and the IRS are continuing to study whether additional rules to better coordinate the overall foreign loss and overall domestic loss regimes would be appropriate, including whether a netting rule should apply to offsetting overall foreign loss accounts and overall domestic loss accounts. The Treasury Department and the IRS welcome additional comments in this regard. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 10, 2008, in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance 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** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by March 20, 2008, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 20, 2008. 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 outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

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

\* \* \* \* \*

### Proposed Amendments to the Regulations

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

#### PART 1—INCOME TAXES

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

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

Section 1.904(g)-3 also issued under 26 U.S.C. 904(g)(4) \* \* \*

Par. 2. Section 1.904-0 is amended by revising the entries for §1.904(f)-1(a), (d)(2), (d)(3), and (d)(4), and for §1.904(f)-2(c) and (c)(1), and adding entries for §§1.904(f)-7 and 1.904(f)-8 to read as follows:

*§1.904-0 Outline of regulation provisions for section 904.*

\* \* \* \* \*

*§1.904(f)-1 Overall foreign loss and the overall foreign loss account.*

\* \* \* \* \*

(a)(1) and (a)(2) [The text of these entries is the same as the text of the entries for §1.904(f)-1T(a)(1) and (a)(2) in

§1.904(f)-0T published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

(d)(2), (d)(3), and (d)(4) [The text of these entries is the same as the text of the entries for §1.904(f)-1T(d)(2), (d)(3), and (d)(4) in §1.904(f)-0T published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

*§1.904(f)-2 Recapture of overall foreign losses.*

\* \* \* \* \*

(c) and (c)(1) [The text of these entries is the same as the text of the entries for §1.904(f)-2T(c) and (c)(1) in §1.904(f)-0T published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

*§1.904(f)-7 Separate limitation loss and the separate limitation loss account.*

[The text of the entries for this section is the same as the text of the entries for §1.904(f)-7T(a) through (f) in §1.904(f)-0T published elsewhere in this issue of the Bulletin.]

*§1.904(f)-8 Recapture of separate limitation loss accounts.*

[The text of the entries for this section is the same as the text of the entries for §1.904(f)-8T(a) through (c) in §1.904(f)-0T published elsewhere in this issue of the Bulletin.]

Par. 3. In §1.904(f)-1, paragraph (a)(2) is added, and paragraph (d)(4) is revised, to read as follows:

*§1.904(f)-1 Overall foreign loss and the overall foreign loss account.*

(a)(1) \* \* \*

(2) [The text of the proposed amendments to §1.904(f)-1(a)(2) is the same as the text of §1.904(f)-1T(a)(2) published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

(d) \* \* \*

(4) [The text of the proposed amendments to §1.904(f)-1(d)(4) is the same as the text of §1.904(f)-1T(d)(4) published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

Par. 4. Section 1.904(f)-2(c)(1) and (c)(5) *Example 4.* are revised to read as follows:

*§1.904(f)-2 Recapture of overall foreign losses.*

\* \* \* \* \*

(c) \* \* \* (1) [The text of the proposed amendments to §1.904(f)-2(c)(1) is the same as the text of §1.904(f)-2T(c)(1) published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

(5) \* \* \*

*Example 4.* [The text of the proposed amendments to §1.904(f)-2(c)(5) *Example 4.* is the same as the text of §1.904(f)-2T(c)(5) *Example 4.* published elsewhere in this issue of the Bulletin.]

\* \* \* \* \*

Par. 5. Sections 1.904(f)-7 and 1.904(f)-8 are added to read as follows:

*§1.904(f)-7 Separate limitation loss and the separate limitation loss account.*

[The text of proposed §1.904(f)-7 is the same as the text of §1.904(f)-7T(a) through (f) published elsewhere in this issue of the Bulletin.]

*§1.904(f)-8 Recapture of separate limitation loss accounts.*

[The text of proposed §1.904(f)-8 is the same as the text of §1.904(f)-8T(a) through (c) published elsewhere in this issue of the Bulletin.]

Par. 6. Section 1.904(g)-0 is added to read as follows:

*§1.904(g)-0 Outline of regulation provisions.*

\* \* \* \* \*

*§1.904(g)-1 Overall domestic loss and the overall domestic loss account.*

[The text of the entries for this section is the same as the text for §1.904(g)-1T(a) through (f) in §1.904(g)-0T published elsewhere in this issue of the Bulletin.]

*§1.904(g)-2 Recapture of overall domestic losses.*

[The text of the entries for this section is the same as the text for §1.904(g)-2T(a)

through (d) in §1.904(g)-0T published elsewhere in this issue of the Bulletin.]

*§1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses.*

[The text of the entries for this section is the same as the text for §1.904(g)-3T(a) through (i) in §1.904(g)-0T published elsewhere in this issue of the Bulletin.]

Par. 7. Sections 1.904(g)-1, 1.904(g)-2, and 1.904(g)-3 are added to read as follows:

*§1.904(g)-1 Overall domestic loss and the overall domestic loss account.*

[The text of proposed §1.904(g)-1 is the same as the text of §1.904(g)-1T(a) through (f) published elsewhere in this issue of the Bulletin.]

*§1.904(g)-2 Recapture of overall domestic losses.*

[The text of proposed §1.904(g)-2 is the same as the text of §1.904(g)-2T(a) through (d) published elsewhere in this issue of the Bulletin.]

*§1.904(g)-3 Ordering rules for the allocation of net operating losses, net capital losses, U.S. source losses, and separate limitation losses, and for recapture of separate limitation losses, overall foreign losses, and overall domestic losses.*

[The text of proposed §1.904(g)-3 is the same as the text of §1.904(g)-3T(a) through (i) published elsewhere in this issue of the Bulletin.]

Par. 8. Section 1.1502-9 is revised to read as follows:

*§1.1502-9 Consolidated overall foreign losses and separate limitation losses.*

[The text of proposed §1.1502-9 is the same as the text of §1.1502-9T(a) through (e) published elsewhere in this issue of the Bulletin.]

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

(Filed by the Office of the Federal Register on December 20, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 21, 2007, 72 F.R. 72646)

## **Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations**

### **Disclosure of Return Information to the Bureau of the Census**

#### **REG-147832-07**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: In this issue of the Bulletin, the IRS is issuing a regulation (T.D. 9373) that would add an additional item of return information that may be disclosed to the Bureau of the Census (Bureau) for use in the Bureau's annual Survey of Industrial Research and Development. This proposed regulation provides guidance to IRS personnel responsible for disclosing the information. This regulation facilitates the assistance of the IRS to the Bureau in its statistics programs and requires no action by taxpayers and has no effect on their tax liabilities.

DATES: Written and electronic comments and requests for a public hearing must be received by March 31, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-147832-07), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-147832-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW,

Washington, DC, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS and REG-147832-07).

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, Richard Hurst, (202) 622-7180 (not a toll-free number); concerning the notice of proposed rulemaking, Glenn Melcher, (202) 622-4570 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### **Background**

Under section 6103(j)(1)(A), upon written request from the Secretary of Commerce, the Treasury Secretary is to furnish to the Bureau of the Census (Bureau) return information as may be prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and conducting related statistical activities authorized by law. Section 301.6103(j)(1)-1 of the regulation provides an itemized description of the items of return information authorized to be disclosed for this purpose. Periodically, the disclosure regulation is amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document contains a proposed regulation authorizing IRS personnel to disclose an additional item of return information that has been requested by the Secretary of Commerce.

A temporary regulation in this issue of the Bulletin amends the Procedure and Administration Regulations (26 CFR Part 301) relating to Internal Revenue Code (Code) section 6103(j). The amendments to the regulation contain rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and conducting related statistical activities authorized by law. Specifically, the amendment to the regulation authorizes the IRS to disclose an additional item of return information that has been requested by the Secretary of Commerce that is necessary for the Bureau's annual Survey of Industrial Research and Development.

The text of the temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation explains the proposed regulation.

### 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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this proposed regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Requests for a Public Hearing

Before the proposed regulation is adopted as a final regulation, consideration will be given to any electronic and written comments (a signed original and

eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulation and how it can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### Drafting Information

The principal author of this proposed regulation is Glenn Melcher, Office of the Associate Chief Counsel (Procedure & Administration).

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 2. Section §301.6103(j)(1)–1 is amended by revising paragraphs (b)(3)(xxv) and (e) to read as follows:

*§301.6103(j)(1)–1 Disclosure of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.*

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(xxv) [The text of proposed amended paragraph (b)(3)(xxv) is the same as the text of §301.6103(j)(1)–1T(b)(3)(xxv) published elsewhere in this issue of the Bulletin].

\* \* \* \* \*

(e) [The text of proposed amended paragraph (e) is the same as the text of §301.6103(j)(1)–1T(e) published elsewhere in this issue of the Bulletin].

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

(Filed by the Office of the Federal Register on December 28, 2007, 8:45 a.m., and published in the issue of the Federal Register for December 31, 2007, 72 F.R. 74246)

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

## Announcement 2008-5

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.

# Reinstatement To Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, The Director, Office of Professional Responsibility, may entertain a petition for reinstatement for any attorney, certified public accountant, enrolled

agent, or enrolled actuary censured, suspended, or disbarred, from practice before the Internal Revenue Service.

The following individuals' eligibility to practice before the Internal Revenue Service has been restored:

Name	Address	Designation	Date of Reinstatement
Cohen, Peter	Edison, NJ	CPA	June 01, 2004
Brunelle, Roswell J.	Queensbury, NY	CPA	June 10, 2004
Cohick, Jeffrey S.	Newville, PA	Enrolled Agent	October 30, 2004
Cotroneo, Nicholas	McLean, VA	CPA	February 28, 2007
Layson, David A.	Corydon, IN	Attorney	October 06, 2007
Tomasulo, Maria V.	Wantagh, NY	CPA	October 16, 2007
Emeziem, Kelechi C.	Antioch, CA	Attorney	October 17, 2007
Johnston, Gregory A.	Muscatine, IA	Attorney	October 17, 2007
Shapiro, Sidney C.	West Palm Beach, FL	CPA	October 29, 2007
Hubbard, Cynthia A.	Geneva, IL	Attorney	October 31, 2007
Moss, Steve E.	Henderson, NC	CPA	November 29, 2007
Schaffer, Robert J.	Baiting Hollow, NY	CPA	December 04, 2007
Woods, Dalton C.	Carrollton, TX	Enrolled Agent	December 04, 2007
Brown, Arthur I.	Miami, FL	CPA	December 14, 2007

# 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 the 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
Bauman, John J.	Battle Creek, MI	CPA	Indefinite from October 1, 2007
Montgomery, Dwight M.	Redlands, CA	Attorney	Indefinite from October 1, 2007

Name	Address	Designation	Date of Suspension
Deku, John V.	Toledo, OH	Attorney	Indefinite from October 8, 2007
Ying, William F.	Beverly Hills, CA	CPA	Indefinite from October 9, 2007
Brill, Ann M.	Sheboygan, WI	CPA	Indefinite from October 10, 2007
Benvin, Anne C.	Phoenix, AZ	Enrolled Agent	Indefinite from October 22, 2007
Kingman, William B.	San Antonio, TX	Attorney	Indefinite from October 22, 2007
Nurney, J. Christopher	Hatboro, PA	CPA	Indefinite from October 22, 2007
Wren, Gary M.	Redding, CA	Enrolled Agent	Indefinite from October 29, 2007
Beck, Brian S.	Boston, MA	CPA	Indefinite from November 1, 2007
Draper, Jeffrey L.	Olathe, KS	CPA	Indefinite from November 1, 2007
Ehrlich, Gary P.	Chevy Chase, MD	CPA	Indefinite from November 1, 2007
Garrison, John C.	Prairie Village, KS	CPA	Indefinite from November 1, 2007
Greenslit, Wayne	Keene, NH	CPA	Indefinite from November 1, 2007
Moran, Philip D.	Salem, MA	Attorney	Indefinite from November 1, 2007
Wright, Cory	Reno, NV	CPA	Indefinite from November 1, 2007
Turbeville, Mary A.	Geyserville, CA	Enrolled Agent	Indefinite from November 16, 2007

Name	Address	Designation	Date of Suspension
Saffold, Rodger P.	Cleveland, OH	CPA	Indefinite from December 1, 2007
Voss, Patrick W.	Metairie, LA	CPA	Indefinite from December 1, 2007
Rosner, Ronald I.	Manahawkin, NJ	CPA	Indefinite from December 13, 2007
Johnson, Jr., Stanley	Miami, FL	Attorney	Indefinite from December 14, 2007

## 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 before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Crotts, William P.	Phoenix, AZ	Attorney	Indefinite from October 16, 2007
Daugherty, Troy L.	Olathe, KS	Attorney	Indefinite from October 16, 2007
Driscoll, Jr., Wilfred C.	Somerset, MA	Attorney	Indefinite from October 16, 2007
Shah, Ashok S.	Manalapan, NJ	CPA	Indefinite from October 16, 2007
Sheline, Calvin L.	Camp Verde, AZ	CPA	Indefinite from October 16, 2007
Bosse, Leigh D.	Hillsborough, NH	Attorney	Indefinite from October 24, 2007
Webb, James E.	Nashville, TN	CPA	Indefinite from October 25, 2007

Name	Address	Designation	Date of Suspension
Gottschalk, Don E.	Cedar Falls, IA	Attorney	Indefinite from October 31, 2007
Joy, Steven B.	Paton, IA	Attorney	Indefinite from October 31, 2007
Smallwood, Teresa L.	Durham, NC	Attorney	Indefinite from November 2, 2007
Donaldson, James F.	Denver, CO	Attorney	Indefinite from November 15, 2007
Roux, Johnathan M.	Fair Oaks, CA	CPA	Indefinite from November 20, 2007
Linville, Wiley T.	Denver, CO	Attorney	Indefinite from December 4, 2007
Andrade, Sergio R.	Inver Grove Hghts, MN	Attorney	Indefinite from December 13, 2007
Arzani, Mitzi H.	Charlotte, NC	CPA	Indefinite from December 13, 2007
Catron, Stephen B.	Knoxville, TN	Attorney	Indefinite from December 13, 2007
Coulagouri, Louis A.	Moorestown, NJ	Attorney	Indefinite from December 13, 2007
Crown, Charles K.	Blakeslee, PA	CPA	Indefinite from December 13, 2007
George, Philip J.	Great Falls, VA	Attorney	Indefinite from December 13, 2007
Heitz, John P.	Oneill, NE	Attorney	Indefinite from December 13, 2007
Jones, William F.	Park Rapids, MN	Attorney	Indefinite from December 13, 2007
Khoury, Arthur M.	Lawrence, MA	Attorney	Indefinite from December 13, 2007

Name	Address	Designation	Date of Suspension
McGree, Charles A.	Fort Payne, AL	Attorney	Indefinite from December 13, 2007
Nason, George H.	Franklin, TN	Attorney	Indefinite from December 13, 2007
Owen, Thomas A.	Arlington, TX	Attorney	Indefinite from December 13, 2007
Ozulumba, Michael	Boston, MA	Attorney	Indefinite from December 13, 2007
Phillips, Mark A.	Elm Grove, WI	Attorney	Indefinite from December 13, 2007
Simpson, Joseph H.	Amite, LA	Attorney	Indefinite from December 13, 2007
Sipes, Laura A.	St. Charles, MO	Attorney	Indefinite from December 13, 2007
Sullivan, Joseph O.	Warwick, NY	Attorney	Indefinite from December 13, 2007
Szegda, Michael A.	Old Tappan, NJ	Attorney	Indefinite from December 13, 2007
Misch, Paul M.	Akron, OH	Attorney	Indefinite from December 17, 2007
Brenner, Allen L.	Long Beach, NY	Attorney	Indefinite from December 20, 2007
Cook, Rirchard B.	Cockeysville, MD	Attorney	Indefinite from December 20, 2007
Shang, Wade V.	S. San Francisco, CA	CPA	Indefinite from December 20, 2007

# Suspensions From Practice Before the Internal Revenue Service After Appeal

Under Title 31, Code of Federal Regulations, Part 10, after a decision is issued by an Administrative Law Judge, either

party may appeal to the Secretary of the Treasury. The following individuals have been placed under suspension from prac-

tice before the Internal Revenue Service **AFTER** an appeal:

Name	Address	Designation	Effective Date
Andrews, Ted E.	Avon, IN	CPA	Indefinite from October 19, 2007

# Disbarments 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 oppor-

tunity for a proceeding before an administrative law judge, the following individu-

als have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Ruocchio, Raymond	Havertown, PA	CPA	April 30, 2007
Roseman, Eric W.	Scottsdale, AZ	CPA	August 20, 2007
Solomon, Stanley	Brooklyn, NY	CPA	September 04, 2007
Marks, Robert	Medfield, MA	Attorney	October 15, 2007

# 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
Villarreal, Ricardo	Houston, TX	EA	September 24, 2007
Meisgeier, Deborah K.	Richmond, TX	EA	October 16, 2007
O'Brien, Colleen D.	Winter Park, FL	CPA	October 24, 2007
Staver, Peter J.	Southgate, MI	Attorney	November 06, 2007
Weiss, Ira	Pittsburgh, PA	Attorney	November 29, 2007
Orr, William S.	Kerrville, TX	CPA	December 04, 2007

Name	Address	Designation	Date of Censure
Whitsitt, Richard	Panama City, FL	CPA	December 04, 2007
<b>Foundations Status of Certain Organizations</b>	Creative Technology Enrichment Center, Inc., Hamlet, NC		Light the Way Home, Inc., Houston, TX
<b>Announcement 2008-13</b>	Crosbys NPO, Lynnwood, WA		Main Street Crossing, Tomball, TX
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 <i>not</i> indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.	Cultural Education Program, Inc., Waterville, ME		Making Waves, Nashville, TN
<i>Former Public Charities.</i> 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:	Delaware Self Help Corporation, Newark, DE		Massachusetts Institute for Justice, Inc., Newburyport, MA
4 God Only, Forth Worth, TX	Diabetes Research Education and Support Group, Fort Smith, AR		Mid-South Youth Center, Carbondale, IL
Adaptive Solutions Technologies, Inc., Port Allen, LA	Dolo Siakor Memorial Basketball & Soccer Association, Inc., Parkville, MD		Millenium Estate Living, Missouri City, TX
AESOP, Inc., Cedar Hill, TX	Dorcus Foundation, Orlando, FL		Monadnock Children's Relief Foundation, Jaffrey, NH
All About Alzheimers, Inc., Rochester Hills, MI	Dr. Harb S. & Santosh K. Hayre Foundation, Houston, TX		Moore Faith Center, Houston, MS
American Eye Disease Association, Brooklyn, NY	Family Patterns, Inc., Moreland, GA		Nu, Inc., New Orleans, LA
Arden Health Resource Service, Springdale, AR	First Stop Community Development Corporation, Washington, DC		Nuevas Faces of Hope, Inc., Paradise Valley, AZ
Arizona Center for Public Policy, Scottsdale, AZ	Friends of the Poor, Inc., Stuart, FL		Ocotillo Village Housing Corporation, Benson, AZ
Baal Perazim Ministries, Inc., Brentwood, NY	Friends of Tagalog on Site, Inc., Long Beach, NJ		Open Ears Music Collaboration, Inc., New York, NY
Barton Springs Heritage Association, Inc., Austin, TX	Georgia Cardiac and Vascular Research, Inc., Gainesville, GA		Pass It Along, Inc., Oklahoma City, OK
Bolivian Conservation Fund, Chestertown, MD	Gregorys Journey, Williamsport, PA		Peoples Court of Final Appeal, Inc., Chicago, IL
Capital City Recovery, Dacula, GA	Healing Hearts Foundation, Inc., Miami Lakes, FL		Plymouth Area Chamber of Commerce Foundation, Inc., Plymouth, MA
Care Outreach Ministries, Inc., Carmel, IN	Heaven on Earth Foundation, Alvarado, TX		Positive Motivational Institute, Inglewood, CA
Challenged Drop-In Center, Inc., Van Wert, OH	Heritage Affordable Housing, Seattle, WA		Prison Reform, Inc., Chicago, IL
Cherubim, Tujunga, CA	Houston Carnival Arts Committee, Houston, TX		Project SOS, Las Vegas, NV
Community Care Foundation, Inc., Mission Hills, CA	Independent Constructs Counseling Center of St. Louis, Inc., St. Louis, MO		Psychsource, Inc., Roswell, GA
	Jacksonville Scottish Rite Association, Inc., Jacksonville, FL		Real Enterprises of Washington, Glenoma, WA
	Jenkins Youth Foundation, Moreno Valley, CA		Richard Wells Walker Scholarship Foundation, Inc., Oriental, NC
	Jerusalem Store House, Wylie, TX		Rohnert Park Boards and Blades Corporation, Rohnert Park, CA
	Jesus and Me Youth Outreach Ministries, Gastonia, NC		Seventh Woman Foundation, Inc., Silver Springs, MD
	Jomada Ministry Foundation, Inc., Tinian, MP		Shiloh Resource Community and Development Center, Baltimore, MD
	Junior Volleyball, Inc., Fort Morgan, CO		SMAJ Homebound Hair Care Services, Inc., Gretna, LA
	Kids Nutrition Program, Inc., Lula, GA		Society of Support Foundation, Canyon Country, CA
	Kidshealth 2020, Inc., Cleveland, OH		Sonrise-First Love Second Chance International, Tomball, TX
	Kitsap Dental Mission Support Organization, Silverdale, WA		Southern California Lions-Quest Support Foundation, Fullerton, CA
	Kittredge Club, Inc., New York, NY		Stilwell Housing Assistance Corporation, Muskogee, OK
	Kiwanis Club of Mill Hall Pennsylvania Foundation, Mill Hall, PA		Support & Training for Adoptive & Foster Families, Jackson, MI
	KKIS Keep Kids in School, Inc., Sugar Land, TX		Susan Shadeko-Oshinuga Foundation, Carson, CA
	Kwon Foundation, Glendale, CA		
	Latria, Inc., Indianapolis, IN		

Texas Civil War Museum, Inc.,  
 White Settlement, TX  
 Texas Springs Alliance, Austin, TX  
 Trinity's Foundation for Children With  
 Special Needs, Inc., Washington, DC  
 Tru Life Community Resource Center,  
 Inc., Tarpon Springs, FL  
 Trust for Philadelphia Treasures,  
 Philadelphia, PA  
 Turn Off the TV, Inc., Athens, GA  
 Union for the Conservation of Raptors,  
 Hancock, ME  
 United Human Rights Congress,  
 Los Angeles, CA  
 Uprise, Inc., Detroit, MI  
 Urban Conservation League,  
 San Diego, CA  
 Verle and Eleanor Hammond Foundation,  
 Ashburn, VA  
 Visual Voices, Inc., Pittsburgh, PA  
 Westerville South High School PTO,  
 Westerville, OH  
 Wiredmd, Inc., New Haven, CT  
 World of Endangered Species,  
 Placerville, CA  
 XCEL Development, Spartanburg, SC

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.

---

## **Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code**

### **Announcement 2008-14**

The Internal Revenue Service has revoked its determination that the organi-

zations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on February 25, 2008, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Judah Youth Ministries  
 Red Bank, NJ  
 Little League Baseball  
 West Warwick, RI  
 Youth Sports Systems, Inc.  
 Albuquerque, NM  
 Miss Crestline Scholarship Pageant  
 Committee  
 Crestline, OH  
 Millcreek Development Corp.  
 Philadelphia, PA

Jeff & Ann Mowrey Charitable Supporting  
 Organization  
 Columbia, MD  
 Pacoima Athletic Club  
 Arleta, CA  
 Families on The Move  
 New Brunswick, NJ  
 Credit Foundation of America  
 Irvine, CA  
 Family Pride, Inc.  
 Cataula, GA  
 Bear Soldier Industries  
 Bismarck, ND  
 Equal Opportunity Housing DBA Home  
 Star Magic  
 Denver, CO  
 One Particular Harbour Foundation  
 Wyoming, MI  
 Soulfire Films  
 Brooklyn, NY  
 Gottlieb Family Foundation  
 Lawrence, NY  
 Coltrin Family Foundation  
 Sandy, UT  
 Crock 39 Foundation  
 Irving, TX  
 Community Outreach Development  
 Foundation  
 Gulfport, MS  
 Lakhdar Barouche Foundation, Inc.  
 New York, NY  
 Don Luscombe Aviation History  
 Foundation  
 Phoenix, AZ  
 Americas Youth Apprenticeship  
 Enterprises, Inc.  
 Oklahoma City, OK  
 The Educational Charitable Supporting  
 Organization  
 Millersville, MD  
 Family to Family Americans for Prostate  
 Cancer Awareness and Support  
 Carson City, NV  
 The Douglas and Valerie Wood Charitable  
 Supporting Organization  
 Latrobe, PA

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

## Abbreviations

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

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

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

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

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

Bulletins 2008–1 through 2008–8

### Announcements:

2008-1, 2008-1 I.R.B. 246  
2008-2, 2008-3 I.R.B. 307  
2008-3, 2008-2 I.R.B. 269  
2008-4, 2008-2 I.R.B. 269  
2008-5, 2008-4 I.R.B. 333  
2008-6, 2008-5 I.R.B. 378  
2008-7, 2008-5 I.R.B. 379  
2008-8, 2008-6 I.R.B. 403  
2008-9, 2008-7 I.R.B. 444  
2008-10, 2008-7 I.R.B. 445  
2008-11, 2008-7 I.R.B. 445  
2008-12, 2008-7 I.R.B. 446  
2008-13, 2008-8 I.R.B. 480  
2008-14, 2008-8 I.R.B. 481

### Notices:

2008-1, 2008-2 I.R.B. 251  
2008-2, 2008-2 I.R.B. 252  
2008-3, 2008-2 I.R.B. 253  
2008-4, 2008-2 I.R.B. 253  
2008-5, 2008-2 I.R.B. 256  
2008-6, 2008-3 I.R.B. 275  
2008-7, 2008-3 I.R.B. 276  
2008-8, 2008-3 I.R.B. 276  
2008-9, 2008-3 I.R.B. 277  
2008-10, 2008-3 I.R.B. 277  
2008-11, 2008-3 I.R.B. 279  
2008-12, 2008-3 I.R.B. 280  
2008-13, 2008-3 I.R.B. 282  
2008-14, 2008-4 I.R.B. 310  
2008-15, 2008-4 I.R.B. 313  
2008-16, 2008-4 I.R.B. 315  
2008-17, 2008-4 I.R.B. 316  
2008-18, 2008-5 I.R.B. 363  
2008-19, 2008-5 I.R.B. 366  
2008-20, 2008-6 I.R.B. 406  
2008-21, 2008-7 I.R.B. 431  
2008-22, 2008-8 I.R.B. 465  
2008-23, 2008-7 I.R.B. 433  
2008-24, 2008-8 I.R.B. 466

### Proposed Regulations:

REG-104713-07, 2008-6 I.R.B. 409  
REG-111583-07, 2008-4 I.R.B. 319  
REG-114126-07, 2008-6 I.R.B. 410  
REG-141399-07, 2008-8 I.R.B. 470  
REG-147832-07, 2008-8 I.R.B. 472

### Revenue Procedures:

2008-1, 2008-1 I.R.B. 1  
2008-2, 2008-1 I.R.B. 90

### Revenue Procedures— Continued:

2008-3, 2008-1 I.R.B. 110  
2008-4, 2008-1 I.R.B. 121  
2008-5, 2008-1 I.R.B. 164  
2008-6, 2008-1 I.R.B. 192  
2008-7, 2008-1 I.R.B. 229  
2008-8, 2008-1 I.R.B. 233  
2008-9, 2008-2 I.R.B. 258  
2008-10, 2008-3 I.R.B. 290  
2008-11, 2008-3 I.R.B. 301  
2008-12, 2008-5 I.R.B. 368  
2008-13, 2008-6 I.R.B. 407  
2008-14, 2008-7 I.R.B. 435

### Revenue Rulings:

2008-1, 2008-2 I.R.B. 248  
2008-2, 2008-2 I.R.B. 247  
2008-3, 2008-2 I.R.B. 249  
2008-4, 2008-3 I.R.B. 272  
2008-5, 2008-3 I.R.B. 271  
2008-6, 2008-3 I.R.B. 271  
2008-7, 2008-7 I.R.B. 419  
2008-8, 2008-5 I.R.B. 340  
2008-9, 2008-5 I.R.B. 342

### Tax Conventions:

2008-8, 2008-6 I.R.B. 403

### Treasury Decisions:

9368, 2008-6 I.R.B. 382  
9369, 2008-6 I.R.B. 394  
9370, 2008-7 I.R.B. 428  
9371, 2008-8 I.R.B. 447  
9372, 2008-8 I.R.B. 462  
9373, 2008-8 I.R.B. 463  
9375, 2008-5 I.R.B. 344

<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2007–27 through 2007–52 is in Internal Revenue Bulletin 2007–52, dated December 26, 2007.

## **Finding List of Current Actions on Previously Published Items<sup>1</sup>**

Bulletins 2008–1 through 2008–8

### **Notices:**

#### **2001-16**

Modified by

Notice 2008-20, 2008-6 I.R.B. 406

#### **2006-107**

Modified by

Notice 2008-7, 2008-3 I.R.B. 276

#### **2007-30**

Modified and superseded by

Notice 2008-14, 2008-4 I.R.B. 310

#### **2007-54**

Clarified by

Notice 2008-11, 2008-3 I.R.B. 279

### **Proposed Regulations:**

#### **REG-209020-86**

Corrected by

Ann. 2008-11, 2008-7 I.R.B. 445

#### **REG-113891-07**

Hearing scheduled by

Ann. 2008-4, 2008-2 I.R.B. 269

### **Revenue Procedures:**

#### **2007-1**

Superseded by

Rev. Proc. 2008-1, 2008-1 I.R.B. 1

#### **2007-2**

Superseded by

Rev. Proc. 2008-2, 2008-1 I.R.B. 90

#### **2007-3**

Superseded by

Rev. Proc. 2008-3, 2008-1 I.R.B. 110

#### **2007-4**

Superseded by

Rev. Proc. 2008-4, 2008-1 I.R.B. 121

#### **2007-5**

Superseded by

Rev. Proc. 2008-5, 2008-1 I.R.B. 164

#### **2007-6**

Superseded by

Rev. Proc. 2008-6, 2008-1 I.R.B. 192

#### **2007-7**

Superseded by

Rev. Proc. 2008-7, 2008-1 I.R.B. 229

#### **2007-8**

Superseded by

Rev. Proc. 2008-8, 2008-1 I.R.B. 233

### **Revenue Procedures— Continued:**

#### **2007-39**

Superseded by

Rev. Proc. 2008-3, 2008-1 I.R.B. 110

#### **2007-52**

Superseded by

Rev. Proc. 2008-9, 2008-2 I.R.B. 258

### **Revenue Rulings:**

#### **2007-4**

Supplemented and superseded by

Rev. Rul. 2008-3, 2008-2 I.R.B. 249

### **Treasury Decisions:**

#### **9362**

Corrected by

Ann. 2008-9, 2008-7 I.R.B. 444

Ann. 2008-12, 2008-7 I.R.B. 446

#### **9363**

Corrected by

Ann. 2008-10, 2008-7 I.R.B. 445

<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2007–27 through 2007–52 is in Internal Revenue Bulletin 2007–52, dated December 26, 2007.

# INDEX

## Internal Revenue Bulletins 2008–1 through 2008–8

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parenthesis refers to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

### Key to Abbreviations:

Ann	Announcement
CD	Court Decision
DO	Delegation Order
EO	Executive Order
PL	Public Law
PTE	Prohibited Transaction Exemption
RP	Revenue Procedure
RR	Revenue Ruling
SPR	Statement of Procedural Rules
TC	Tax Convention
TD	Treasury Decision
TDO	Treasury Department Order

## EMPLOYEE PLANS

- Alternative funding schedule, amortization (Ann 2) 3, 307
- Benefit restrictions for underfunded pension plans, hearing for REG–113891–07 (Ann 4) 2, 269
- Claims submitted to IRS Whistleblower Office under section 7623 (Notice 4) 2, 253
- Defined benefit plan, accrued benefits (RR 7) 7, 419
- Defined contribution plans, diversification of employer securities, extension of certain transitional rules (Notice 7) 3, 276
- Determination letters, issuing procedures (RP 6) 1, 192
- Full funding limitations, weighted average interest rates, segment rates for:
  - January 2008 (Notice 17) 4, 316
  - February 2008 (Notice 24) 8, 466
- Letter rulings:
  - And determination letters, areas which will not be issued from:
    - Associates Chief Counsel and Division Counsel (TE/GE) (RP 3) 1, 110
    - Associate Chief Counsel (International) (RP 7) 1, 229
  - And general information letters, procedures (RP 4) 1, 121
  - User fees, request for letter rulings (RP 8) 1, 233
- Proposed Regulations:
  - 26 CFR 1.430; 1.436; benefit restrictions for underfunded pension plans, hearing for REG–113891–07 (Ann 4) 2, 269
- Stocks, statutory stock options, information reporting requirements (Notice 8) 3, 276
- Supplemental health insurance, HIPAA (Notice 23) 7, 433
- Technical advice to IRS employees (RP 5) 1, 164
- Transitional guidance for new funding rules and funding-related benefits limitations under PPA '06, uniform effective date (Notice 21) 7, 431

## EMPLOYMENT TAX

- Claims submitted to IRS Whistleblower Office under section 7623 (Notice 4) 2, 253
- Frivolous tax return positions (Notice 14) 4, 310
- Interest-free adjustments and claims for refund of employment taxes (REG–111583–07) 4, 319
- Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
- Proposed Regulations:
  - 26 CFR 31.6011(a)–1, –4, –5, amended; 31.6205–1, amended; 31.6302–0, –1, amended; 31.6402(a)–1, –2, amended; 31.6413(a)–2, amended; 31.6414–1, amended; interest-free adjustments and claims for refund of employment taxes (REG–111583–07) 4, 319
- Technical Advice Memoranda (TAMs) (RP 2) 1, 90

## ESTATE TAX

- Claims submitted to IRS Whistleblower Office under section 7623 (Notice 4) 2, 253
- Frivolous tax return positions (Notice 14) 4, 310
- Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
- Technical Advice Memoranda (TAMs) (RP 2) 1, 90

## EXCISE TAX

- Claims submitted to IRS Whistleblower Office under section 7623 (Notice 4) 2, 253
- Frivolous tax return positions (Notice 14) 4, 310
- Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
- Supplemental health insurance, HIPAA (Notice 23) 7, 433
- Technical Advice Memoranda (TAMs) (RP 2) 1, 90

## EXEMPT ORGANIZATIONS

- Annual notice to donors regarding pending and settled declaratory judgment suits (Ann 1) 1, 246
- Claims submitted to IRS Whistleblower Office under section 7623 (Notice 4) 2, 253
- Frivolous tax return positions (Notice 14) 4, 310
- Letter rulings:
  - And determination letters:
    - Areas which will not be issued from Associates Chief Counsel and Division Counsel (TE/GE) (RP 3) 1, 110
    - Exemption application determination letter rulings under sections 501 and 521 (RP 9) 2, 258
    - And general information letters, procedures (RP 4) 1, 121
    - User fees, request for letter rulings (RP 8) 1, 233
  - List of organizations classified as private foundations (Ann 13) 8, 480

## EXEMPT ORGANIZATIONS—Cont.

Revocations (Ann 3) 2, 269; (Ann 14) 8, 481  
Technical advice to IRS employees (RP 5) 1, 164  
Transitional relief and filing procedures, charitable trust (Notice 6) 3, 275

## GIFT TAX

Claims submitted to IRS Whistleblower Office under section 7623 (Notice 4) 2, 253  
Frivolous tax return positions (Notice 14) 4, 310  
Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1  
Technical Advice Memoranda (TAMs) (RP 2) 1, 90

## INCOME TAX

Annual notice to donors regarding pending and settled declaratory judgment suits (Ann 1) 1, 246  
Calculating and apportioning the section 11(b)(1) additional tax under section 1561 for controlled groups (TD 9369) 6, 394; (REG-104713-07) 6, 409  
Cell captive guidance:  
Insurance, protected cell company (Notice 19) 5, 366  
Insurance, risk shifting and risk distribution (RR 8) 5, 340  
Certain outbound reorganizations and section 351 exchanges (Notice 10) 3, 277  
Charitable contributions, recordkeeping requirements (Notice 16) 4, 315  
Claims submitted to IRS Whistleblower Office under section 7623 (Notice 4) 2, 253  
Clarification of transitional relief under Notice 2007-54 (Notice 11) 3, 279  
Consolidated returns, loss disallowance (Notice 9) 3, 277  
Consumer Price Index (CPI) adjustments, certain loans under section 1274A for 2008 (RR 3) 2, 249  
Corporations, health insurance costs of 2-percent shareholder-employees, S corporation (Notice 1) 2, 251  
Credits:  
Foreign tax credit, redeterminations, correction (Ann 9) 7, 444; correction (Ann 11) 7, 445; correction (Ann 12) 7, 446  
Reduction of foreign tax credit limitation categories under section 904(d) (TD 9368) 6, 382; (REG-114126-07) 6, 410  
Low-income housing credit:  
2008 population figures used for calculation (Notice 22) 8, 465  
Indian Housing Block Grant (IHBG) Program (RR 6) 3, 271  
Satisfactory bond, “bond factor” amounts for the period:  
January through March 2008 (RR 2) 2, 247  
Deductions, dependency exemption, qualifying relative (Notice 5) 2, 256  
Disclosure of return information to the Bureau of the Census (TD 9372) 8, 462; (TD 9373) 8, 463; (REG-147832-07) 8, 472

## INCOME TAX—Cont.

Disciplinary actions involving attorneys, certified public accountants, enrolled agents, and enrolled actuaries (Ann 5) 4, 333  
Electronic tax administration, guidance necessary to facilitate – updating section 7216 regulations (TD 9375) 5, 344  
Employer-provided vehicles, cents-per-mile valuation rule, maximum vehicle values (RP 13) 6, 407  
Foreign currency, debt characterization, exchange traded notes, prepaid forwards (RR 1) 2, 248  
Frivolous tax return positions (Notice 14) 4, 310  
Guidance to tax return preparers, consents to disclose and consents to use tax return information in the Form 1040 series (RP 12) 5, 368  
Insurance companies:  
Loss payment patterns and discount factors for the 2007 accident year (RP 10) 3, 290  
Proposed AG VACARVM and proposed Life PBR (Notice 18) 5, 363  
Salvage discount factors for the 2007 accident year (RP 11) 3, 301  
Interest:  
Investment:  
Federal short-term, mid-term, and long-term rates for:  
January 2008 (RR 4) 3, 272  
February 2008 (RR 9) 5, 342  
Interim standards under section 6694(a) (Notice 13) 3, 282  
Letter rulings:  
And determination letters, areas which will not be issued from:  
Associates Chief Counsel and Division Counsel (TE/GE) (RP 3) 1, 110  
Associate Chief Counsel (International) (RP 7) 1, 229  
And information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1  
Marketing of refund anticipation loans (RALs) and certain other products in connection with the preparation of a tax return (Ann 7) 5, 379  
Mortgage insurance premiums, allocation and information reporting for 2007 (Notice 15) 4, 313  
Penalties, substantial understatement, preparer penalty (RP 14) 7, 435  
Prepaid forward contracts, exchange traded notes (Notice 2) 2, 252  
Preparer signature requirements under section 6695(b) (Notice 12) 3, 280  
Private foundations, organizations now classified as (Ann 13) 8, 480  
Proposed Regulations:  
26 CFR 1.904-0, amended; 1.904(f)-1, -2, amended; 1.904(f)-7, -8, added; 1.904(g)-0 thru -3, added; 1.1502-9, revised; treatment of overall foreign and domestic losses (REG-141399-07) 8, 470  
26 CFR 1.904-2(i), added; 1.904-4, -5, revised; 1.904-7(g), added; 1.904(f)-12(h), added; reduction of foreign tax credit limitation categories under section 904(d) (REG-114126-07) 6, 410

## INCOME TAX—Cont.

26 CFR 1.1561-0, -2, added; 1.1563-1, amended; calculating and apportioning the section 11(b)(1) additional tax under section 1561 for controlled groups (REG-104713-07) 6, 409

26 CFR 301.6103(j)(1)-1, amended; disclosure of return information to the Bureau of the Census (REG-147832-07) 8, 472

### Publications:

Update to Publication 1187, Specifications for Filing Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, Electronically or Magnetically (Revised 12-2006) (Ann 6) 5, 378

### Regulations:

26 CFR 1.904-0, amended; 1.904(b)-0, added; 1.904(f)-0, -0T, -1T, -2T, -7, -7T, -8, -8T, added; 1.904(f)-1, -2, -3, amended; 1.904(g)-0, -0T, -1, -1T, -2, -2T, -3, -3T, added; 1.904(i)-0, added; 1.904(j)-0, added; 1.1502-9, revised; 1.1502-9T, added; treatment of overall foreign and domestic losses (TD 9371) 8, 447

26 CFR 1.904-0, -2, -2T, -4, -4T, -5, -5T, -7, -7T, amended; 1.904(f)-12, -12T, amended; reduction of foreign tax credit limitation categories under section 904(d) (TD 9368) 6, 382

26 CFR 1.905-3T, -4T, amended; foreign tax credit, notification of foreign tax redeterminations, correction to TD 9362 (Ann 9) 7, 444

26 CFR 1.1502-47T, added; 1.1561-0T, added; 1.1561-2, removed; 1.1561-2T, amended; 1.1563-1T, amended; calculating and apportioning the section 11(b)(1) additional tax under section 1561 for controlled groups (TD 9369) 6, 394

26 CFR 300.0, amended; 300.7, .8, added; user fees relating to enrollment to perform actuarial services (TD 9370) 7, 428

26 CFR 301.6103(j)(1)-1, amended; disclosure of return information to the Bureau of the Census (TD 9372) 8, 462

26 CFR 301.6103(j)(1)-1T, amended; disclosure of return information to the Bureau of the Census (TD 9373) 8, 463

26 CFR 301.7216-0, added; 301.7216-1, -2, -3, revised; guidance necessary to facilitate electronic tax administration, update (TD 9375) 5, 344

Returns required on magnetic media, corrections to TD 9363 (Ann 10) 7, 445

Revocations, exempt organizations (Ann 3) 2, 269; (Ann 14) 8, 481

Stocks, statutory stock options, information reporting requirements (Notice 8) 3, 276

### Tax conventions:

Updated tax tables for Belgium, Denmark, Finland, and Germany tax conventions (Ann 8) 6, 403

U.S.-Mexico income tax treaty, treatment of Mexico's impuesto empresarial a tasa unica (IETU) (Notice 3) 2, 253

Tax shelter, listed transactions (Notice 20) 6, 406

Technical Advice Memoranda (TAMs) (RP 2) 1, 90

Treatment of overall foreign and domestic losses (TD 9371) 8, 447; (REG-141399-07) 8, 470

User fees relating to enrollment to perform actuarial services (TD 9370) 7, 428

## INCOME TAX—Cont.

Wash sales, individual retirement accounts, Roth IRAs (RR 5) 3, 271

## SELF-EMPLOYMENT TAX

Claims submitted to IRS Whistleblower Office under section 7623 (Notice 4) 2, 253

Frivolous tax return positions (Notice 14) 4, 310

Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1

Technical Advice Memoranda (TAMs) (RP 2) 1, 90





# INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

## CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

---

## ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at [www.irs.gov](http://www.irs.gov). Under information for: select Businesses. Under related topics, select More Topics. Then select Internal Revenue Bulletins.

---

## INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

---

## HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh PA, 15250-7954. Please allow two to six weeks, plus mailing time, for delivery.

---

## WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page ([www.irs.gov](http://www.irs.gov)) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:T:SP, Washington, DC 20224

---

**Internal Revenue Service**  
**Washington, DC 20224**

Official Business  
Penalty for Private Use, \$300