

## **HIGHLIGHTS OF THIS ISSUE**

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

### **INCOME TAX**

#### **Rev. Rul. 2010–11, page 516.**

**Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate.** For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for April 2010.

#### **Notice 2010–17, page 519.**

This notice provides the face amount of qualified school construction bonds (QSCBs) allocated by the Department of the Treasury to each state and large local education agency for 2010 under section 54F(d) of the Code. This notice does not contain any other guidance. Notice 2009–35 supplemented.

#### **Notice 2010–18, page 525.**

This notice provides guidance to assist state housing credit agencies in determining how to reduce the state housing credit ceiling under section 42(h)(3) of the Code when credits are exchanged for funds under section 1602 of the American Recovery and Reinvestment Tax Act of 2009, including guidance concerning the effect of section 1602 funds on building basis and taxpayer income.

#### **Notice 2010–25, page 527.**

This notice provides taxpayers with interim guidance on measurement of continuity of interest of reorganizations during the period between expiration of the current temporary regulations and the issuance of new regulations.

#### **Notice 2010–26, page 527.**

**Chile earthquake in 2010.** This notice designates the Chile earthquake occurring in February 2010 as a qualified disaster for purposes of section 139 of the Code.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2010–19, page 529.**

This announcement provides procedures that a charitable trust may use to request a ruling that it was and continues to be a Type III supporting organization described in section 509(a)(3) of the Code and to obtain a refund of any section 4940 tax paid with respect to its 2008 taxable year.

### **ADMINISTRATIVE**

#### **Rev. Proc. 2010–20, page 528.**

**Nonshareholder contribution to capital under section 118(a).** This procedure provides that the Service will not challenge a corporation's treatment of a Smart Grid Investment Grant made by the Department of Energy to the corporation as a nonshareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporation properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder.

Actions Relating to Court Decisions is on the page following the Introduction.  
Finding Lists begin on page ii.



# The IRS Mission

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

the tax law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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## Actions Relating to Decisions of the Tax Court

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all

of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The Actions on Decisions published in the weekly Internal Revenue Bulletin are consolidated semiannually and appear in the first Bulletin for July and the Cumulative Bulletin for the first half of the year. A semiannual consolidation also appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIECES in result only in the following decision:

**James R. Thompson v.  
United States,<sup>1</sup>**

87 Fed. Cl. 728 (Fed. Cl. 2009)

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<sup>1</sup> Acquiesces in result only relating to whether an interest in a limited liability company (LLC) is a limited partnership interest as defined under section 1.469-5T(e)(3).



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

## Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

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

The adjusted applicable federal long-term rate is set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

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

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

## Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

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

Federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

## Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

## Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

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

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

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

sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for April 2010.

## Rev. Rul. 2010-11

This revenue ruling provides various prescribed rates for federal income tax purposes for April 2010 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2010–11 TABLE 1  
Applicable Federal Rates (AFR) for April 2010

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.67%	.67%	.67%	.67%
110% AFR	.74%	.74%	.74%	.74%
120% AFR	.80%	.80%	.80%	.80%
130% AFR	.87%	.87%	.87%	.87%
<i>Mid-term</i>				
AFR	2.70%	2.68%	2.67%	2.67%
110% AFR	2.97%	2.95%	2.94%	2.93%
120% AFR	3.25%	3.22%	3.21%	3.20%
130% AFR	3.51%	3.48%	3.46%	3.46%
150% AFR	4.06%	4.02%	4.00%	3.99%
175% AFR	4.74%	4.69%	4.66%	4.64%
<i>Long-term</i>				
AFR	4.40%	4.35%	4.33%	4.31%
110% AFR	4.85%	4.79%	4.76%	4.74%
120% AFR	5.29%	5.22%	5.19%	5.16%
130% AFR	5.74%	5.66%	5.62%	5.59%

REV. RUL. 2010–11 TABLE 2

Adjusted AFR for April 2010

*Period for Compounding*

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.53%	.53%	.53%	.53%
Mid-term adjusted AFR	1.68%	1.67%	1.67%	1.66%
Long-term adjusted AFR	3.95%	3.91%	3.89%	3.88%

REV. RUL. 2010–11 TABLE 3

Rates Under Section 382 for April 2010

Adjusted federal long-term rate for the current month	3.95%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.03%

REV. RUL. 2010–11 TABLE 4

Appropriate Percentages Under Section 42(b)(1) for April 2010

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

Appropriate percentage for the 70% present value low-income housing credit	7.82%
Appropriate percentage for the 30% present value low-income housing credit	3.35%

REV. RUL. 2010-11 TABLE 5  
Rate Under Section 7520 for April 2010

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years,  
or a remainder or reversionary interest 3.2%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

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**Section 7520.—Valuation  
Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of April 2010. See Rev. Rul. 2010-11, page 516.

# Part III. Administrative, Procedural, and Miscellaneous

## Qualified School Construction Bond Allocations for 2010

### Notice 2010–17

#### SECTION 1. PURPOSE

This notice sets forth the maximum face amount of qualified school construction bonds (“QSCBs”) allocated by the Department of the Treasury (Treasury) to each State and large local educational agency for 2010 under § 54F(d) of the Internal Revenue Code (Code). For this purpose, § 54A(e)(3) provides that the term “State” includes the District of Columbia and any possession of the United States. This notice supplements Notice 2009–35, 2009–17 I.R.B. 876 (April 27, 2009).

#### SECTION 2. BACKGROUND

##### .01 INTRODUCTION

Section 1521(a) of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115 (2009) (“Act”) added new § 54F to the Code, setting forth program provisions for QSCBs.

Section 54F(a) defines a “qualified school construction bond” to mean any bond issued as part of an issue if —

(1) 100 percent of the available project proceeds of such issue are to be used for the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue,

(2) the bond is issued by a State or local government within the jurisdiction of which such school is located, and

(3) the issuer designates such bond for purposes of this section.

Section 54F(c) provides a national bond limitation authorization for QSCBs of \$11 billion for 2009 and \$11 billion for 2010 (each, a “calendar year volume cap” and together “volume cap”). Section 54F(c)(3) provides that except for carryforwards provided for in § 54F(e), there is no calendar year volume cap for calendar years after 2010.

Section 54F(b) provides that the maximum aggregate face amount of bonds is-

sued during any calendar year that may be designated under § 54F(a) by any issuer shall not exceed the portion of the calendar year volume cap allocated to such issuer for the calendar year under § 54F(d).

Section 54F(d)(1) provides that, except as provided in § 54F(d)(2)(C), the calendar year volume cap shall be allocated by the Treasury among the States in proportion to the respective amounts each State is eligible to receive under § 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) (the “Education Act”) for the most recent fiscal year ending before the calendar year. Section 54F(d)(1) further provides that the calendar year volume cap amount allocated to each State is to be further allocated by the State to issuers within the State.

Section 54F(d)(2)(A) provides that 40 percent of the calendar year volume cap for any calendar year is to be allocated under § 54F(d)(2)(B) by the Treasury among local educational agencies that are large local agencies for the calendar year. Section 54F(d)(2)(B) provides that 40 percent of the calendar year volume cap is to be allocated among large local educational agencies in proportion to the respective amounts each such agency received under § 1124 of the Education Act for the most recent fiscal year ending before the calendar year.

Section 54F(d)(2)(C) provides that the allocation of calendar year volume cap to any State under § 54F(d)(1) is reduced by the aggregate amount of allocations under § 54F(d)(2) to large local educational agencies within the State.

Section 54F(d)(2)(E) defines a large local educational agency as any local educational agency if such agency is: (1) among the one hundred local educational agencies with the largest number of children aged 5 through 17 from families living below the poverty level, as determined by the Treasury using the most recent data available from the Department of Commerce that are satisfactory to the Treasury; or (2) one of not more than twenty-five additional local educational agencies that the Secretary of Education determines (based on the most recent data available satisfactory to the Treasury) are in particular need of assistance, based on a low level of resources

for school construction, a high level of enrollment growth, or such other factors as the Treasury deems appropriate.

Section 54F(d)(3) provides that the amount allocated under § 54F(d)(1) to any United States possession other than Puerto Rico is an amount that would have been allocated to such possession if all allocations under § 54F(d)(1) were made on the basis of respective populations of individuals below the poverty line (as defined by the Office of Management and Budget). Section 54F(d)(3) further provides that in making the other allocations, the amount to be allocated under § 54F(d)(1) to the States is reduced by the aggregate amount allocated under § 54F(d)(3) to the United States possessions.

Section 54F(d)(4) provides for additional calendar year volume cap amounts of \$200 million for calendar year 2009 and \$200 million for calendar year 2010 (each an “Indian tribal government calendar year volume cap” and together the “Indian tribal government volume cap”) to be allocated by the Secretary of Interior for purposes of the construction, rehabilitation, and repair of schools funded by the Bureau of Indian Affairs. This \$200 million Indian tribal government calendar year volume cap allocated to the Indian tribal governments does not reduce the \$11 billion calendar year volume cap allocated to the States and the large local educational agencies. Section 54F(d)(4) further provides that, for amounts of Indian tribal government volume cap allocated, Indian tribal governments (as defined in § 7701(a)(40)) are to be treated as qualified issuers.

#### SECTION 3. 2010 ALLOCATIONS OF NATIONAL BOND VOLUME CAP FOR QSCBs

The 2010 national bond volume cap for QSCBs is \$11 billion. This amount is allocated among the States and large local educational agencies as set forth in this notice. The 2010 allocations to 103 large local educational agencies reflects the determination by the Secretary of Education to select 3 additional large local educational agencies under § 54F(d)(2)(E)(ii) for such year. The first chart below allocates \$6.6 billion of the \$11 billion 2010 calendar year vol-

ume cap for QSCBs to States to be issued by such State or further allocated to the is- suers within such State. The second chart below allocates \$4.4 billion of the \$11 bil- lion 2010 calendar year volume cap for QSCBs to large local educational agencies.

**2010 Allocations to States of Volume Cap for  
Qualified School Construction Bonds  
(Net of Allocations to Large Local Educational Agencies)**

State/Territory	Total Allocation by State/ Territory
Alabama	140,453,000
Alaska	28,163,000
Arizona	171,115,000
Arkansas	124,197,000
California	720,058,000
Colorado	95,686,000
Connecticut	98,431,000
Delaware	29,797,000
District of Columbia	0
Florida	81,038,000
Georgia	234,431,000
Hawaii	0
Idaho	39,379,000
Illinois	251,167,000
Indiana	182,583,000
Iowa	66,422,000
Kansas	82,984,000
Kentucky	138,870,000
Louisiana	140,525,000
Maine	41,368,000
Maryland	45,190,000
Massachusetts	157,361,000
Michigan	297,611,000
Minnesota	80,649,000
Mississippi	134,610,000
Missouri	146,348,000
Montana	31,838,000
Nebraska	35,294,000
Nevada	5,157,000
New Hampshire	29,797,000
New Jersey	215,904,000
New Mexico	62,037,000

**2010 Allocations to States of Volume Cap for  
Qualified School Construction Bonds  
(Net of Allocations to Large Local Educational Agencies)**

State/Territory	Total Allocation by State/ Territory
New York	178,782,000
North Carolina	188,591,000
North Dakota	25,974,000
Ohio	293,763,000
Oklahoma	91,217,000
Oregon	109,096,000
Pennsylvania	286,677,000
Rhode Island	41,296,000
South Carolina	129,456,000
South Dakota	29,797,000
Tennessee	119,131,000
Texas	547,674,000
Utah	55,599,000
Vermont	24,236,000
Virginia	172,249,000
Washington	162,837,000
West Virginia	72,262,000
Wisconsin	100,459,000
Wyoming	24,589,000
American Samoa	10,614,000
Guam	10,838,000
Northern Marianas	6,824,000
Puerto Rico	0
Virgin Islands	9,576,000
<b>Total</b>	<b>6,600,000,000</b>

**2010 Allocations to Large Local Educational Agencies of Volume Cap for  
Qualified School Construction Bonds**

State	Large Local Educational Agency	Allocation
Alabama	Birmingham City School District	14,274,000
Alabama	Mobile County School District	25,419,000

**2010 Allocations to Large Local Educational Agencies of Volume Cap for  
Qualified School Construction Bonds**

<b>State</b>	<b>Large Local Educational Agency</b>	<b>Allocation</b>
Arizona	Mesa Unified District	19,466,000
Arizona	Phoenix Union High School District	12,514,000
Arizona	Tucson Unified District	20,018,000
California	Bakersfield City Elementary	15,102,000
California	Compton Unified	16,893,000
California	Fresno Unified	39,773,000
California	Long Beach Unified	34,501,000
California	Los Angeles Unified	290,180,000
California	Oakland Unified	23,960,000
California	Sacramento City Unified	19,342,000
California	San Bernardino City Unified	25,294,000
California	San Diego City Unified	36,093,000
California	San Francisco Unified	12,957,000
California	Santa Ana Unified	17,539,000
California	Stockton City Unified	14,934,000
Colorado	Denver County 1	29,262,000
District of Columbia	District of Columbia Public Schools	32,947,000
Florida	Brevard County School District	12,271,000
Florida	Broward County School District	51,646,000
Florida	Dade County School District	95,438,000
Florida	Duval County School District	33,074,000
Florida	Hillsborough County School District	37,935,000
Florida	Lee County School District	14,308,000
Florida	Marion County School District	11,253,000
Florida	Orange County School District	36,229,000
Florida	Palm Beach County School District	34,023,000
Florida	Pasco County School District	13,627,000
Florida	Pinellas County School District	23,529,000
Florida	Polk County School District	21,223,000
Florida	Volusia County School District	17,796,000
Georgia	Atlanta City School District	34,526,000
Georgia	Clayton County School District	15,166,000
Georgia	De Kalb County School District	29,940,000
Georgia	Fulton County School District	17,917,000
Georgia	Gwinnett County School District	19,640,000
Georgia	Richmond County School District	15,979,000

**2010 Allocations to Large Local Educational Agencies of Volume Cap for  
Qualified School Construction Bonds**

<b>State</b>	<b>Large Local Educational Agency</b>	<b>Allocation</b>
Hawaii	Hawaii Department of Education	29,797,000
Illinois	City of Chicago School District 299	257,127,000
Indiana	Indianapolis Public Schools	31,534,000
Kentucky	Jefferson County School District	30,352,000
Louisiana	Caddo Parish School Board	20,707,000
Louisiana	East Baton Rouge Parish School Board	21,675,000
Louisiana	Jefferson Parish School Board	21,891,000
Louisiana	Orleans Parish School Board	40,055,000
Maryland	Baltimore City Public School System	53,530,000
Maryland	Baltimore County Public Schools	19,952,000
Maryland	Prince George's County Public Schools	25,803,000
Massachusetts	Boston	41,474,000
Michigan	Detroit City School District	127,644,000
Minnesota	Minneapolis	19,787,000
Minnesota	St. Paul	18,253,000
Mississippi	Jackson Public School District	15,429,000
Missouri	Kansas City School District	16,274,000
Missouri	St. Louis City	28,481,000
Nebraska	Omaha Public Schools	18,922,000
Nevada	Clark County School District	58,833,000
New Jersey	Newark City	25,753,000
New Mexico	Albuquerque Public Schools	25,025,000
New York	Buffalo City School District	33,025,000
New York	New York City	664,010,000
New York	Rochester City School District	28,376,000
North Carolina	Charlotte-Mecklenburg Schools	25,051,000
North Carolina	Cumberland County Schools	14,805,000
North Carolina	Forsyth County Schools	14,162,000
North Carolina	Guilford County Schools	16,843,000
North Carolina	Wake County Schools	17,606,000
Ohio	Cincinnati City School District	25,922,000
Ohio	Cleveland Municipal School District	51,058,000
Ohio	Columbus City School District	39,266,000
Ohio	Toledo City School District	20,962,000
Oklahoma	Oklahoma City	18,167,000
Oklahoma	Tulsa	15,625,000

**2010 Allocations to Large Local Educational Agencies of Volume Cap for  
Qualified School Construction Bonds**

<b>State</b>	<b>Large Local Educational Agency</b>	<b>Allocation</b>
Pennsylvania	Philadelphia City School District	145,352,000
Pennsylvania	Pittsburgh School District	19,520,000
Puerto Rico	Puerto Rico Department of Education	380,394,000
South Carolina	Charleston County School District	15,076,000
South Carolina	Greenville County School District	14,302,000
Tennessee	Knox County School District	11,979,000
Tennessee	Memphis City School District	49,710,000
Tennessee	Nashville-Davidson County School District	24,016,000
Texas	Aldine Independent School District	19,022,000
Texas	Alief Independent School District	16,483,000
Texas	Arlington Independent School District	13,656,000
Texas	Austin Independent School District	24,078,000
Texas	Brownsville Independent School District	25,901,000
Texas	Dallas Independent School District	69,599,000
Texas	Edinburg Consolidated Independent School District	13,967,000
Texas	El Paso Independent School District	29,140,000
Texas	Fort Worth Independent School District	28,764,000
Texas	Garland Independent School District	12,488,000
Texas	Houston Independent School District	95,370,000
Texas	La Joya Independent School District	13,544,000
Texas	Laredo Independent School District	14,165,000
Texas	Northside Independent School District	14,641,000
Texas	Pasadena Independent School District	14,609,000
Texas	Pharr-San Juan-Alamo Independent School District	13,453,000
Texas	San Antonio Independent School District	30,730,000
Texas	Ysleta Independent School District	17,869,000
Virginia	Norfolk City Public Schools	15,092,000
Virginia	Richmond City Public Schools	14,983,000
Wisconsin	Milwaukee	72,933,000
<b>Total</b>		<b>4,400,000,000</b>

**SECTION 4. EFFECTIVE DATE OF  
2010 ALLOCATIONS OF NATIONAL  
BOND VOLUME CAP**

The allocations of the national bond volume cap for QSCBs in Section 3 are effective for QSCBs issued, pursuant to an

allocation of 2010 calendar year volume cap, after March 16, 2010.

**SECTION 5. ALLOCATION OF THE  
INDIAN TRIBAL GOVERNMENT  
VOLUME CAP**

The Department of the Interior is exclusively responsible for making the allocations of the Indian tribal govern-

ment volume cap and published a notice in the Federal Register, 74 F.R. 56211-02 (October 30, 2009), soliciting applications for allocations of such volume cap. Interested parties may also contact John Rever, Director, Office of Facilities, Environment and Cultural Resources, Bureau of Indian Affairs, at (703) 390-6314 or [John.Rever@bia.gov](mailto:John.Rever@bia.gov).

## SECTION 6. DRAFTING INFORMATION

The principal authors of this notice are Aviva M. Roth and Johanna Som de Cerff of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice, contact Johanna Som de Cerff at (202) 622-3980 (not a toll-free call).

## American Recovery and Reinvestment Tax Act of 2009 Clarifications

### Notice 2010-18

This notice clarifies certain issues under sections 1404 and 1602 of the American Recovery and Reinvestment Tax Act of 2009 (Pub. L. 111-5) (the Act). Specifically, this notice provides guidance on how to take into account the amount of a grant under section 1602 of the Act in reducing the amount of a state's housing credit ceiling, on the exclusion of the amount of grants from the recipients' gross income, and on the effect of such grants on the depreciable or eligible basis of property.

### BACKGROUND

Section 42 of the Internal Revenue Code allows a 10-year tax credit for investment in qualified low-income buildings placed in service after December 31, 1986. Section 42(h)(1) provides, generally, that the amount of credit under § 42 for any taxable year for any building shall not exceed the housing credit dollar amount allocated to the building. Section 42(h)(3)(A) provides, in part, that the aggregate housing credit dollar amount that a State housing credit agency may allocate for any calendar year is limited to that year's State housing credit ceiling (Ceiling).

Section 42(h)(3)(C) of the Code provides, in part, that the Ceiling applicable

to any State for any calendar year is an amount equal to—

(i) the unused Ceiling, if any, of the State for the preceding calendar year;

(ii) the greater of (I) \$1.75 multiplied by the State population, or (II) \$2,000,000;

(iii) the amount of Ceiling returned in the calendar year, and;

(iv) the amount, if any, allocated to the State by the Secretary under § 42(h)(3)(D) from a national pool (National Pool) of unused credit.

Section 42(h)(3)(H) of the Code provides that for calendar years after 2002, the \$2,000,000 and \$1.75 amounts in § 42(h)(3)(C)(ii) shall be increased by a cost-of-living adjustment (COLA). Section 42(h)(3)(I) increases the Ceiling for 2009 by adding (i) \$0.20 for the dollar amount in effect under § 42(h)(3)(C)(ii)(I) after application of the § 42(h)(3)(H) COLA, and (ii) an amount equal to 10 percent for the dollar amount in effect under § 42(h)(3)(C)(ii)(II) (rounded to the next lowest multiple of \$5,000) after application of the § 42(h)(3)(H) COLA. For the 2009 Ceiling, the § 42(h)(3)(C)(ii)(I) and (II) amounts are \$2.30 and \$2,665,000, respectively. See Section 3.07 of Rev. Proc. 2008-66, 2008-45 I.R.B. 1107, 1111.

Section 42(i)(9)(A) of the Code, as added by section 1404 of the Act, provides that the amounts described in § 42(h)(3)(C)(i) through (iv) with respect to any State for 2009 shall each be reduced by so much of the amount as is taken into account in determining the amount of any grant to the State under section 1602 of the Act. Section 1602(a) of the Act provides that the Department of the Treasury shall make a grant to the housing credit agency of each State in an amount equal to the State's low-income housing grant election amount. Section 1602(b) of the Act provides that the term "low-income housing grant election amount" means, for any State, the amount as the State may elect that does not exceed 85 percent of—

(1) the sum of—

(A) 100 percent of the State's 2009 Ceiling that is attributable to amounts described in § 42(h)(3)(C)(i) and (iii) of the Code, and

(B) 40 percent of the State's 2009 Ceiling that is attributable to amounts described in § 42(h)(3)(C)(ii) and (iv), multiplied by

(2) 10.

On May 4, 2009, the Department of the Treasury released guidance in the form of an application (Application) and grantee terms and conditions (Terms and Conditions) informing designated State housing credit agencies (Designated Agencies) how to exchange low-income housing tax credits for amounts under section 1602 of the Act. This guidance may be accessed electronically at: [http://www.treas.gov/recovery/docs/LIH\\_application-package.pdf](http://www.treas.gov/recovery/docs/LIH_application-package.pdf)

A list of the Designated Agencies is provided, and background information to the Application states, on page 3, that a Designated Agency is one that files Form 8610, "Annual Low-Income Housing Credit Agencies Report," for all agencies within the State. Paragraph 2.a. of the Terms and Conditions provides that the grantee is the housing credit agency that files Form 8610. Paragraph 7.a. of the Terms and Conditions provides that the grantee shall track (1) the credit equivalent of all grant election amounts to ensure that the 2009 Ceiling is appropriately reduced as required by § 42(i)(9)(A) of the Code and (2) total grant election amounts to ensure that these amounts do not exceed the amount authorized by section 1602(b) of the Act. Paragraph 7.b. provides that the grantee shall track the total of credits allocated under § 42(h)(1). Paragraph 7.c. provides that the grantee shall ensure that the credit equivalent of all elected grant amounts through 2010, plus the credits allocated under § 42(h)(1) during 2009, do not exceed the 2009 Ceiling. The Terms and Conditions do not explain how the credit equivalent of a grant election amount is determined.

Section 42(d)(1) of the Code provides that the eligible basis of a new building is its adjusted basis as of the close of the first tax year of the credit period. Section 42(d)(4)(A) provides that, except as provided in § 42(d)(4)(B) and (C), the adjusted basis of any building is determined without regard to the adjusted basis of any property that is not residential rental property. Section 42(d)(4)(B) provides that the adjusted basis of any building includes the adjusted basis of property of a character subject to the allowance for depreciation used in common areas or provided as comparable amenities to all residential rental units in the building. Section 42(d)(5)(A) provides that the eligible basis of a building shall not include any costs financed

with the proceeds of a federally funded grant. Section 42(i)(9)(B), as added by section 1404 of the Act, provides that the basis of a qualified building shall not be reduced by the amount of any grant described in § 42(i)(9)(A). The legislative history to the Act provides that grants received under this provision (*i.e.*, cash assistance received under section 1602 of the Act) do not reduce [the] tax basis of a qualified low-income building. The legislative history to the Act further provides that grants under this provision are not taxable income to recipients. See H.R. Conf. Rep. No. 16, 111<sup>th</sup> Cong., 1<sup>st</sup> Sess. 532, 533 (2009).

## CLARIFICATIONS

### 1. *Credit Equivalent of Cash Assistance and Tracking under § 42(i)(9)(A)*

Section 42(i)(9)(A) of the Code, as added by section 1404 of the Act, requires that the amounts in § 42(h)(3)(C)(i) through (iv) shall each be reduced by so much of such amount as is taken into account in determining the amount of any grant (cash assistance) under section 1602 of the Act. Thus, similar to the way the Designated Agency tracks allocations of credit during the course of a calendar year to ensure that total credits allocated do not exceed the Ceiling for that year, § 42(i)(9)(A) implies a duty (and paragraph 7 of the grant application Terms and Conditions imposes a duty) by the Designated Agency to track credits allocated and the credit equivalent of cash assistance amounts to ensure that total credits allocated from the 2009 Ceiling and the credit equivalent of total cash assistance amounts do not exceed the 2009 Ceiling. A Designated Agency may determine the credit equivalent of a cash assistance amount by dividing the cash assistance amount by 8.5 and rounding the result up to the nearest dollar.

For example, in computing the reduction with respect to the § 42(h)(3)(C)(ii) component of the Ceiling (and using an actual figure published by the Department of the Treasury in the List of Designated Agencies attached to the Application), assume that the maximum cash assistance amount permissible from the 2009 Ceiling for State X with respect to that component is \$9,061,000.

State X is a state whose population qualifies for \$2,665,000 in credits under § 42(h)(3)(C)(ii)(II), as adjusted for inflation under § 42(h)(3)(H). The Department of the Treasury determined the maximum cash assistance amount of \$9,061,000 available to State X by multiplying total available credits of \$2,665,000 under § 42(h)(3)(C)(ii)(II) by the formula prescribed by section 1602(b) of the Act for credits under § 42(h)(3)(C)(ii)(II) (*i.e.*,  $0.85 \times ([\$2,665,000 \times 0.4] \times 10)$ ). Of this amount, assume the Designated Agency of State X elects under section 1602(b) of the Act a cash assistance amount of \$5 million. The credit equivalent of \$5 million is \$588,236 (*i.e.*,  $\$5 \text{ million} / 8.5 = \$588,235.29$ , rounded up to the nearest dollar). For purposes of making the reduction required by § 42(i)(9)(A) to State X's 2009 Ceiling, the \$2,665,000 in credits under § 42(h)(3)(C)(ii) must be reduced by \$588,236, the credit equivalent of the \$5 million cash assistance amount, not by the \$5 million cash assistance amount. The \$2,076,764 (*i.e.*,  $\$2,665,000 - \$588,236$ ) remaining in credit under § 42(h)(3)(C)(ii) is available for use in making credit allocations by the Designated Agency. However, for purposes of making any future cash assistance election under section 1602 of the Act from the § 42(h)(3)(C)(ii) portion of State X's 2009 Ceiling, the \$9,061,000 maximum cash assistance amount is reduced by \$5 million to \$4,061,000.

The Department of the Treasury may not, in view of the taxpayer privacy and disclosure rules under § 6103 of the Code, publish the maximum cash assistance amounts from the other components of a State's 2009 Ceiling (unlike credits under § 42(h)(3)(C)(ii)). To ensure that credits allocated and the credit equivalent of cash assistance amounts from any of these components of the 2009 Ceiling do not exceed credits available from those components, a Designated Agency should multiply the credit amount used to elect a cash assistance amount by the percentage applicable to that credit amount under section 1602(b)(1) of the Act, and then reduce the 2009 Ceiling accordingly.

For example, in computing the reduction with respect to the § 42(h)(3)(C)(iv) component of the Ceiling, assume that the credit amount of that component from State X's 2009 Ceiling is \$1 million. Assume further that in computing the reduc-

tion with respect to the § 42(h)(3)(C)(iii) component, the credit amount of that component from State X's 2009 Ceiling is \$2 million. Of the \$1 million in credits under § 42(h)(3)(C)(iv), the Designated Agency of State X elects under section 1602 of the Act to use \$800,000 for a cash assistance amount. Of the \$2 million in credits under § 42(h)(3)(C)(iii), the Designated Agency elects under section 1602 of the Act to use \$1.5 million for a cash assistance amount.

Under section 1602(b)(1)(B) of the Act, the percentage applicable to credit amounts under § 42(h)(3)(C)(iv) is 40 percent. The product of \$800,000 and 40 percent is \$320,000. As required by § 42(i)(9)(A), the \$1 million of credits under § 42(h)(3)(C)(iv) is reduced by \$320,000, not \$800,000. The remaining \$680,000 in credits (*i.e.*,  $\$1 \text{ million} - \$320,000$ ) under § 42(h)(3)(C)(iv) is available for use in making credit allocations by the Designated Agency. However, the \$1 million of credit under § 42(h)(3)(C)(iv) is reduced by \$800,000 for purposes of making any future elections for cash assistance under section 1602 of the Act.

Under section 1602(b)(1)(A) of the Act, the percentage applicable to credit amounts under § 42(h)(3)(C)(iii) is 100 percent. The product of \$1.5 million and 100 percent is \$1.5 million. As required by § 42(i)(9)(A), the \$2 million of credits under § 42(h)(3)(C)(iii) is reduced by \$1.5 million, the actual credit amount elected by the Designated Agency to make a cash assistance election under section 1602 of the Act. The remaining \$500,000 in credits (*i.e.*,  $\$2 \text{ million} - \$1.5 \text{ million}$ ) under § 42(h)(3)(C)(iii) is available for use in making credit allocations by the Designated Agency. Similarly, the \$2 million in credits under § 42(h)(3)(C)(iii) is reduced by \$1.5 million for purposes of making any future elections for cash assistance under section 1602 of the Act.

### 2. *Income Tax Treatment of Subawards*

Based on the legislative history of the Act, subawards made pursuant to section 1602(c) of the Act are excluded from the gross income of recipients and are exempt from taxation.

### 3. *Basis Treatment of Subawards*

Section 42(i)(9)(B) of the Code, as added by section 1404 of the Act, provides

that the basis of a qualified building shall not be reduced by the amount of any grant described in § 42(i)(9)(A). The legislative history to the Act provides that grants received under this provision (*i.e.*, cash assistance received under section 1602 of the Act) do not reduce the tax basis of a qualified low-income building. By extension, subawards under section 1602(c) of the Act derived from cash assistance under that section that are used in a qualified low-income building are not federal grants for purposes of § 42(d)(5)(A) and do not otherwise reduce the depreciable or eligible basis of the building.

#### DRAFTING INFORMATION

The principal author of this notice is Christopher J. Wilson, Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information concerning this notice, contact Mr. Wilson at (202) 622-3040 (not a toll-free call).

## INTERIM GUIDANCE ON MEASUREMENT OF CONTINUITY OF INTEREST IN REORGANIZATIONS

### Notice 2010-25

This notice pertains to the continuity of interest test generally applicable to reorganizations described in section 368 of the Internal Revenue Code.

#### I. PURPOSE

Under section 7805(e)(2) of the Internal Revenue Code, temporary regulations expire three years after issuance, if not earlier withdrawn. Section 1.368-1T(e)(2) of the Income Tax Regulations will accordingly expire on March 19, 2010. The purpose of this notice is to provide taxpayers with interim guidance applicable to the period between the expiration of the temporary regulations and the issuance of replacement guidance.

#### II. BACKGROUND AND INTERIM GUIDANCE

The Internal Revenue Code of 1986 (Code) generally provides nonrecognition

treatment for reorganizations described in section 368 of the Code. Besides satisfying the statutory and other requirements, in order to qualify as a reorganization, a transaction generally must satisfy the continuity of interest (COI) requirement. COI requires that, in substance, a substantial part of the value of the proprietary interests in the target corporation be preserved in the reorganization.

On March 20, 2007, the Internal Revenue Service (Service) and the Treasury Department (Treasury) published temporary regulations § 1.368-1T(e)(2) (T.D. 9316, 2007-1 C.B. 962) and proposed regulations (REG-146247-06, 2007-1 C.B. 977) in the Federal Register (72 FR 12974 and 72 FR 13058, respectively). The text of the temporary regulations and the proposed regulations is the same. The Service and the Treasury intend to issue final regulations, but do not expect to issue such regulations prior to the expiration of the temporary regulations. The purpose of this notice is to provide taxpayers with interim guidance applicable to the period between the expiration of the temporary regulations and the issuance of new regulations.

After expiration of the temporary regulations and prior to the issuance of new regulations, taxpayers may apply the rules set forth in the proposed regulations notwithstanding that the temporary regulations have expired. However, the target corporation, the issuing corporation, the controlling corporation of the acquiring corporation if stock thereof is provided as consideration in the transaction, and any direct or indirect transferee of transferred basis property from any of the foregoing, may not apply the provisions of the proposed regulations unless all such taxpayers elect to apply the provisions of such regulations. This requirement will be satisfied if none of the specified parties adopts treatment inconsistent with this election.

#### DRAFTING INFORMATION

The principal author of this notice is Richard Starke of the Office of Associate Chief Counsel (Corporate). For further information regarding this notice, please contact Richard Starke at (202) 622-7790 (not a toll-free call).

## Chile Earthquake Occurring in February 2010 Designated as a Qualified Disaster Under § 139 of the Internal Revenue Code

### Notice 2010-26

This notice designates the Chile earthquake occurring in February 2010 as a qualified disaster for purposes of § 139 of the Internal Revenue Code in the affected areas of Chile.

#### EARTHQUAKE DISASTER

On February 27, 2010, a magnitude 8.8 earthquake with numerous significant aftershocks and a tsunami affected southern and central Chile (“Chile earthquake”). The earthquake and resulting aftershocks affected approximately 2 million individuals, displaced thousands of individuals from damaged and destroyed houses, and resulted in 795 deaths. The earthquake also caused major damage to buildings and infrastructure near the epicenter, and disrupted communications, electricity, water, and gas services in the affected areas. In addition, a tsunami caused significant damage along parts of coastal Chile. *USAID Chile — Earthquake Fact Sheet No. 1* (March 1, 2010) and *No. 2* (March 2, 2010).

This notice enables employer-sponsored private foundations to assist certain victims in areas affected by the Chile earthquake and enables recipients to exclude qualified disaster relief payments from gross income.

#### QUALIFIED DISASTER RELIEF PAYMENTS EXCLUDED FROM RECIPIENT'S GROSS INCOME

Section 139(a) provides that gross income shall not include any amount received by an individual as a qualified disaster relief payment.

Section 139(b) provides that a qualified disaster relief payment includes any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses (not otherwise compensated for by insurance or otherwise)

incurred as a result of a qualified disaster, or

(2) to reimburse or pay reasonable and necessary expenses (not otherwise compensated for by insurance or otherwise) incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

Under § 139(c)(3) the term “qualified disaster” includes a disaster resulting from an event that is determined by the Secretary to be of a catastrophic nature.

#### DESIGNATION AS QUALIFIED DISASTER

The Commissioner of Internal Revenue, pursuant to delegation by the Secretary, has determined that the Chile earthquake occurring in February 2010 is an event of a catastrophic nature under § 139(c)(3). Therefore, the Chile earthquake is designated as a qualified disaster under § 139 in the affected areas of Chile.

#### SECTION 501(c)(3) ORGANIZATIONS

Employer-sponsored private foundations may choose to provide disaster relief to employee victims of the Chile earthquake. Like all organizations described in § 501(c)(3), private foundations should exercise due diligence when providing disaster relief as set forth in Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations*.

#### DRAFTING INFORMATION

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Mr. Iskow at (202) 622-4920 (not a toll-free call).

*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, §§ 118, 362.)*

## Rev. Proc. 2010-20

### SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under section 118(a) of the Internal Revenue Code for the treatment of a Smart Grid Investment Grant (SGIG) under 42 U.S.C. 17386 made by the United States Department of Energy (DOE) to a corporation for qualifying investments under the Smart Grid Investment Matching Grant Program as authorized by section 1306 of the Energy Independence and Security Act of 2007 (Pub. L. 110-140), as amended by section 405, Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

### SECTION 2. BACKGROUND

Section 118(a) of the Code provides that in the case of a corporation, gross income does not include a contribution to the capital of the taxpayer.

Section 1.118-1 of the Income Tax Regulations provides that section 118 applies to contributions to capital made by a person other than a shareholder, for example, property contributed to a corporation by a governmental unit for the purpose of enabling the corporation to expand its operating facilities.

Section 362(c)(2) of the Code requires a basis reduction in a corporation's property when the corporation receives money from a nonshareholder as a contribution to its capital.

42 U.S.C. 17386 provides that DOE shall establish a Smart Grid Investment Matching Grant Program to make grants for qualifying investments. Under 42 U.S.C. 17386, an SGIG may not be

used for ongoing or routine operating and maintenance expenditures.

### SECTION 3. SCOPE

This revenue procedure applies to corporate taxpayers that receive an SGIG under 42 U.S.C. 17386 from DOE. This revenue procedure does not apply to noncorporate taxpayers, or to grants under 42 U.S.C. 17384 (Smart Grid technology research, development, and demonstration).

### SECTION 4. PROCEDURE

The Internal Revenue Service will not challenge a corporation's treatment of an SGIG made by DOE to the corporation as a nonshareholder contribution to the capital of the corporation under section 118(a) of the Code if the corporation properly reduces the basis of its property under section 362(c)(2) and the regulations thereunder.

### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective March 10, 2010.

### SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is David McDonnell of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, contact Mr. McDonnell at (202) 622-3040 (not a toll-free call).

# Part IV. Items of General Interest

## PROCEDURES FOR CERTAIN TRUSTS THAT QUALIFY AS TYPE III SUPPORTING ORGANIZATIONS

### Announcement 2010-19

This announcement applies to any trust that met the requirements to be classified as a Type III supporting organization through the end of the 2008 taxable year (including by meeting the significant voice responsiveness test for periods after August 16, 2007), but erroneously filed Form 990-PF and paid section 4940 tax for the 2008 taxable year. It provides procedures that such a trust may use to request a ruling that it was and continues to be a Type III supporting organization described in section 509(a)(3) and to obtain a refund of any section 4940 tax paid with respect to its 2008 taxable year.

This announcement also describes procedures for charitable trusts that became private foundations after August 16, 2007, and wish to terminate their private foundation status under section 507(b)(1)(B) by operating as Type III supporting organizations.

#### Background

Treas. Reg. § 1.509(a)-4(i) sets forth the requirements for an organization to qualify as a section 509(a)(3) supporting organization that is “operated in connection with” one or more publicly supported organizations (*i.e.*, a “Type III supporting organization”). Type III supporting organizations are required to meet a “responsiveness test” and an “integral part test.” See Treas. Reg. § 1.509(a)-4(i)(1)(i), (i)(2).

Prior to passage of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006) (“PPA”), there were two alternative ways for a Type III supporting organization to meet the responsiveness test.

1. The significant voice test. Treas. Reg. § 1.509(a)-4(i)(2)(ii) provides that an organization meets the responsiveness test if, by virtue of certain governance relationships between the supporting

organization and the supported organization, or a close and continuous working relationship between the supporting organization and supported organization, the officers, directors, or trustees of the publicly supported organization have a significant voice in the investment policies of the supporting organization, the timing of grants, the manner of making them, and the selection of recipients of such supporting organization, and in otherwise directing the use of the income or assets of the supporting organization.

2. The charitable trust test. Treas. Reg. § 1.509(a)-4(i)(2)(iii) provides that an organization meets the responsiveness test if it is a charitable trust under state law, each publicly supported organization is a named beneficiary under the trust’s governing instrument, and each beneficiary organization has the power to enforce the trust and compel an accounting under state law.

Section 1241(c) of the PPA eliminated the charitable trust test, effective August 17, 2007. Consequently, as of August 17, 2007, a charitable trust can no longer qualify as a Type III supporting organization unless it meets the significant voice test.

Notice 2008-6, 2008-1 C.B. 275, provided that any charitable trust that became a private foundation because of the PPA’s elimination of the charitable trust test would not be required to file an information return on Form 990-PF or pay excise taxes on investment income under section 4940 until its first taxable year beginning on or after January 1, 2008.

On August 2, 2007, the Treasury Department (“Treasury”) and the Internal Revenue Service (“IRS”) published an advance notice of proposed rulemaking (“ANPRM”) describing the rules Treasury and the IRS anticipated proposing regarding Type III supporting organizations. The ANPRM states that Treasury and the IRS expect that all Type III supporting organizations will be required to meet the significant voice responsiveness test under Treas. Reg. § 1.509(a)-4(i)(2)(ii).

On September 24, 2009, Treasury and the IRS published a notice of proposed rulemaking in the Federal Register (74 Fed. Reg. 48,672) addressing Type III supporting organizations (“proposed regulations”). The proposed regulations require that all Type III supporting organizations meet the significant voice responsiveness test, and provide two new examples illustrating the application of the significant voice test to charitable trusts.

#### Scope

A trust may request a ruling stating that it is a Type III supporting organization and obtain a refund of any tax paid under section 4940 by following the procedures set forth in this Announcement if it is either:

1. A charitable trust that:
  - a. received a determination recognizing its tax-exempt status under section 501(c)(3);
  - b. was classified as a Type III supporting organization prior to enactment of the PPA;
  - c. continued to meet the requirements to be classified as a Type III supporting organization through the end of its 2008 taxable year (including by meeting the significant voice responsiveness test for periods after August 16, 2007); and
  - d. erroneously filed Form 990-PF for the 2008 taxable year and paid section 4940 tax for the 2008 taxable year;or
2. A non-exempt charitable trust described in section 4947(a)(1) that:
  - a. is treated for certain purposes as an organization described in section 501(c)(3);
  - b. was classified as a Type III supporting organization prior to enactment of the PPA;
  - c. continued to meet the requirements to be classified as a Type III supporting organization through the end of its 2008 taxable year (including by meeting the significant voice responsiveness test for periods after August 16, 2007); and

- d. erroneously filed Form 990-PF for the 2008 taxable year and paid section 4940 tax for the 2008 taxable year.

#### Procedures

##### *A. Ruling that trust qualifies as Type III supporting organization for taxable years beginning on or after January 1, 2008*

A trust may request a ruling that it qualified and continues to qualify as a Type III supporting organization for taxable years beginning on or after January 1, 2008, by submitting a written request for a ruling pursuant to Revenue Procedure 2010-4, 2010-1 I.R.B. 122.

The request for ruling should generally follow the format specified in Revenue Procedure 2010-4 and must include the following:

1. A subject line or other indicator on the first page of the request in bold, underlined, or all capitals font indicating “REQUEST FOR RULING — TYPE III SUPPORTING ORGANIZATION STATUS OF TRUST.”
2. An explanation of how the trust satisfied the requirements to be classified as a Type III supporting organization through the end of its 2008 taxable year (including by meeting the significant voice responsiveness test for periods after August 16, 2007), and how it expects to continue to satisfy such requirements for subsequent years. For this purpose, the trust may rely on the proposed regulations.
3. With respect to the significant voice test, documentation that establishes that the trust satisfied the requirements of the test. For example, such documentation may include minutes or other documentation of meetings, telephone calls, conversations, e-mail exchanges, and policies that demonstrate a close and continuous working relationship between the supported organization(s) and the supporting organization based upon which the supported organization(s) has a significant voice.

Like all requests for a ruling, the request must be signed under penalties of perjury

by the trust’s officer, director, trustee, or other authorized official. The complete request should be mailed to:

Internal Revenue Service  
Attention: EO Letter Rulings  
P.O. Box 27720  
McPherson Station  
Washington, D.C. 20038

There is no user fee for this ruling request. No deletions statement is required because determinations regarding foundation status are public pursuant to section 6104. The Checklist in Appendix B of Revenue Procedure 2010-4 is not required.

##### *B. Claims for refunds of tax paid under section 4940 for taxable years beginning on or after January 1, 2008*

A trust may request a refund of tax paid under section 4940 for its first taxable year beginning on or after January 1, 2008, by filing a Form 843 that meets the following requirements:

1. The Form 843 must be accompanied by a copy of the ruling received from the IRS under the procedures set forth in this announcement.
2. The Form 843 must be submitted by mail or delivered to:

Internal Revenue Service Center  
P.O. Box 9941  
MS: 6710  
Ogden, Utah 84409-0074
3. The Form 843 must be completed as follows:
  - a. Write “Announcement 2010-19 status change” at the top of Form 843,
  - b. On line 6, check the box for “990-PF,” and
  - c. On line 7, write “Announcement 2010-19 status change by Type III supporting organization.”

##### *C. 2008 Form 990*

Any trust that receives a ruling that it is a Type III supporting organization under the procedures set forth in this announcement must file a Form 990 for its first taxable year beginning on or after January 1,

2008, within 120 days of the date of the ruling letter. The top of page 1 of the Form 990 should bear the following legend in bold, underlined, or all capitals font: “ANNOUNCEMENT 2010-19.”

##### *D. Section 507 terminations of private foundation status*

Charitable trusts that became private foundations after August 16, 2007, may terminate their private foundation status under section 507(b)(1)(B) by operating as Type III supporting organizations. Under existing law and procedures, a private foundation may terminate its private foundation status under section 507(b)(1)(B) by: (1) operating as an organization described in paragraph (1), (2), or (3) of section 509(a) for a continuous period of at least 60 calendar months beginning with the first day of any taxable year that begins after December 31, 1969; (2) notifying the Secretary before the commencement of the 60-month period that it is terminating its private foundation status; and (3) establishing that it in fact operated as an organization described in section 509(a)(1), (2), or (3) to the satisfaction of the Secretary immediately after the expiration of the 60-month period.

Notifications of termination should be labeled “TERMINATION NOTIFICATION” at the top of the first page of the cover letter, and should be submitted to the Determinations office in Cincinnati. The letter and accompanying documentation should be mailed to—

Internal Revenue Service  
P.O. Box 2508  
Rm. 4024  
Cincinnati, OH 45201

For further information regarding this announcement, contact Mike Repass of the Exempt Organizations, Tax Exempt and Government Entities Division at (202) 283-8924 (not a toll-free call).

# 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 2010–1 through 2010–14

### Announcements:

2010-1, 2010-4 I.R.B. 333  
2010-2, 2010-2 I.R.B. 271  
2010-3, 2010-4 I.R.B. 333  
2010-4, 2010-5 I.R.B. 384  
2010-5, 2010-6 I.R.B. 402  
2010-6, 2010-6 I.R.B. 402  
2010-7, 2010-6 I.R.B. 403  
2010-8, 2010-7 I.R.B. 408  
2010-9, 2010-7 I.R.B. 408  
2010-10, 2010-7 I.R.B. 410  
2010-11, 2010-10 I.R.B. 438  
2010-12, 2010-7 I.R.B. 410  
2010-13, 2010-8 I.R.B. 426  
2010-14, 2010-11 I.R.B. 449  
2010-15, 2010-10 I.R.B. 438  
2010-16, 2010-11 I.R.B. 450  
2010-17, 2010-13 I.R.B. 515  
2010-18, 2010-12 I.R.B. 460  
2010-19, 2010-14 I.R.B. 529

### Notices:

2010-1, 2010-2 I.R.B. 251  
2010-2, 2010-2 I.R.B. 251  
2010-3, 2010-2 I.R.B. 253  
2010-4, 2010-2 I.R.B. 253  
2010-5, 2010-2 I.R.B. 256  
2010-6, 2010-3 I.R.B. 275  
2010-7, 2010-3 I.R.B. 296  
2010-8, 2010-3 I.R.B. 297  
2010-9, 2010-3 I.R.B. 298  
2010-10, 2010-3 I.R.B. 299  
2010-11, 2010-4 I.R.B. 326  
2010-12, 2010-4 I.R.B. 326  
2010-13, 2010-4 I.R.B. 327  
2010-14, 2010-5 I.R.B. 344  
2010-15, 2010-6 I.R.B. 390  
2010-16, 2010-6 I.R.B. 396  
2010-17, 2010-14 I.R.B. 519  
2010-18, 2010-14 I.R.B. 525  
2010-19, 2010-7 I.R.B. 404  
2010-20, 2010-8 I.R.B. 422  
2010-21, 2010-12 I.R.B. 451  
2010-22, 2010-10 I.R.B. 435  
2010-23, 2010-11 I.R.B. 441  
2010-24, 2010-12 I.R.B. 452  
2010-25, 2010-14 I.R.B. 527  
2010-26, 2010-14 I.R.B. 527

### Proposed Regulations:

REG-132232-08, 2010-6 I.R.B. 401  
REG-137036-08, 2010-6 I.R.B. 398

### Proposed Regulations— Continued:

REG-101896-09, 2010-5 I.R.B. 347  
REG-117501-09, 2010-11 I.R.B. 442  
REG-131028-09, 2010-4 I.R.B. 332  
REG-148681-09, 2010-11 I.R.B. 443

### Revenue Procedures:

2010-1, 2010-1 I.R.B. 1  
2010-2, 2010-1 I.R.B. 90  
2010-3, 2010-1 I.R.B. 110  
2010-4, 2010-1 I.R.B. 122  
2010-5, 2010-1 I.R.B. 165  
2010-6, 2010-1 I.R.B. 193  
2010-7, 2010-1 I.R.B. 231  
2010-8, 2010-1 I.R.B. 234  
2010-9, 2010-2 I.R.B. 258  
2010-10, 2010-3 I.R.B. 300  
2010-11, 2010-2 I.R.B. 269  
2010-12, 2010-3 I.R.B. 302  
2010-13, 2010-4 I.R.B. 329  
2010-14, 2010-12 I.R.B. 456  
2010-15, 2010-7 I.R.B. 404  
2010-17, 2010-8 I.R.B. 425  
2010-18, 2010-9 I.R.B. 451  
2010-19, 2010-13 I.R.B. 469  
2010-20, 2010-14 I.R.B. 528  
2010-21, 2010-13 I.R.B. 473

### Revenue Rulings:

2010-1, 2010-2 I.R.B. 248  
2010-2, 2010-3 I.R.B. 272  
2010-3, 2010-3 I.R.B. 272  
2010-4, 2010-4 I.R.B. 309  
2010-5, 2010-4 I.R.B. 312  
2010-6, 2010-6 I.R.B. 387  
2010-7, 2010-8 I.R.B. 417  
2010-8, 2010-10 I.R.B. 432  
2010-9, 2010-13 I.R.B. 461  
2010-10, 2010-13 I.R.B. 461  
2010-11, 2010-14 I.R.B. 516

### Treasury Decisions:

9474, 2010-4 I.R.B. 322  
9475, 2010-4 I.R.B. 304  
9476, 2010-5 I.R.B. 336  
9477, 2010-6 I.R.B. 385  
9478, 2010-4 I.R.B. 315  
9480, 2010-11 I.R.B. 439

<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2009–27 through 2009–52 is in Internal Revenue Bulletin 2009–52, dated December 28, 2009.

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

Bulletins 2010–1 through 2010–14

### Announcements:

#### 2009-51

Supplemented and superseded by  
Ann. 2010-16, 2010-11 I.R.B. 450

#### 2010-4

Corrected by  
Ann. 2010-10, 2010-7 I.R.B. 410

### Notices:

#### 2005-88

Superseded by  
Notice 2010-13, 2010-4 I.R.B. 327

#### 2008-41

Modified by  
Notice 2010-7, 2010-3 I.R.B. 296

#### 2008-55

Modified by  
Notice 2010-3, 2010-2 I.R.B. 253

#### 2008-88

Modified by  
Notice 2010-7, 2010-3 I.R.B. 296

#### 2008-113

Modified by  
Notice 2010-6, 2010-3 I.R.B. 275

#### 2008-115

Modified by  
Notice 2010-6, 2010-3 I.R.B. 275

#### 2009-11

Amplified by  
Notice 2010-9, 2010-3 I.R.B. 298

#### 2009-13

Obsoleted by  
T.D. 9478, 2010-4 I.R.B. 315  
REG-131028-09, 2010-4 I.R.B. 332

#### 2009-35

Supplemented by  
Notice 2010-17, 2010-14 I.R.B. 519

#### 2009-38

Amplified and superseded by  
Notice 2010-2, 2010-2 I.R.B. 251

#### 2009-62

Modified and supplemented by  
Notice 2010-23, 2010-11 I.R.B. 441

### Proposed Regulations:

#### REG-127270-06

Hearing scheduled by  
Ann. 2010-6, 2010-6 I.R.B. 402

### Revenue Procedures:

#### 80-59

Modified and superseded by  
Rev. Proc. 2010-11, 2010-2 I.R.B. 269

#### 87-35

Obsoleted by  
Rev. Proc. 2010-3, 2010-1 I.R.B. 110

#### 2008-14

Updated by  
Rev. Proc. 2010-15, 2010-7 I.R.B. 404

#### 2009-1

Superseded by  
Rev. Proc. 2010-1, 2010-1 I.R.B. 1

#### 2009-2

Superseded by  
Rev. Proc. 2010-2, 2010-1 I.R.B. 90

#### 2009-3

Superseded by  
Rev. Proc. 2010-3, 2010-1 I.R.B. 110

#### 2009-4

Superseded by  
Rev. Proc. 2010-4, 2010-1 I.R.B. 122

#### 2009-5

Superseded by  
Rev. Proc. 2010-5, 2010-1 I.R.B. 165

#### 2009-6

Superseded by  
Rev. Proc. 2010-6, 2010-1 I.R.B. 193

#### 2009-7

Superseded by  
Rev. Proc. 2010-7, 2010-1 I.R.B. 231

#### 2009-8

Superseded by  
Rev. Proc. 2010-8, 2010-1 I.R.B. 234

#### 2009-9

Superseded by  
Rev. Proc. 2010-9, 2010-2 I.R.B. 338

#### 2009-15

Amplified and superseded by  
Rev. Proc. 2010-12, 2010-3 I.R.B. 302

#### 2009-17

Superseded by  
Rev. Proc. 2010-21, 2010-13 I.R.B. 473

#### 2009-25

Superseded by  
Rev. Proc. 2010-3, 2010-1 I.R.B. 110

#### 2009-55

Corrected by  
Ann. 2010-11, 2010-10 I.R.B. 438

### Revenue Procedures— Continued:

#### 2010-1

Corrected by  
Ann. 2010-5, 2010-6 I.R.B. 402

### Revenue Rulings:

#### 67-436

Obsoleted by  
REG-101896-09, 2010-5 I.R.B. 347

#### 92-19

Supplemented in part by  
Rev. Rul. 2010-7, 2010-8 I.R.B. 417

#### 2008-52

Supplemented and superseded by  
Rev. Rul. 2010-2, 2010-3 I.R.B. 272

### Treasury Decisions:

#### 9424

Corrected by  
Ann. 2010-18, 2010-12 I.R.B. 460

#### 9443

Corrected by  
Ann. 2010-8, 2010-7 I.R.B. 408

#### 9458

Corrected by  
Ann. 2010-7, 2010-6 I.R.B. 403

<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2009–27 through 2009–52 is in Internal Revenue Bulletin 2009–52, dated December 28, 2009.



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