Internal Revenue bulletin

Bulletin No. 2000–36
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HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2000–41, page 248.
Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for September 2000.

T.D. 8896, page 249.
REG–103735–00; REG–110311–98;
REG–103736–00, page 258.
Proposed and temporary regulations modify the disclosure, registration, and list maintenance requirements relating to tax shelters under sections 6011, 6111, and 6112 of the Code.

T.D. 8897, page 234.
Final regulations under section 263A of the Code provide guidance relating to the application of the uniform capitalization rules to property produced in the trade or business of farming. Notices 87–76, 88–24, and 88–86 (section V) obsolete.

Notice 2000–44, page 255.
Tax avoidance using artificially high basis. Taxpayers and their representatives are alerted that the purported losses arising from certain types of transactions are not properly allowable for federal income tax purposes. Also, the Service may impose penalties on participants in these transactions or, as applicable, on persons who participate in promoting or reporting these transactions.

Notice 2000–45, page 256.
Capitalization; business expenses; farmers. This notice provides guidance to taxpayers engaged in the trade or business of farming in determining whether a plant has a preproductive period in excess of 2 years for purposes of section 263A(d) of the Code.

Rev. Proc. 2000–33, page 257.
Acquisition of corporate debt. This procedure provides guidance on whether an acquisition of corporate debt by a beneficiary of the decedent creditor's estate or by a beneficiary of a revocable trust that became irrevocable upon the creditor's death is a direct acquisition within the meaning of section 1.108–2(b) of the regulations.

EMPLOYEE PLANS

Announcement 2000–77, page 260.
This announcement provides guidance on the types of plan amendments that may be needed to obtain a favorable determination letter for volume submitter plan applications.

ADMINISTRATIVE

T.D. 8896, page 249.
REG–103735–00; REG–110311–98;
REG–103736–00, page 258.
Proposed and temporary regulations modify the disclosure, registration, and list maintenance requirements relating to tax shelters under sections 6011, 6111, and 6112 of the Code.

Announcement 2000–76, page 260.
The Service expects to post planned changes to the 2001 Forms W-2 and W-3 on the IRS web site by mid-October 2000. Earlier drafts are being modified in response to public comments.

Finding Lists begin on page ii.
Announcement of Disbarments and Suspensions begins on page 262.
Index for August begins on page iv.

Department of the Treasury
Internal Revenue Service

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 consolidated 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 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 first 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 first Bulletin of the succeeding semiannual period, respectively.

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2000. See Rev. Rul. 2000–41, page 248.

Section 61.—Gross Income

26 CFR 1.61–12: Income from discharge of indebtedness.

This revenue procedure provides guidance on whether an acquisition of corporate debt by a beneficiary of the decedent creditor's estate or by a beneficiary of a revocable trust that became irrevocable upon the creditor's death is a direct acquisition within the meaning of § 1.108–2(b) of the Regulations. See §§ 1.61–12(a), 1.108–2(a) and 1.108–2(b) regarding income from the discharge of indebtedness by a person related to the debtor, and certain exceptions that may be provided by Revenue Procedure or other published guidance.

See Rev. Proc. 2000–33, page 257.

Section 108.—Income From Discharge of Indebtedness

26 CFR 1.108–2: Acquisition of indebtedness by a person related to the debtor.

This revenue procedure provides guidance on whether an acquisition of corporate debt by a beneficiary of the decedent creditor's estate or by a beneficiary of a revocable trust that became irrevocable upon the creditor's death is a direct acquisition within the meaning of § 1.108–2(b) of the regulations. See §§ 1.61–12(a), 1.108–2(a) and 1.108–2(b) regarding income from the discharge of indebtedness by a person related to the debtor, and certain exceptions that may be provided by Revenue Procedure or other published guidance.

See Rev. Proc. 2000–33, page 257.

Section 263A.—Capitalization and Inclusion in Inventory Costs of Certain Expenses

26 CFR 1.263A–4: Rules for property produced in a farming business.

T.D. 8897

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Rules for Property Produced in a Farming Business

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the application of section 263A of the Internal Revenue Code to property produced in the trade or business of farming. These regulations also provide guidance regarding the election available to certain taxpayers to not have section 263A apply to any plant produced by the electing taxpayers in each taxpayer's farming trade or business. These regulations affect taxpayers engaged in the trade or business of farming.

DATES: *Effective Date*: These regulations are effective August 21, 2000.

Applicability Date: For dates of applicability, see §1.263A–4(f) of these regulations.

FOR FURTHER INFORMATION CONTACT: Grant D. Anderson, (202) 622-4970 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1987, the IRS published in the **Federal Register** a notice of proposed rulemaking (LR–168–86, 1987–1 C.B. 808 [52 F.R. 10118]) by cross reference to temporary regulations published the same day (T.D. 8131, 1987–1 C.B. 98 [52 F.R. 10052]). Amendments to the notice of proposed rulemaking and temporary regulations were published in the **Federal Register** on August 7, 1987, by a notice of proposed rulemaking (LR–37–87, 1987–2 C.B. 1054 [52 F.R. 29391]) that cross referenced to temporary regulations published the same day (T.D. 8148, 1987–2 C.B. 70 [52 F.R. 29375]). Notice 88–24 (1988–1 C.B. 491) provided that forthcoming regulations would modify the proposed regulations and the regulations under §1.471–6. Notice 88–86 (1988–2 C.B. 401) provided that forthcoming regulations would clarify the definition of *members of family* for purposes of the election out of section 263A. In addition, Notice 88–86 provided that forthcoming regulations would provide that certain taxpayers could elect to use the simplified production method for property used in the trade or business of farming. On August 5, 1994, the temporary regulations relating to property produced in a farming business were reissued and published in the **Federal Register** (T.D. 8559, 1994–2 C.B. 32 [59 F.R. 39958]). On August 22, 1997, proposed and revised temporary regulations were issued and published in the **Federal Register** (T.D. 8729, 1997–2 C.B. 35 [62 F.R. 44542]). A public hearing was held on November 19, 1997.

Written comments responding to the notice of proposed rulemaking were received. After consideration of all the public comments, the regulations are adopted as revised by this Treasury decision and the corresponding temporary regulations are withdrawn.

Explanation of Provisions and Summary of Comments

Section 263A provides uniform capitalization rules that govern the treatment of costs incurred in the production of property or the acquisition of property for resale. Section 263A generally requires taxpayers to capitalize the direct costs and an allocable portion of indirect costs of producing property in a farming business (including both plants and animals). However, taxpayers that are neither required to use an accrual method by section 447 nor prohibited by section 448(a)(3) from using the cash receipts and disbursements method (qualified taxpayers) are eligible for two exceptions provided in section 263A(d). First, under section 263A(d)(1), section 263A does not apply to a qualified taxpayer's cost of producing plants with a preproductive period of two years or less or animals in a farming business. Second, pursuant to section 263A(d)(3), a qualified taxpayer may elect to have section 263A not apply to the cost of producing plants in a farming business.

Property Produced in a Farming Business

Consistent with sections 263A(d)(1)(A) and 263A(d)(3)(A), the proposed regulations provided that the special rules of section 263A(d) apply only to property produced by a taxpayer in a farming business. The term *farming business* means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than 6 years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals.

The proposed regulations explained that taxpayers engaged in contract harvesting, reselling of plants or animals that are not produced by the taxpayer, and processing that is not incident to growing, raising, or harvesting of agricultural or horticultural commodities, are not producing property in a farming business. Several commentators requested that the final regulations permit some of these taxpayers to use the special rules of section 263A(d). However, sections 263A(d)(1)(A) and 263A(d)(3)(A) limit the special rules of section 263A(d) to property *produced* by the taxpayer in a farming business. As discussed below, the IRS and Treasury Department continue to believe that taxpayers that merely contract harvest, resell plants or animals that they do not raise or grow, or engage in processing agricultural or horticultural commodities that is not incident to growing, raising, or harvesting of these commodities, are not producing property in a farming business and therefore do not meet this requirement. Accordingly, the final regulations do not adopt these suggestions.

The proposed regulations provided that, for purposes of the definition of farming business, harvesting, does not include contract harvesting of an agricultural or horticultural commodity that is not grown or raised by the taxpayer. Some commentators were concerned that this language may be used to disqualify otherwise legitimate farmers who make arrangements with their neighbors to harvest each others crops. First, the IRS and Treasury Department believe that whether and to what extent a taxpayer is engaged in a farming business is to be determined based on all the facts and circumstances. No inference is intended that merely because a taxpayer engages in nonfarm activities, such as contract harvesting, in addition to farm activities, that such taxpayer is not engaged in a farming business. Further, the exception under section 263A(d) is relevant only to taxpayers whose costs are otherwise subject to capitalization under section 263A. Thus, for example, while taxpayers that grow plants are generally subject to section 263A with respect to that production activity, taxpayers that contract harvest horticultural commodities are not, because they are engaged in a service activity. A taxpayer that harvests crops grown by the taxpayer and contract harvests crops grown by another is subject to section 263A (and the exception contained in section 263A(d)), but only for the costs of harvesting its own crops. Accordingly, the final regulations do not adopt the commentators' suggestion to include contract harvesting in the special rules of section 263A(d).

Similarly, the proposed regulations provided that the special rules of section 263A(d) do not apply to a taxpayer that merely buys and resells plants or animals grown or raised by another taxpayer. The preamble to the proposed regulations indicated that in evaluating whether the taxpayer is engaged in the production, or merely the resale, of plants or animals, it is anticipated that consideration will be given to factors including: the length of time between the taxpayer's acquisition of a plant or animal and the time the plant or animal is made available for sale to the taxpayer's customers, and, in the case of plants, whether plants acquired by the taxpayer are planted in the ground or kept in temporary containers.

Many commentators expressed concern that the proposed regulations' concept of "merely buying and reselling plants grown by another" could be interpreted to mean that only taxpayers growing a plant from seed would be regarded as engaged in a farming business. For example, the commentators were concerned that a taxpayer that buys a partially grown plant, grows the plant to a larger size, and then sells the plant would not be engaged in a farming business. The final regulations clarify that a taxpayer is engaged in the production of property in a farming business, rather than the mere resale of plants or animals, if the plant or animal is held for further cultivation and development prior to sale. In addition, the final regulations include an example illustrating that a taxpayer that buys plants, grows them, and sells them, is producing property in a farming business; whereas a taxpayer that buys plants and, without further cultivation and development, resells them is not producing property in a farming business. The example also illustrates that a taxpayer engaged in both farming activities and resale activities is not required to capitalize costs under section 263A with respect to the resale activities if the taxpayer has average annual gross receipts of less than $10 million. See also, Ann. 97–120 (1997–50 I.R.B. 61) (confirming that nursery growers using the farming exception may deduct the costs of young plants purchased for further development and cultivation prior to sale as well as the costs of growing the plants).

Some commentators suggested that the final regulations disregard whether a plant is kept in its container out of concern that taxpayers who grow plants in containers would not be considered to be producing property in a farming business. The IRS and Treasury Department continue to believe that this is a factor to be considered in addition to all the other facts and circumstances. Accordingly, the final regulations retain this factor. However, the final regulations have been clarified to explain that a plant that is *grown* by a taxpayer in a container is regarded as a plant produced in a farming business.

One commentator requested that the value added to a plant or animal by a taxpayer also be a factor in determining whether a taxpayer is engaged in the production, or the mere resale, of plants or animals. The final regulations provide that a taxpayer's addition of value to plants or animals through agricultural or horticultural processes is a factor to be considered in evaluating whether a taxpayer is producing property in a farming business.

Some commentators requested that the list of factors contained in the preamble be included in the regulations. In response to these comments, the final regulations contain a list of factors, modified as discussed above, to assist in the determination of whether a plant or animal is held for further cultivation and development prior to sale or merely held for resale.

One commentator expressed concern that under the proposed regulations a farming business only includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural commodities. This commentator also suggested that farmers are engaging in processing activities as the result of new technology and changes in the market for agricultural or horticultural products. The IRS and Treasury Department believe that processing activities that are not normally incident to the growing, raising, or harvesting of agricultural or horticultural products, such as the canning of an agricultural product or the combination of an agricultural product with other ingredients to produce a different edible item, are not farming activities. Accordingly, the final regulations, like the proposed regulations, include in the definition of farming business only those processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products, such as the washing, inspecting, and packaging of those products.

Exceptions to Section 263A for Certain Property

Taxpayers generally must capitalize direct costs and an allocable portion of indirect costs of producing all plants (without regard to the length of the preproductive period) and animals. Qualified taxpayers, however, are eligible for an exception to this general rule. Under this exception, qualified taxpayers are not required to capitalize under section 263A the costs of producing plants that have a preproductive period of 2 years or less or with respect to animals. Thus, under this exception, qualified taxpayers are required to capitalize only those costs of producing plants that have a preproductive period in excess of 2 years.

A few commentators suggested that, for purposes of determining the application of section 263A, the preproductive period of a plant should be determined with reference to the length of time a particular taxpayer grows a plant rather than with reference to how long it takes the plant to reach a productive stage. The commentators suggested this method would, in essence, supplant the nationwide weighted average preproductive period used for plants grown in commercial quantities in the United States and the reasonable estimate of the preproductive period used for all other plants. For example, a qualified taxpayer grows bushes that have a preproductive period of 3 years and 3 months. If the taxpayer purchases and plants the bushes when they are 2 years old, the commentators suggest that the preproductive period of the bushes should be regarded as 2 years or less (and the taxpayer would, therefore, not be required to capitalize the costs associated with growing the bushes) because this taxpayer grows the bushes for only 15 months before the bushes become productive in marketable quantities. If, however, another qualified taxpayer purchased the same type of bushes when the bushes were 14 months old and grew them for 2 years and 1 month, the preproductive period of the bushes would be regarded as in excess of 2 years, and this taxpayer would be required to capitalize the costs of growing the bushes.

The final regulations do not adopt this recommendation. First, the statute requires that the preproductive period of a plant grown in commercial quantities in the United States be based on the nationwide weighted average preproductive period of the plant. *See Pelaez and Sons, Inc., et al. v. Commissioner*, 114 T.C. No. 28 (No. 18049–97 May 30, 2000). Further, the IRS and Treasury Department continue to believe that, for purposes of determining whether section 263A applies, the preproductive period of a plant not grown in commercial quantities in the United States also should be determined on a plant-by-plant basis rather than on a taxpayer-by-taxpayer basis.

In the case of a plant that is not produced in commercial quantities in the United States, the proposed regulations provided that, at or before the time the seed or plant is acquired or planted, the taxpayer is required to reasonably estimate whether the plant has a preproductive period in excess of 2 years. One commentator suggested that the regulations provide that if the United States Department of Agriculture (USDA) or a state department of agriculture certifies that a plant is not grown in commercial quantities in the United States, the plant will be deemed to have a preproductive period of 2 years or less. The effect of this suggestion would be to provide an exemption from section 263A for all qualified taxpayers growing plants that are not grown in commercial quantities in the United States. The IRS and Treasury Department believe that such a rule would be inconsistent with the statutory language of section 263A. Accordingly, the final regulations do not adopt this suggestion.

The proposed regulations provided that, for purposes of determining whether a plant has a preproductive period in excess of 2 years, in the case of a plant grown in commercial quantities in the United States, the nationwide weighted average preproductive period of such plant is used. One commentator requested that a list of plants with nationwide weighted average preproductive periods in excess of 2 years be published and kept current as needed. Notice 2000–45, page 256, issued contemporaneously with the publication of these final regulations, provides a list of plants grown in commercial quantities in the United States that have a nationwide weighted average preproductive period in excess of 2 years. Notice 2000–45 will be modified and superseded as needed.

Tax shelters, within the meaning of section 448(a)(3), are not qualified taxpayers and are therefore not eligible for the special rules of section 263A(d). A tax shelter, for purposes of section 448(a)(3), means a farming business that is a farming syndicate as defined under section 464(c) or any partnership, entity, plan or arrangement that is a tax shelter within the meaning of section 6662(d)(2)(C)(iii) (that is, its principal purpose is to avoid or evade Federal income tax). See §1.448–1T(b)(1)(iii). There is a presumption under section 448 that marketed arrangements, in which persons carry on farming activities using the services of a common managerial or administrative service, will fall within the meaning of a tax shelter if a substantial portion of farming expenses are prepaid with borrowed funds. See §1.448–1T(b)(4). The proposed regulations repeated the text of §1.448–1T(b)(1)(iii) and (4) to explain which farming businesses are tax shelters.

A commentator suggested that the marketed arrangement presumption set forth in §1.448–1T(b)(4) and the proposed regulations is too broad in scope and should be modified. The commentator is concerned that this provision of the regulations will cause taxpayers participating in farming cooperatives to be treated as tax shelters and, therefore, require them to use an accrual method of accounting and to capitalize the direct costs and an allocable portion of indirect costs of producing all plants and animals. The commentator explained that such a result is unwarranted with respect to individual farmers and farming businesses that join together to form farming cooperatives for non-tax reasons, such as to obtain supplies at lower prices and have a steady market for their farm products.

The IRS and Treasury Department believe that the marketed arrangement presumption is necessary to preclude taxpayers from investing in farming operations in order to generate losses, often without making economic outlays, that may be used to shelter income from other sources. However, the IRS and Treasury Department do not believe that the marketed arrangement presumption, as described in the temporary Income Tax Regulations under section 448 and the proposed section 263A regulations, would cause a taxpayer producing property in a farming business to be regarded as a tax shelter merely because the taxpayer joined a farming cooperative. Therefore, the marketed arrangement presumption is not modified in the final regulations.

Preparatory and Preproductive Period Costs

The IRS and Treasury Department believe that, in general, section 263A does not change the rules under section 263 regarding the need to capitalize preparatory costs (that is, costs incurred prior to raising agricultural or horticultural commodities or that otherwise enable a farmer to begin the farming process). Thus, the proposed regulations clarified that, as under prior law, taxpayers generally must capitalize preparatory expenditures (for example, the cost of seeds, seedlings, and animals; clearing, leveling and grading land; drilling and equipping wells; irrigation systems; budding trees, *etc*.). However, because section 263A requires the capitalization of certain additional costs, the amount of preparatory expenditures capitalized to property that is subject to section 263A may be greater than under prior law. By requiring the capitalization of all the direct costs and the allocable portion of indirect costs incurred during the preparatory period, section 263A ensures that the income from farming will be appropriately matched with all of the costs of producing property in a farming business.

Section 263A expanded the circumstances under which costs that were once termed *developmental expenditures* or *cultural practices expenditures* (that is, costs incurred by a taxpayer so that the growing process can continue in the desired manner) must be capitalized. The proposed regulations clarified that these costs are included in the category of preproductive period costs that are required to be capitalized under section 263A. Thus, the proposed regulations provided that all appropriate costs incurred during the preproductive period of property subject to section 263A must be capitalized, including the costs of certain soil and water conservation expenditures and fertilizing incurred during the preproductive period.

One commentator requested that expenditures for soil and water conservation, described in section 175, and fertilizer, described in section 180, be excepted from capitalization under section 263A. However, the legislative history of former section 447(b) indicates that Congress believed that soil and water conservation expenditures incurred during the preproductive period were required to be capitalized into the basis of the plants produced. See H.R. Rep. No. 658, 94th Cong., 1st Sess. 95 (1975), 1976–3 (Vol. 2) C.B. 787. See also, Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, H.R. Rep. No. 10612, 94th Cong., 2nd Sess. 55 (1976), 1976–3 (Vol. 2) C.B. 67. In addition, the legislative history to section 464 indicates that Congress believed that the costs of fertilizer incurred during the preproductive period was capitalized under former section 278. See Senate Report No. 938, 94th Cong., 2nd Sess. 62 (1976), 1976–3 (Vol. 3) C.B. 100. See also, Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, H.R. Rep. No. 10612, 94th Cong., 2nd Sess. 49 (1976), 1976–3 (Vol. 2) C.B. 61. Because section 263A was intended to continue the principles of sections 447 and 278, the IRS and Treasury Department believe that expenditures for soil and water conservation and fertilizer incurred during the preproductive period are costs of producing those plants. Further, the IRS and Treasury Department believe that providing a single rule regarding when expenditures for soil and water conservation and fertilizer incurred during the preproductive period must be capitalized is consistent with the intent of Congress to provide uniform capitalization rules. Accordingly, the final regulations retain the proposed regulations' provision that these costs incurred during the preproductive period are included in the category of costs that are required to be capitalized under section 263A. However, the IRS and Treasury Department do not believe that Congress intended to require capitalization of expenditures for soil and water conservation deductible under section 175 and fertilizer deductible under section 180 that are not incurred during the preproductive period. Accordingly, the final regulations clarify that these expenditures are not subject to capitalization under section 263A except to the extent they are required to be capitalized as a preproductive period cost.

Capitalization Period

Preproductive period costs (for example, irrigating, fertilizing, real estate taxes) are capitalized during the actual preproductive period of a plant or animal. A taxpayer that grows a plant that will have more than 1 crop or yield is engaged in the production of two types of property, the plant and the crop or yield of the plant (for example, the orange tree and the orange). The proposed regulations clarified the capitalization period for plants that will have more than 1 crop or yield, for crops or yields of plants that will have more than 1 crop or yield, and for other plants.

The proposed regulations provided that the preproductive period of a plant generally begins when a taxpayer first incurs costs with respect to the plant, for example, when the plant is acquired or the seed is planted. In the case of crops or yields of a plant that has more than 1 crop or yield, the preproductive period of the crop or yield begins when the plant has become productive in marketable quantities and the crop or yield first appears, whether in the form of a sprout, bloom, blossom, bud, *etc*.

One commentator suggested that the preproductive period for crops or yields that require several years of growth (for example, biennial crops) begins upon first appearance of the crop in the year the crop actually develops. For example, a biennial plant produces fruit buds in the first year, but the buds do not develop until the second year. In the second year, the plant produces blossoms, which subsequently grow into an edible food product that is harvested and sold in that year. However, if weather conditions are harsh, the buds produced in the first year may not blossom and develop in the second year. The commentator suggests that the preproductive period begin not when the buds first appear in the first year but when the blossoms appear in the second year as that is the first sign of actual development. The IRS and Treasury Department are concerned that the suggested rule would be difficult to apply because a taxpayer may not know in any case whether the appearance of a crop will actually develop. Accordingly, the final regulations do not adopt this suggestion.

In the case of a plant that will have more than 1 crop or yield, the preproductive period of the plant ends when the plant becomes productive in marketable quantities. In the case of the crop or yield of a plant that has more than 1 crop or yield that has become productive in marketable quantities, the preproductive period of the crop or yield ends when the crop or yield is disposed of. Finally, in the case of other plants, the preproductive period ends when the plant is disposed of.

One commentator requested that the proper tax treatment of field costs (such as the costs of irrigating, fertilizing, *etc.*) that are incurred after a crop or yield is harvested but before the crop or yield is disposed of, which do not benefit and are unrelated to the crop or yield that has been harvested, be clarified. The commentator is concerned that the proposed regulations subject such field costs to capitalization under the general principles of section 263A. The IRS and Treasury Department agree with the commentator's concerns. Accordingly, the final regulations provide that field costs incurred after a crop or yield is harvested but before the crop or yield is disposed of do not have to be capitalized to the harvested crop or yield because such costs relate to the plant or a future crop or yield rather than to the harvested crop or yield.

One commentator requested that the definition of when a plant that will have more than 1 crop or yield becomes productive in marketable quantities be clarified. Under the proposed regulations such a plant becomes productive in marketable quantities when it is (or would be considered) placed in service for purposes of section 168 (without regard to the applicable convention). The commentator noted that some taxpayers regard a plant as being placed in service for purposes of depreciation at the time the preproductive period ends for purposes of section 263A. The commentator requested that the final regulations adopt a rule that provides more guidance with respect to the end of the preproductive period.

The IRS and Treasury Department agree with the commentator's concerns. Accordingly, the final regulations provide that a plant becomes productive in marketable quantities once a crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course of the taxpayer's business. Factors that are relevant in determining whether the crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course include: whether a crop or yield is harvested that is more than *de minimis*, although it may be less than expected at the maximum bearing stage, based on a comparison of the quantities per acre harvested in the year in question to the quantities per acre expected to be harvested when the plant reaches full maturity; and whether the sales proceeds exceed the costs of harvest and make a reasonable contribution to an allocable share of farm expenses.

Election not to Capitalize Costs

Qualified taxpayers may elect not to capitalize under section 263A the costs of producing certain plants even though such plants have a preproductive period in excess of 2 years and would otherwise be subject to the capitalization requirements of section 263A. Taxpayers making this election may continue to deduct (subject to other limitations of the Internal Revenue Code) the costs that were deductible under the rules in effect before the enactment of section 263A.

A taxpayer may make this election automatically on its original federal income tax return for the first taxable year in which the taxpayer would otherwise be required to capitalize costs under section 263A. The final regulations provide that if a taxpayer does not make this election in this first taxable year, the taxpayer may make this election by filing Form 3115, "Application for Change in Accounting Method," using the appropriate procedures that govern the filing of the Form 3115.

A taxpayer and any person related to the taxpayer (including a member of the taxpayer's family) electing to not capitalize costs under section 263A for certain plants are required to use the alternative depreciation system of section 168(g)(2) for any property used predominantly in a farming business that is placed in service in a taxable year for which the election is in effect. In Notice 88–86, the IRS noted that commentators had suggested that guidance be provided clarifying the definition of members of a family. This guidance was provided in the proposed regulations. One commentator suggested that this proposed guidance be modified so that elections made by some family members do not bind other family members. The statutory language provides that an election affects family members and defines family members for this purpose. Thus, the IRS and Treasury Department believe that Congress's intent was to bind all family members when one member makes an election not to capitalize costs under section 263A. Accordingly, the final regulations do not adopt the suggestion.

Casualty Loss Exception

Section 263A(d)(2) provides an exception from capitalization under section 263A for costs incurred with respect to plants that are replacing certain plants that were lost by reason of certain casualties. The proposed regulations clarified that this exception does not apply to preparatory expenditures or the costs of capital assets. In addition, the regulations clarified that the casualty loss exception applies whether the plants are replanted on the same parcel of land as the plants destroyed by casualty or a parcel of land of the same acreage in the United States. The regulations additionally clarified that the exception applies to all plants replanted on such acreage, even if the plants are replanted in greater density than the plants destroyed by the casualty.

One commentator requested that the casualty loss exception be expanded to allow a current deduction for the expenditures incurred for replacing capital assets. The final regulations do not adopt this recommendation. Prior to the enactment of section 263A, preparatory expenditures as well as acquisition costs incurred during the preparatory period were generally capitalized under section 263. Also, prior to the enactment of section 263A, certain preproductive period costs were capitalized under former sections 447(b) and 278. Former section 278(c) provided an exception to the capitalization of preproductive period costs where such costs were incurred to replant a grove, orchard, or vineyard which had been lost or destroyed by reason of a casualty. However, this exception only applied to preproductive period costs capitalized under former section 278 and did not apply to preparatory expenditures and acquisition costs capitalized under section 263. The special exception in section 263A(d)(2) was intended to be a continuation, as modified to include all plants bearing an edible crop for human consumption, of the exception found in former section 278(c). Nothing in the statute or legislative history of section 263A indicates an intention to expand the exception to include other costs, such as the costs of replacing capital assets, in addition to the preproductive period costs.

Unit Livestock Price Method

The unit livestock price method provides for the valuation of different classes of animals in inventory at a standard unit price for each animal within a class. A taxpayer who elects to use the unit livestock price method must apply it to all livestock raised, whether for sale or for draft, breeding, or dairy purposes. In Notice 88–24, the IRS indicated that forthcoming regulations would modify the rule contained in §1.471–6 and require that taxpayers adjust the unit prices upward, from time to time as specified by those regulations, to reflect increases in costs taxpayers experience in raising livestock. Contemporaneous with the section 263A proposed regulations published August 22, 1997, §1.471–6 was modified to require a taxpayer to annually reevaluate the unit livestock prices and adjust the prices upward to reflect increases in the costs of raising livestock. Under this regulation, the consent of the Commissioner is not required to make such upward adjustments; however, consent is required to make any other change in animal classification or unit prices.

One commentator expressed concern that if taxpayers are required to annually reevaluate their unit prices, they should be able to both increase and decrease the unit price to reflect all changes in the cost of raising livestock. In addition, this commentator suggested that the unit livestock price method should be modified to allow a taxpayer to remove from inventory animals that have been raised for use in the taxpayer's trade or business (such as a breeding cow) and depreciate the inventory value of the animal.

Although these comments are outside the scope of this regulation, the IRS and Treasury Department understand the commentator's concerns. In addition, the IRS and Treasury Department recognize a broader concern that the requirement to annually reevaluate unit prices may have eliminated much of the simplicity of the unit livestock price method, especially for farmers neither required to use an accrual method by section 447 nor prohibited from using the cash method by section 448(a)(3). Accordingly, the IRS and Treasury Department intend to study the unit livestock price method to determine whether the method may be made simpler to apply and will take into account the commentator's suggestions as part of this study.

Record Keeping Requirements

Pursuant to 26 U.S.C. 7805(f)(1), copies of the 1997 notice of proposed rulemaking and temporary rule were provided to the Chief Counsel for Advocacy of the Small Business Administration for comment. The Chief Counsel for Advocacy submitted comments requesting that the IRS conduct a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) (RFA) on how the notice of proposed rulemaking would affect recordkeeping burdens imposed on small business taxpayers engaged in a farming business.

Under the RFA, the IRS is required to prepare a regulatory flexibility analysis if the proposed rule imposes a collection of information requirement (including a recordkeeping requirement) on small entities and that requirement is likely to have a significant economic impact on a substantial number of small entities (5 U.S.C 603(a)). The RFA defines a *recordkeeping requirement* as "a requirement imposed by an agency on persons to maintain specified records" (5 U.S.C. 601(7) and (8)). Since neither the proposed nor final regulation contain a collection of information requirement (including a requirement that persons maintain specified records), an analysis is not required by the RFA.

Effective Date And Method Changes

The final regulations provide that, in the case of property that is not inventory in the hands of the taxpayer, the regulations are applicable to costs incurred after August 21, 2000, in taxable years ending after August 21, 2000. In the case of inventory property, the final regulations are applicable to taxable years beginning after August 21, 2000.

For property that is not inventory, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of these final regulations for costs incurred after August 21, 2000, provided the change is made for the first taxable year ending after August 21, 2000. For inventory property, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of these final regulations for the first taxable year beginning after August 21, 2000. To make such a change, a taxpayer must follow the automatic consent procedures in Rev. Proc. 99–49 (1999–52 I.R.B. 725) (see §601.601(d)(2) of this chapter), as modified by these regulations.

Effect on Other Documents

The following publications are obsolete as of August 22, 2000: Notice 87–76 (1987–2 C.B. 384); Notice 88–24 (1988–1 C.B. 491); and section V of Notice 88–86 (1988–2 C.B. 401).

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 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) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these final regulations are Jan Skelton and Richard C. Farley, Jr. previously of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of 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 continues to read in part as follows:

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

Par. 2. Section 1.162–12 is amended by revising the ninth sentence of paragraph (a) to read as follows:

§1.162–12 Expenses for farmers.

(a) * * * For rules regarding the capitalization of expenses of producing property in the trade or business of farming, see section 263A of the Internal Revenue Code and §1.263A–4. * * *

* * * * *

Par. 3. Section 1.263A–0 is amended by revising the introductory text and adding entries for §1.263A–4 to read as follows:

§1.263A–0 Outline of regulations under section 263A.

This section lists the paragraphs in §§1.263A–1 through 1.263A–4 and §§1.263A–7 through 1.263A–15 as follows:

* * * * *

§1.263A–4 Rules for property produced in a farming business.

(a) Introduction.
(1) In general.
(2) Exception.
(i) In general.
(ii) Tax shelter.
(A) In general.
(B) Presumption.
(iii) Examples.
(3) Costs required to be capitalized or inventoried under another provision.
(4) Farming business.
(i) In general.
(A) Plant.
(B) Animal.
(ii) Incidental activities.
(A) In general.
(B) Activities that are not incidental.
(iii) Examples.
(b) Application of section 263A to property produced in a farming business.
(1) In general.
(i) Plants.
(ii) Animals.
(2) Preproductive period.
(i) Plant.
(A) In general.
(B) Applicability of section 263A.
(C) Actual preproductive period.
(*1*) Beginning of the preproductive period.
(*2*) End of the preproductive period.
(*i*) In general.
(*ii*) Marketable quantities.
(D) Examples.
(ii) Animal.
(A) Beginning of the preproductive period.
(B) End of the preproductive period.
(C) Allocation of costs between animal and first yield.
(c) Inventory methods.
(1) In general.
(2) Available for property used in a trade or business.
(3) Exclusion of property to which section 263A does not apply.
(d) Election not to have section 263A apply.
(1) Introduction.
(2) Availability of the election.
(3) Time and manner of making the election.
i. Automatic election.
ii. Nonautomatic election.
(4) Special rules.
(i) Section 1245 treatment.
(ii) Required use of alternative depreciation system.
(iii) Related person.
(A) In general.
(B) Members of family.
(5) Examples.
(e) Exception for certain costs resulting from casualty losses.
(1) In general.
(2) Ownership.
(3) Examples.
(4) Special rule for citrus and almond groves.
(i) In general.
(ii) Example.
(f) Effective date and change in method of accounting.
(1) Effective date.
(2) Change in method of accounting.

* * * * *

§1.263A–0T [Removed]

Par. 4. Section 1.263A–0T is removed.

Par. 5. Section 1.263A–1 is amended as follows:

1. The last sentence of paragraph (b)(3) is revised.

2. The last sentence of paragraph (b)(4) is revised.

The revisions read as follows:

§1.263A–1 Uniform capitalization of costs.

* * * * *

(b) * * *

(3) * * * See §1.263A–4 for specific rules relating to taxpayers engaged in the trade or business of farming.

(4) * * * See §1.263A–4, however, for rules relating to taxpayers producing certain trees to which section 263A applies.

* * * * *

Par. 6. Section 1.263A–4 is revised to read as follows:

§1.263A–4 Rules for property produced in a farming business.

(a) *Introduction*—(1) *In general*. This section provides guidance with respect to the application of section 263A to property produced in a farming business as defined in paragraph (a)(4) of this section. Except as otherwise provided by the rules of this section, the general rules of §§1.263A–1 through 1.263A–3 and §§1.263A–7 through 1.263A–15 apply to property produced in a farming business. A taxpayer that engages in the raising or growing of any agricultural or horticultural commodity, including both plants and animals, is engaged in the production of property. Section 263A generally requires the capitalization of the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of this property. The direct and indirect costs of producing plants or animals generally include preparatory costs allocable to the plant or animal and preproductive period costs of the plant or animal. Except as provided in paragraphs (a)(2) and (e) of this section, taxpayers must capitalize the costs of producing all plants and animals unless the election described in paragraph (d) of this section is made.

(2) *Exception*—(i) *In general*. Section 263A does not apply to the costs of producing plants with a preproductive period of 2 years or less or the costs of producing animals in a farming business, if the taxpayer is not—

(A) A corporation or partnership required to use an accrual method of accounting (accrual method) under section 447 in computing its taxable income from farming; or

(B) A tax shelter prohibited from using the cash receipts and disbursements method under section 448(a)(3).

(ii) *Tax shelter*—(A) *In general*. A farming business is considered a tax shelter, and thus a taxpayer prohibited from using the cash method under section 448(a)(3), if the farming business is—

(*1*) A farming syndicate as defined in section 464(c); or

(*2*) A tax shelter, within the meaning of section 6662(d)(2)(C)(iii).

(B) *Presumption*. Marketed arrangements in which persons carry on farming activities using the services of a common managerial or administrative service will be presumed to have the principal purpose of tax avoidance, within the meaning of section 6662(d)(2)(C)(iii), if such persons prepay a substantial portion of their farming expenses with borrowed funds.

(iii) *Examples*. The following examples illustrate the provisions of this paragraph(a)(2):

Example 1. Farmer A grows trees that have a preproductive period in excess of 2 years, and that produce an annual crop. Farmer A is not required by section 447 to use an accrual method or prohibited by section 448(a)(3) from using the cash method. Accordingly, Farmer A qualifies for the exception described in this paragraph (a)(2). Since the trees have a preproductive period in excess of 2 years, Farmer A must capitalize the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of the trees. Since the annual crop has a preproductive period of 2 years or less, Farmer A is not required to capitalize the costs of producing the crops.

Example 2. Assume the same facts as *Example 1*, except that Farmer A is required by section 447 to use an accrual method or prohibited by 448(a)(3) from using the cash method. Farmer A does not qualify for the exception described in this paragraph (a)(2). Farmer A is required to capitalize the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of the trees and crops.

(3) *Costs required to be capitalized or inventoried under another provision*. The exceptions from capitalization provided in paragraphs (a)(2), (d) and (e) of this section do not apply to any cost that is required to be capitalized or inventoried under another Internal Revenue Code or regulatory provision, such as section 263 or 471.

(4) *Farming business*—(i) *In general*. A farming business means a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity. Examples include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit, nuts, or other crops; the raising of ornamental trees (other than evergreen trees that are more than 6 years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. For purposes of this section, the term harvesting does not include contract harvesting of an agricultural or horticultural commodity grown or raised by another. Similarly, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A taxpayer is engaged in raising a plant or animal, rather than the mere resale of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by the taxpayer to the plant or animal through agricultural or horticultural processes; the length of time between the taxpayer's acquisition of the plant or animal and the time that the taxpayer makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

(A) *Plant*. A plant produced in a farming business includes, but is not limited to, a fruit, nut, or other crop bearing tree, an ornamental tree, a vine, a bush, sod, and the crop or yield of a plant that will have more than one crop or yield raised by the taxpayer. Sea plants are produced in a farming business if they are tended and cultivated as opposed to merely harvested.

(B) *Animal*. An animal produced in a farming business includes, but is not limited to, any stock, poultry or other bird, and fish or other sea life raised by the taxpayer. Thus, for example, the term animal may include a cow, chicken, emu, or salmon raised by the taxpayer. Fish and other sea life are produced in a farming business if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(ii) *Incidental activities*—(A) *In general*. A farming business includes processing activities that are normally incident to the growing, raising, or harvesting of agricultural or horticultural products. For example, a taxpayer in the trade or business of growing fruits and vegetables may harvest, wash, inspect, and package the fruits and vegetables for sale. Such activities are normally incident to the raising of these crops by farmers. The taxpayer will be considered to be in the trade or business of farming with respect to the growing of fruits and vegetables and the processing activities incident to their harvest.

(B) *Activities that are not incidental*. Farming business does not include the processing of commodities or products beyond those activities that are normally incident to the growing, raising, or harvesting of such products.

(iii) *Examples*. The following examples illustrate the provisions of this paragraph (a)(4):

Example 1. Individual A operates a retail nursery. Individual A has three categories of plants. The first category is comprised of plants that Individual A grows from seeds or cuttings. The second category is comprised of plants that Individual A purchases in containers and grows for a period of from several months to several years. Individual A replants some of these plants in the ground. The others are replanted in a series of larger containers as they grow. The third category is comprised of plants that are purchased by Individual A in containers. Individual A does not grow these plants to a larger size before making them available for resale. Instead, Individual A makes these plants available for resale, in the container in which purchased, shortly after receiving them. Thus, no value is added to these plants by Individual A through horticultural processes. Individual A also sells soil, mulch, chemicals, and yard tools. Individual A is producing property in the farming business with respect to the first two categories of plants because these plants are held for further cultivation and development prior to sale. The plants in the third category are not held for further cultivation and development prior to sale and, therefore, are not regarded as property produced in a farming business for purposes of section 263A. Accordingly, Individual A must account for the third category of plants, along with the soil, mulch, chemicals, and yard tools, as property acquired for resale. If Individual A's average annual gross receipts are less than $10 million, Individual A will not be required to capitalize costs with respect to its resale activities under section 263A.

Example 2. Individual B is in the business of growing and harvesting wheat and other grains. Individual B also processes grain that Individual B has harvested in order to produce breads, cereals, and other similar food products, which Individual B then sells to customers in the course of its business. Although Individual B is in the farming business with respect to the growing and harvesting of grain, Individual B is not in the farming business with respect to the processing of such grain to produce the food products.

Example 3. Individual C is in the business of raising poultry and other livestock. Individual C also operates a meat processing operation in which the poultry and other livestock are slaughtered, processed, and packaged or canned. The packaged or canned meat is sold to Individual C's customers. Although Individual C is in the farming business with respect to the raising of poultry and other livestock, Individual C is not in the farming business with respect to the slaughtering, processing, packaging, and canning of such animals to produce the food products.

(b) *Application of section 263A to property produced in a farming business*—(1) *In general*. Unless otherwise provided in this section, section 263A requires the capitalization of the direct costs and an allocable portion of the indirect costs that directly benefit or are incurred by reason of the production of any property in a farming business (including animals and plants without regard to the length of their preproductive period). Section 1.263A–1(e) describes the types of direct and indirect costs that generally must be capitalized by taxpayers under section 263A and paragraphs (b)(1)(i) and (ii) of this section provide specific examples of the types of costs typically incurred in the trade or business of farming. For purposes of this section, soil and water conservation expenditures that a taxpayer has elected to deduct under section 175 and fertilizer that a taxpayer has elected to deduct under section 180 are not subject to capitalization under section 263A, except to the extent these costs are required to be capitalized as a preproductive period cost of a plant or animal.

(i) *Plants*. The costs of producing a plant typically required to be capitalized under section 263A include the costs incurred so that the plant's growing process may begin (preparatory costs), such as the acquisition costs of the seed, seedling, or plant, and the costs of planting, cultivating, maintaining, or developing the plant during the preproductive period (preproductive period costs). Preproductive period costs include, but are not limited to, management, irrigation, pruning, soil and water conservation (including costs that the taxpayer has elected to deduct under section 175), fertilizing (including costs that the taxpayer has elected to deduct under section 180), frost protection, spraying, harvesting, storage and handling, upkeep, electricity, tax depreciation and repairs on buildings and equipment used in raising the plants, farm overhead, taxes (except state and Federal income taxes), and interest required to be capitalized under section 263A(f).

(ii) *Animals*. The costs of producing an animal typically required to be capitalized under section 263A include the costs incurred so that the animal's raising process may begin (preparatory costs), such as the acquisition costs of the animal, and the costs of raising or caring for such animal during the preproductive period (preproductive period costs). Preproductive period costs include, but are not limited to, management, feed (such as grain, silage, concentrates, supplements, haylage, hay, pasture and other forages), maintaining pasture or pen areas (including costs that the taxpayer has elected to deduct under sections 175 or 180), breeding, artificial insemination, veterinary services and medicine, livestock hauling, bedding, fuel, electricity, hired labor, tax depreciation and repairs on buildings and equipment used in raising the animals (for example, barns, trucks, and trailers), farm overhead, taxes (except state and Federal income taxes), and interest required to be capitalized under section 263A(f).

(2) *Preproductive period*—(i) *Plant*—(A) *In general*. The preproductive period of property produced in a farming business means—

(*1*) In the case of a plant that will have more than one crop or yield (for example, an orange tree), the period before the first marketable crop or yield from such plant;

(*2*) In the case of the crop or yield of a plant that will have more than one crop or yield (for example, the orange), the period before such crop or yield is disposed of; or

(*3*) In the case of any other plant, the period before such plant is disposed of.

(B) *Applicability of section 263A*. For purposes of determining whether a plant has a preproductive period in excess of 2 years, the preproductive period of plants grown in commercial quantities in the United States is based on the nationwide weighted average preproductive period for such plant. The Commissioner will publish a noninclusive list of plants with a nationwide weighted average preproductive period in excess of 2 years. In the case of other plants grown in commercial quantities in the United States, the nationwide weighted average preproductive period must be determined based on available statistical data. For all other plants, the taxpayer is required, at or before the time the seed or plant is acquired or planted, to reasonably estimate the preproductive period of the plant. If the taxpayer estimates a preproductive period in excess of 2 years, the taxpayer must capitalize the costs of producing the plant. If the estimate is reasonable, based on the facts in existence at the time it is made, the determination of whether section 263A applies is not modified at a later time even if the actual length of the preproductive period differs from the estimate. The actual length of the preproductive period will, however, be considered in evaluating the reasonableness of the taxpayer's future estimates. The nationwide weighted average preproductive period or the estimated preproductive period is only used for purposes of determining whether the preproductive period of a plant is greater than 2 years.

(C) *Actual preproductive period*. The plant's actual preproductive period is used for purposes of determining the period during which a taxpayer must capitalize preproductive period costs with respect to a particular plant.

(*1*) *Beginning of the preproductive period*. The actual preproductive period of a plant begins when the taxpayer first incurs costs that directly benefit or are incurred by reason of the plant. Generally, this occurs when the taxpayer plants the seed or plant. In the case of a taxpayer that acquires plants that have already been permanently planted, or plants that are tended by the taxpayer or another prior to permanent planting, the actual preproductive period of the plant begins upon acquisition of the plant by the taxpayer. In the case of the crop or yield of a plant that will have more than one crop or yield, the actual preproductive period begins when the plant has become productive in marketable quantities and the crop or yield first appears, for example, in the form of a sprout, bloom, blossom, or bud.

(*2*) *End of the preproductive period*—(*i*) *In general*. In the case of a plant that will have more than one crop or yield, the actual preproductive period ends when the plant first becomes productive in marketable quantities. In the case of any other plant (including the crop or yield of a plant that will have more than one crop or yield), the actual preproductive period ends when the plant, crop, or yield is sold or otherwise disposed of. Field costs, such as irrigating, fertilizing, spraying and pruning, that are incurred after the harvest of a crop or yield but before the crop or yield is sold or otherwise disposed of are not required to be included in the preproductive period costs of the harvested crop or yield because they do not benefit and are unrelated to the harvested crop or yield.

(*ii*) *Marketable quantities*. A plant that will have more than one crop or yield becomes productive in marketable quantities once a crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course of the taxpayer's business. Factors that are relevant to determining whether a crop or yield is produced in sufficient quantities to be harvested and marketed in the ordinary course include: whether the crop or yield is harvested that is more than *de minimis*, although it may be less than expected at the maximum bearing stage, based on a comparison of the quantities per acre harvested in the year in question to the quantities per acre expected to be harvested when the plant reaches full maturity; and whether the sales proceeds exceed the costs of harvest and make a reasonable contribution to an allocable share of farm expenses.

(D) *Examples*. The following examples illustrate the provisions of this paragraph (b)(2):

Example 1. (i) Farmer A, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. Farmer A acquires 1 year-old plants by purchasing them from an unrelated party, Corporation B, and plants them immediately. The nationwide weighted average preproductive period of the plant is 4 years. The particular plants grown by Farmer A do not begin to produce in marketable quantities until 3 years and 6 months after they are planted by Farmer A.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer A is required to capitalize the costs of producing the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer A must begin to capitalize the preproductive period costs when the plants are planted. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer A must continue to capitalize preproductive period costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer A must capitalize the preproductive period costs for a period of 3 years and 6 months (that is, until the plants are 4 years and 6 months old), notwithstanding the fact that the plants, in general, have a nationwide weighted average preproductive period of 4 years.

Example 2. (i) Farmer B, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. The nationwide weighted average preproductive period of the plant is 2 years and 5 months. Farmer B acquires 1 month-old plants by purchasing them from an unrelated party, Corporation B. Farmer B enters into a contract with Corporation B under which Corporation B will retain and tend the plants for 7 months following the sale. At the end of 7 months, Farmer B takes possession of the plants and plants them in the permanent orchard. The plants become productive in marketable quantities 1 year and 11 months after they are planted by Farmer B.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer B is required to capitalize the costs of producing the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer B must begin to capitalize the preproductive period costs when the purchase occurs. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer B must continue to capitalize the preproductive period costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer B must capitalize the preproductive period costs of the plants for a period of 2 years and 6 months (the 7 months the plants are tended by Corporation B and the 1 year and 11 months after the plants are planted by Farmer B), that is, until the plants are 2 years and 7 months old, notwithstanding the fact that the plants, in general, have a nationwide weighted average preproductive period of 2 years and 5 months.

Example 3. (i) Assume the same facts as in *Example 2*, except that Farmer B acquires the plants by purchasing them from Corporation B when the plants are 8 months old and that the plants are planted by Farmer B upon acquisition.

(ii) Since the plants are deemed to have a preproductive period in excess of 2 years, Farmer B is required to capitalize the costs of producing the plants. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer B must begin to capitalize the preproductive period costs when the plants are planted. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer B must continue to capitalize the preproductive period costs to the plants until the plants begin to produce in marketable quantities. Thus, Farmer B must capitalize the preproductive period costs of the plants for a period of 1 year and 11 months.

Example 4. (i) Farmer C, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are grown in commercial quantities in the United States. Farmer C acquires 1 month-old plants from an unrelated party and plants them immediately. The nationwide weighted average preproductive period of the plant is 2 years and 3 months. The particular plants grown by Farmer C begin to produce in marketable quantities 1 year and 10 months after they are planted by Farmer C.

(ii) Since the plants are deemed to have a nationwide weighted average preproductive period in excess of 2 years, Farmer C is required to capitalize the costs of producing the plants, notwithstanding the fact that the particular plants grown by Farmer C become productive in less than 2 years. See paragraph (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer C must begin to capitalize the preproductive period costs when it plants the plants. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer C properly ceases capitalization of preproductive period costs when the plants become productive in marketable quantities (that is, 1 year and 10 months after they are planted, which is when they are 1 year and 11 months old).

Example 5. (i) Farmer D, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, grows plants that will have more than one crop or yield. The plants are not grown in commercial quantities in the United States. Farmer D acquires and plants the plants when they are 1 year old and estimates that they will become productive in marketable quantities 3 years after planting. Thus, at the time the plants are acquired and planted Farmer D reasonably estimates that the plants will have a preproductive period of 4 years. The actual plants grown by Farmer D do not begin to produce in marketable quantities until 3 years and 6 months after they are planted by Farmer D.

(ii) Since the plants have an estimated preproductive period in excess of 2 years, Farmer D is required to capitalize the costs of producing the plants. See paragraph (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*1*) of this section, Farmer D must begin to capitalize the preproductive period costs when it acquires and plants the plants. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer D must continue to capitalize the preproductive period costs until the plants begin to produce in marketable quantities. Thus, Farmer D must capitalize the preproductive period costs of the plants for a period of 3 years and 6 months (that is, until the plants are 4 years and 6 months old), notwithstanding the fact that Farmer D estimated that the plants would become productive after 4 years.

Example 6. (i) Farmer E, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section grows plants from seed. The plants are not grown in commercial quantities in the United States. The plants do not have more than 1 crop or yield. At the time the seeds are planted Farmer E reasonably estimates that the plants will have a preproductive period of 1 year and 10 months. The actual plants grown by Farmer E are not ready for harvesting and disposal until 2 years and 2 months after the seeds are planted by Farmer E.

(ii) Because Farmer E's estimate of the preproductive period (which was 2 years or less) was reasonable at the time made based on the facts, Farmer E will not be required to capitalize the costs of producing the plants under section 263A, notwithstanding the fact that the actual preproductive period of the plants exceeded 2 years. See paragraph (b)(2)(i)(B) of this section. However, Farmer E must take the actual preproductive period of the plants into consideration when making future estimates of the preproductive period of such plants.

Example 7. (i) Farmer F, a calendar year taxpayer that does not qualify for the exception in paragraph (a)(2) of this section, grows trees that will have more than one crop. Farmer F acquires and plants the trees in April, Year 1. On October 1, Year 6, the trees become productive in marketable quantities.

(ii) The costs of producing the plant, including the preproductive period costs incurred by Farmer F on or before October 1, Year 6, are capitalized to the trees. Preproductive period costs incurred after October 1, Year 6, are capitalized to a crop when incurred during the preproductive period of the crop and deducted as a cost of maintaining the tree when incurred between the disposal of one crop and the appearance of the next crop. See paragraphs (b)(2)(i)(A), (b)(2)(i)(C)(*1*) and (b)(2)(i)(C)(*2*) of this section.

Example 8. (i) Farmer G, a taxpayer that qualifies for the exception in paragraph (a)(2) of this section, produces fig trees on 10 acres of land. The fig trees are grown in commercial quantities in the United States and have a nationwide weighted average preproductive period in excess of 2 years. Farmer G acquires and plants the fig trees in their permanent grove during Year 1. When the fig trees are mature, Farmer G expects to harvest 10x tons of figs per acre. At the end of Year 4, Farmer G harvests .5x tons of figs per acre that it sells for $100x. During Year 4, Farmer G incurs expenses related to the fig operation of: $50x to harvest the figs and transport them to market and other direct and indirect costs related to the fig operation in the amount of $1000x.

(ii) Since the fig trees have a preproductive period in excess of 2 years, Farmer G is required to capitalize the costs of producing the fig trees. See paragraphs (a)(2) and (b)(2)(i)(B) of this section. In accordance with paragraph (b)(2)(i)(C)(*2*) of this section, Farmer G must continue to capitalize preproductive period costs to the trees until they become productive in marketable quantities. The following factors weigh in favor of a determination that the fig trees did not become productive in Year 4: the quantity of harvested figs is *de minimis* based on the fact that the yield is only 5 percent of the expected yield at maturity and the proceeds from the sale of the figs are sufficient, after covering the costs of harvesting and transporting the figs, to cover only a negligible portion of the allocable farm expenses. Based on these facts and circumstances, the fig trees did not become productive in marketable quantities in Year 4.

(ii) *Animal*. An animal's actual preproductive period is used to determine the period that the taxpayer must capitalize preproductive period costs with respect to a particular animal.

(A) *Beginning of the preproductive period*. The preproductive period of an animal begins at the time of acquisition, breeding, or embryo implantation.

(B) *End of the preproductive period*. In the case of an animal that will be used in the trade or business of farming (for example, a dairy cow), the preproductive period generally ends when the animal is (or would be considered) placed in service for purposes of section 168 (without regard to the applicable convention). However, in the case of an animal that will have more than one yield (for example, a breeding cow), the preproductive period ends when the animal produces (for example, gives birth to) its first yield. In the case of any other animal, the preproductive period ends when the animal is sold or otherwise disposed of.

(C) *Allocation of costs between animal and yields*. In the case of an animal that will have more than one yield, the costs incurred after the beginning of the preproductive period of the first yield but before the end of the preproductive period of the animal must be allocated between the animal and the yield using any reasonable method. Any depreciation allowance on the animal may be allocated entirely to the yield. Costs incurred after the beginning of the preproductive period of the second yield, but before the first yield is weaned from the animal must be allocated between the first and second yield using any reasonable method. However, a taxpayer may elect to allocate these costs entirely to the second yield. An allocation method used by a taxpayer is a method of accounting that must be used consistently and is subject to the rules of section 446 and the regulations thereunder.

(c) *Inventory methods*—(1) *In general*. Except as otherwise provided, the costs required to be allocated to any plant or animal under this section may be determined using reasonable inventory valuation methods such as the farm-price method or the unit-livestock-price method. See §1.471–6. Under the unit-livestock-price method, unit prices must include all costs required to be capitalized under section 263A. A taxpayer using the unit-livestock-price method may elect to use the cost allocation methods in §1.263A–1(f) or 1.263A–2(b) to allocate its direct and indirect costs to the property produced in the business of farming. In such a situation, section 471 costs are the costs taken into account by the taxpayer under the unit-livestock-price method using the taxpayer's standard unit price as modified by this paragraph (c)(1). Tax shelters, as defined in paragraph (a)(2)(ii) of this section, that use the unit-livestock-price method for inventories must include in inventory the annual standard unit price for all animals that are acquired during the taxable year, regardless of whether the purchases are made during the last 6 months of the taxable year. Taxpayers required by section 447 to use an accrual method or prohibited by section 448(a)(3) from using the cash method that use the unit-livestock-price method must modify the annual standard price in order to reasonably reflect the particular period in the taxable year in which purchases of livestock are made, if such modification is necessary in order to avoid significant distortions in income that would otherwise occur through operation of the unit-livestock-price method.

(2) *Available for property used in a trade or business*. The farm-price method or the unit-livestock-price method may be used by any taxpayer to allocate costs to any plant or animal under this section, regardless of whether the plant or animal is held or treated as inventory property by the taxpayer. Thus, for example, a taxpayer may use the unit-livestock-price method to account for the costs of raising livestock that will be used in the trade or business of farming (for example, a breeding animal or a dairy cow) even though the property in question is not inventory property.

(3) *Exclusion of property to which section 263A does not apply*. Notwithstanding a taxpayer's use of the farm-price method with respect to farm property to which the provisions of section 263A apply, that taxpayer is not required, solely by such use, to use the farm-price method

with respect to farm property to which the provisions of section 263A do not apply. Thus, for example, assume Farmer A raises fruit trees that have a preproductive period in excess of 2 years and to which the provisions of section 263A, therefore, apply. Assume also that Farmer A raises cattle and is not required to use an accrual method by section 447 or prohibited from using the cash method by section 448(a)(3). Because Farmer A qualifies for the exception in paragraph (a)(2) of this section, Farmer A is not required to capitalize the costs of raising the cattle. Although Farmer A may use the farm-price method with respect to the fruit trees, Farmer A is not required to use the farm-price method with respect to the cattle. Instead, Farmer A's accounting for the cattle is determined under other provisions of the Code and regulations.

(d) *Election not to have section 263A apply*—(1) *Introduction*. This paragraph (d) permits certain taxpayers to make an election not to have the rules of this section apply to any plant produced in a farming business conducted by the electing taxpayer. The election is a method of accounting under section 446, and once an election is made, it is revocable only with the consent of the Commissioner.

(2) *Availability of the election*. The election described in this paragraph (d) is available to any taxpayer that produces plants in a farming business, except that no election may be made by a corporation, partnership, or tax shelter required to use the accrual method under section 447 or prohibited from using the cash method by section 448(a)(3). Moreover, the election does not apply to the costs of planting, cultivation, maintenance, or development of a citrus or almond grove (or any part thereof) incurred prior to the close of the fourth taxable year beginning with the taxable year in which the trees were planted in the permanent grove (including costs incurred prior to the permanent planting). If a citrus or almond grove is planted in more than one taxable year, the portion of the grove planted in any one taxable year is treated as a separate grove for purposes of determining the year of planting.

(3) *Time and manner of making the election*—(i) *Automatic election*. A taxpayer makes the election under this paragraph (d) by not applying the rules of section 263A to determine the capitalized costs of plants produced in a farming business and by applying the special rules in paragraph (d)(4) of this section on its original return for the first taxable year in which the taxpayer is otherwise required to capitalize section 263A costs. Thus, in order to be treated as having made the election under this paragraph (d), it is necessary to report both income and expenses in accordance with the rules of this paragraph (d) (for example, it is necessary to use the alternative depreciation system as provided in paragraph (d)(4)(ii) of this section). For example, a farmer who deducts costs that are otherwise required to be capitalized under section 263A but fails to use the alternative depreciation system under section 168(g)(2) for applicable property placed in service has not made an election under this paragraph (d) and is not in compliance with the provisions of section 263A. In the case of a partnership or S corporation, the election must be made by the partner, shareholder, or member.

(ii) *Nonautomatic election*. A taxpayer that does not make the election under this paragraph (d) as provided in paragraph (d)(3)(i) must obtain the consent of the Commissioner to make the election by filing a Form 3115, Application for Change in Method of Accounting, in accordance with §1.446–1(e)(3).

(4) *Special rules*. If the election under this paragraph (d) is made, the taxpayer is subject to the special rules in this paragraph (d)(4).

(i) *Section 1245 treatment*. The plant produced by the taxpayer is treated as section 1245 property and any gain resulting from any disposition of the plant is recaptured (that is, treated as ordinary income) to the extent of the total amount of the deductions that, but for the election, would have been required to be capitalized with respect to the plant. In calculating the amount of gain that is recaptured under this paragraph (d)(4)(i), a taxpayer may use the farm-price method or another simplified method permitted under these regulations in determining the deductions that otherwise would have been capitalized with respect to the plant.

(ii) *Required use of alternative depreciation system*. If the taxpayer or a related person makes an election under this paragraph (d), the alternative depreciation system (as defined in section 168(g)(2)) must be applied to all property used predominantly in any farming business of the taxpayer or related person and placed in service in any taxable year during which the election is in effect. The requirement to use the alternative depreciation system by reason of an election under this paragraph (d) will not prevent a taxpayer from making an election under section 179 to deduct certain depreciable business assets.

(iii) *Related person*—(A) *In general*. For purposes of this paragraph (d)(4), related person means—

(*1*) The taxpayer and members of the taxpayer's family;

(*2*) Any corporation (including an S corporation) if 50 percent or more of the stock (in value) is owned directly or indirectly (through the application of section 318) by the taxpayer or members of the taxpayer's family;

(*3*) A corporation and any other corporation that is a member of the same controlled group (within the meaning of section 1563(a)(1)); and

(*4*) Any partnership if 50 percent or more (in value) of the interests in such partnership is owned directly or indirectly by the taxpayer or members of the taxpayer's family.

(B) *Members of family*. For purposes of this paragraph (d)(4)(iii), the terms "members of the taxpayer's family," and "members of family" (for purposes of applying section 318(a)(1)), means the spouse of the taxpayer (other than a spouse who is legally separated from the individual under a decree of divorce or separate maintenance) and any of the taxpayer's children (including legally adopted children) who have not reached the age of 18 as of the last day of the taxable year in question.

(5) *Examples*. The following examples illustrate the provisions of this paragraph (d):

Example 1. (i) Farmer A, an individual, is engaged in the trade or business of farming. Farmer A grows apple trees that have a preproductive period greater than 2 years. In addition, Farmer A grows and harvests wheat and other grains. Farmer A elects under this paragraph (d) not to have the rules of section 263A apply to the costs of growing the apple trees.

(ii) In accordance with paragraph (d)(4) of this section, Farmer A is required to use the alternative depreciation system described in section 168(g)(2) with respect to all property used predominantly in any farming business in which Farmer A engages (including the growing and harvesting of wheat) if such property is placed in service during a year for which the election is in effect. Thus, for example, all assets and equipment (including trees and any equipment used to grow and harvest wheat) placed in service during a year for which the election is in effect must be depreciated as provided in section 168(g)(2).

Example 2. Assume the same facts as in *Example 1*, except that Farmer A and members of Farmer A's family (as defined in paragraph (d)(4)(iii)(B) of this section) also own 51 percent (in value) of the interests in Partnership P, which is engaged in the trade or business of growing and harvesting corn. Partnership P is a related person to Farmer A under the provisions of paragraph (d)(4)(iii) of this section. Thus, the requirements to use the alternative depreciation system under section 168(g)(2) also apply to any property used predominantly in a trade or business of farming which Partnership P places in service during a year for which an election made by Farmer A is in effect.

(e) *Exception for certain costs resulting from casualty losses*—(1) *In general*. Section 263A does not require the capitalization of costs that are attributable to the replanting, cultivating, maintaining, and developing of any plants bearing an edible crop for human consumption (including, but not limited to, plants that constitute a grove, orchard, or vineyard) that were lost or damaged while owned by the taxpayer by reason of freezing temperatures, disease, drought, pests, or other casualty (replanting costs). Such replanting costs may be incurred with respect to property other than the property on which the damage or loss occurred to the extent the acreage of the property with respect to which the replanting costs are incurred is not in excess of the acreage of the property on which the damage or loss occurred. This paragraph (e) applies only to the replanting of plants of the same type as those lost or damaged. This paragraph (e) applies to plants replanted on the property on which the damage or loss occurred or property of the same or lesser acreage in the United States irrespective of differences in density between the lost or damaged and replanted plants. Plants bearing crops for human consumption are those crops normally eaten or drunk by humans. Thus, for example, costs incurred with respect to replanting plants bearing jojoba beans do not qualify for the exception provided in this paragraph (e) because that crop is not normally eaten or drunk by humans.

(2) *Ownership*. Replanting costs described in paragraph (e)(1) of this section generally must be incurred by the taxpayer that owned the property at the time the plants were lost or damaged. Paragraph (e)(1) of this section will apply, however, to costs incurred by a person other than the taxpayer that owned the plants at the time of damage or loss if—

(i) The taxpayer that owned the plants at the time the damage or loss occurred owns an equity interest of more than 50 percent in such plants at all times during the taxable year in which the replanting costs are paid or incurred; and

(ii) Such other person owns any portion of the remaining equity interest and materially participates in the replanting, cultivating, maintaining, or developing of such plants during the taxable year in which the replanting costs are paid or incurred. A person will be treated as materially participating for purposes of this provision if such person would otherwise meet the requirements with respect to material participation within the meaning of section 2032A(e)(6).

(3) *Examples*. The following examples illustrate the provisions of this paragraph (e):

Example 1. (i) Farmer A grows cherry trees that have a preproductive period in excess of 2 years and produce an annual crop. These cherries are normally eaten by humans. Farmer A grows the trees on a 100 acre parcel of land (parcel 1) and the groves of trees cover the entire acreage of parcel 1. Farmer A also owns a 150 acre parcel of land (parcel 2) that Farmer A holds for future use. Both parcels are in the United States. In 2000, the trees and the irrigation and drainage systems that service the trees are destroyed in a casualty (within the meaning of paragraph (e)(1) of this section). Farmer A installs new irrigation and drainage systems on parcel 1, purchases young trees (seedlings), and plants the seedlings on parcel 1.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized. In accordance with paragraph (e)(1) of this section, the costs of planting, cultivating, developing, and maintaining the seedlings during their preproductive period are not required to be capitalized by section 263A.

Example 2. (i) Assume the same facts as in *Example 1* except that Farmer A decides to replant the seedlings on parcel 2 rather than on parcel 1. Accordingly, Farmer A installs the new irrigation and drainage systems on 100 acres of parcel 2 and plants seedlings on those 100 acres.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized. Because the acreage of the related portion of parcel 2 does not exceed the acreage of the destroyed orchard on parcel 1, the costs of planting, cultivating, developing, and maintaining the seedlings during their preproductive period are not required to be capitalized by section 263A. See paragraph (e)(1) of this section.

Example 3. (i) Assume the same facts as in *Example 1* except that Farmer A replants the seedlings on parcel 2 rather than on parcel 1, and Farmer A additionally decides to expand its operations by growing 125 rather than 100 acres of trees. Accordingly, Farmer A installs new irrigation and drainage systems on 125 acres of parcel 2 and plants seedlings on those 125 acres.

(ii) The costs of the irrigation and drainage systems and the seedlings must be capitalized. The costs of planting, cultivating, developing, and maintaining 100 acres of the trees during their preproductive period are not required to be capitalized by section 263A. The costs of planting, cultivating, maintaining, and developing the additional 25 acres are, however, subject to capitalization under section 263A. See paragraph (e)(1) of this section.

(4) *Special rule for citrus and almond groves*—(i) *In general*. The exception in this paragraph (e) is available with respect to replanting costs of a citrus or almond grove incurred prior to the close of the fourth taxable year after replanting, notwithstanding the taxpayer's election to have section 263A not apply (described in paragraph (d) of this section).

(ii) *Example*. The following example illustrates the provisions of this paragraph (e)(4):

Example. (i) Farmer A, an individual, is engaged in the trade or business of farming. Farmer A grows citrus trees that have a preproductive period of 5 years. Farmer A elects, under paragraph (d) of this section, not to have section 263A apply. This election, however, is unavailable with respect to the costs of producing a citrus grove incurred within the first 4 years beginning with the year the trees were planted. See paragraph (d)(2) of this section. In year 10, after the citrus grove has become productive in marketable quantities, the citrus grove is destroyed by a casualty within the meaning of paragraph (e)(1) of this section. In year 10, Farmer A acquires and plants young citrus trees in the same grove to replace those destroyed by the casualty.

(ii) Farmer A must capitalize the costs of producing the citrus grove incurred before the close of the fourth taxable year beginning with the year in which the trees were permanently planted. As a result of the election not to have section 263A apply, Farmer A may deduct the preproductive period costs incurred in the fifth year. In year 10, Farmer A must capitalize the acquisition cost of the young trees. However, the costs of planting, cultivating, developing, and maintaining the young trees that replace those destroyed by the casualty are exempted from capitalization under this paragraph (e).

(f) *Effective date and change in method of accounting*—(1) *Effective date*. In the case of property that is not inventory in the hands of the taxpayer, this section is applicable to costs incurred after August 21, 2000, in taxable years ending after August 21, 2000. In the case of inventory property, this section is applicable to taxable years beginning after August 21, 2000.

(2) *Change in method of accounting*. Any change in a taxpayer's method of accounting necessary to comply with this section is a change in method of accounting to

which the provisions of sections 446 and 481 and the regulations thereunder apply. For property that is not inventory in the hands of the taxpayer, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of this section for costs incurred after August 21, 2000, provided the change is made for the first taxable year ending after August 21, 2000. For inventory property, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of this section for the first taxable year beginning after August 21, 2000. A taxpayer changing its method of accounting under this paragraph (f)(2) must file a Form 3115, "Application for Change in Accounting Method," in accordance with the automatic consent procedures in Rev. Proc. 99–49 (1999–52 I.R.B. 725) (see §601.601(d)(2) of this chapter). However, the scope limitations in section 4.02 of Rev. Proc. 99–49 do not apply, provided the taxpayer's method of accounting for property produced in a farming business is not an issue under consideration within the meaning of section 3.09 of Rev. Proc. 99–49. If the taxpayer is under examination, before an appeals office, or before a federal court at the time that a copy of the Form 3115 is filed with the national office, the taxpayer must provide a duplicate copy of the Form 3115 to the examining agent, appeals officer, or counsel for the government, as appropriate, at the time the copy of the Form 3115 is filed. The Form 3115 must contain the name(s) and telephone number(s) of the examining agent, appeals officer, or counsel for the government, as appropriate. Further, in the case of property that is not inventory in the hands of the taxpayer, a change under this paragraph (f)(2) is made on a cutoff basis as described in section 2.06 of Rev. Proc. 99–49 and without the audit protection provided in section 7 of Rev. Proc. 99–49. However, a taxpayer may receive such audit protection for non-inventory property by taking into account any section 481(a) adjustment that results from the change in method of accounting to comply with this section. A taxpayer that opts to determine a section 481(a) adjustment (and, thus, obtain audit protection) for non-inventory property must take into account only additional section 263A costs incurred after December 31, 1986, in taxable years ending after December 31, 1986. Any change in method of accounting that is not made for the taxpayer's first taxable year ending or beginning after August 21, 2000, whichever is applicable, must be made in accord with the procedures in Rev. Proc. 97–27 (1997–1 C.B. 680) (see §601.601(d)(2) of this chapter).

§1.263A–4T [Removed]

Par. 7. Section 1.263A–4T is removed.

Par. 8. Section 1.471–6 is amended as follows:

1. The third sentence of paragraph (d) is revised.

2. The last sentence of paragraph (f) is revised.

The revisions read as follows:

§1.471–6 Inventories of livestock raisers and other farmers.

* * * * *

(d) * * * However, see §1.263A–4(c)(3) for an exception to this rule. * * *

* * * * *

(f) * * * See §1.263A–4 for rules regarding the computation of costs for purposes of the unit-livestock-price-method. * * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved August 10, 2000.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register on August 18, 2000, 8:45 a.m., and published in the issue of the Federal Register for August 21, 2000, 65 F.R. 50638)

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2000. See Rev. Rul. 2000–41, page 248.

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 September 2000. See Rev. Rul. 2000–41, page 248.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2000. See Rev. Rul. 2000–41, page 248.

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 September 2000. See Rev. Rul. 2000–41, page 248.

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 September 2000. See Rev. Rul. 2000–41, page 248.

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 September 2000. See Rev. Rul. 2000–41, page 248.

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 September 2000. See Rev. Rul. 2000–41, page 248.

Section 642.—Speical Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of September 2000. See Rev. Rul. 2000–41, page 248.

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 September 2000. See Rev. Rul. 2000–41, page 248.

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 September 2000. See Rev. Rul. 2000–41, on this page.

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 1274, 1288, 382, and other sections of the Code, tables set forth the rates for September 2000.

Rev. Rul. 2000–41

This revenue ruling provides various prescribed rates for federal income tax purposes for September 2000 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2000–41 TABLE 1
Applicable Federal Rates (AFR) for September 2000
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-Term				
AFR	6.33%	6.23%	6.18%	6.15%
110% AFR	6.97%	6.85%	6.79%	6.75%
120% AFR	7.62%	7.48%	7.41%	7.37%
130% AFR	8.26%	8.10%	8.02%	7.97%
Mid-Term				
AFR	6.22%	6.13%	6.08%	6.05%
110% AFR	6.85%	6.74%	6.68%	6.65%
120% AFR	7.50%	7.36%	7.29%	7.25%
130% AFR	8.13%	7.97%	7.89%	7.84%
150% AFR	9.41%	9.20%	9.10%	9.03%
175% AFR	11.02%	10.73%	10.59%	10.50%
Long-Term				
AFR	6.09%	6.00%	5.96%	5.93%
110% AFR	6.71%	6.60%	6.55%	6.51%
120% AFR	7.33%	7.20%	7.14%	7.09%
130% AFR	7.95%	7.80%	7.73%	7.68%

REV. RUL. 2000–41 TABLE 2
Adjusted AFR for September 2000
Period for Compounding

	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	4.38%	4.33%	4.31%	4.29%
Mid-term adjusted AFR	4.67%	4.62%	4.59%	4.58%
Long-term adjusted AFR	5.41%	5.34%	5.30%	5.28%

REV. RUL. 2000-41 TABLE 3 Rates Under Section 382 for September 2000	
Adjusted federal long-term rate for the current month	5.41%
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.)	5.79%

REV. RUL. 2000-41 TABLE 4 Appropriate Percentages Under Section 42(b)(2) for September 2000	
Appropriate percentage for the 70% present value low-income housing credit	8.44%
Appropriate percentage for the 30% present value low-income housing credit	3.62%

REV. RUL. 2000-41 TABLE 5 Rate Under Section 7520 for September 2000	
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	7.6%

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

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2000. See Rev. Rul. 2000–41, page 248.

Section 6111.—General Requirement of Return, Statement, or List

26 CFR 6011–4T: Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

T.D. 8896

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 301

Modification of Tax Shelter Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations modify the rules relating to the filing by certain corporate taxpayers of a statement with their Federal corporate income tax returns under section 6011(a), the registration of confidential corporate tax shelters under section 6111(d), and the maintenance of lists of investors in potentially abusive tax shelters under section 6112. These regulations provide the public with additional guidance needed to comply with the disclosure rules, the registration requirement, and the list maintenance requirement applicable to tax shelters. The temporary regulations affect corporations participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in REG–103735–00, REG–110311–98, and REG–103736–00 on page 258.

DATES: *Effective Date*: These temporary regulations are effective August 11, 2000.

Applicability Date: For dates of applicability, see §§1.6011–4T(g), 301.6111–2T(h), and 301.6112–1T, A-22.

FOR FURTHER INFORMATION CONTACT: Catherine Moore, (202) 622-3080, (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these regulations previously have been reviewed and approved by the Office of Management and Budget under control numbers 1545-1685 and 1545-1686. No material changes to these collections of information are made by these regulations.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document amends 26 CFR parts 1 and 301 to provide modified rules relating to the disclosure of certain tax shelters by corporate investors on their Federal corporate income tax returns under section 6011, the registration of confidential corporate tax shelters under section 6111, and the maintenance of lists of investors in potentially abusive tax shelters under section 6112.

On February 28, 2000, the IRS issued temporary and proposed regulations regarding section 6011 (T.D. 8877, 2000–11 I.R.B. 747; REG–103735–00, 2000–11 I.R.B. 770), section 6111 (T.D. 8876, 2000–11 I.R.B. 753; REG–110311–98, 2000–11 I.R.B. 767), and section 6112 (T.D. 8875, 2000–11 I.R.B. 761; REG–103736–00, 2000–11 I.R.B. 768). The regulations were published in the **Federal Register** (65 F.R. 11205, 65 F.R. 11215, 65 F.R. 11211) on March 2, 2000.

Based on comments that have been received, the IRS and Treasury have determined that certain interim changes to the temporary and proposed regulations are warranted. The changes in the proposed rules are published in REG–103735–00, REG–110311–98, and REG–103736–00 on page 258. The interim changes are intended to clarify certain provisions of the regulations, address certain practical problems relating to compliance with the regulations, and make certain other changes relating to the scope of the regulations.

It is anticipated that other changes will be made in the final regulations. The IRS and Treasury have determined that additional time is needed to evaluate a number of the comments and recommendations. The IRS and Treasury continue to invite comments on all provisions of the temporary and proposed regulations, including provisions modified by this document. Furthermore, to the extent that taxpayers or other persons believe that there are specific types of transactions for which disclosure is required under the regulations, and that such disclosure is not consistent with the purposes of the regulations, the IRS and Treasury solicit comments that identify such types of transactions and explain those concerns. Such comments will be taken into account in establishing the scope of the final regulations and will also assist the IRS and Treasury in determining whether there are classes of transactions that should be specifically excepted from disclosure under the final regulations.

Explanation of Provisions

1. *Disclosure Statement Required for Certain Corporate Taxpayers*

The temporary regulations under section 6011 provide that every taxpayer that is required to file a return for a taxable year with respect to any tax imposed under section 11 and that has participated, directly or indirectly, in a reportable transaction shall attach a disclosure statement to its return for each taxable year for which the taxpayer's Federal income tax liability is affected by its participation in the reportable transaction. It has come to the attention of the IRS and Treasury that the temporary regulations under section 6011 may have technically failed to include insurance companies and mutual savings banks conducting life insurance business. The IRS and Treasury intended those corporations to be subject to the disclosure requirement in the regulations. The regulations are amended accordingly.

2. *Record Retention Requirement for Certain Reportable Transactions*

The temporary regulations under section 6011 provide that a taxpayer must retain all documents relating to a reportable transaction until the expiration of the statute of limitations for the first taxable year for which a disclosure statement is filed with the taxpayer's tax return.

The IRS and Treasury seek to clarify the record retention requirement. As modified, the temporary regulations provide that a taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the facts of the transaction, the expected tax treatment of the transaction, or the corporation's decision to participate in the transaction.

3. *Confidentiality*

Under section 6111(d), a confidential corporate tax shelter must be registered. In describing *confidentiality*, the temporary regulations under section 6111(d) provide that if an offeree's disclosure of the structure or tax aspects of the transaction is limited in any way by an express or implied understanding or agreement with or for the benefit of any tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. An offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know that the transaction is protected from disclosure or use in any other manner. However, unless the facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter enters into a written agreement with each person who participates or discusses participation in the transaction and such agreement expressly authorizes such persons to disclose every aspect of the transaction with any and all persons, without limitation of any kind.

The IRS and Treasury understand that, in certain circumstances, limitations on disclosure of the structure or tax aspects of a transaction may be considered necessary to comply with Federal or state securities laws. Consequently, the temporary regulations under section 6111(d) are modified to provide an exception for restrictions on disclosure of the structure or tax aspects of the transaction reasonably necessary to comply with those securities laws.

The IRS and Treasury received comments inquiring whether an exclusivity agreement (i.e., an agreement requiring the offeree to pay a fee to a promoter if the offeree engages in the transaction, whether or not the offeree uses the services of that promoter) is a condition of confidentiality. It is the view of the IRS and Treasury that an exclusivity agreement is within the scope of section 6111(d)(2)(B) because it is a limitation on use, and the temporary regulations have been clarified to so provide. However, the regulations have also been clarified to provide that an exclusivity arrangement ordinarily will not result in an offer being treated as made under conditions of confidentiality if the tax shelter promoter provides express written authorization for disclosure. As modified, the written authorization rule is applicable if the promoter expressly authorizes each offeree to disclose the structure and tax aspects of the transaction to any and all persons, without limitation of any kind on such disclosure.

In addition, the temporary regulations are modified to provide that, under section 6111(d)(2)(B), limitations on disclosure or use create a condition of confidentiality only if the limitations relate to the structure or tax aspects of the transaction and such limitations are for the benefit of any person other than the offeree.

4. *Tax Shelter Promoter*

The temporary regulations under section 6111(d) provide that the term *tax shelter promoter* includes a tax shelter organizer under section 6111(e)(1) and §301.6111–1T(Q&A-26 through Q&A-32) and any other person who participates in the organization, management or sale of a tax shelter (other than a person who merely performs services of the kind described in §301.6111–1T Q&A-33) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person.

The IRS and Treasury recognize that the definition of a promoter as currently worded implies that a person can be a promoter by participating in the organization, management or sale of a tax shelter in a way other than as described in section 6111(e)(1) and §301.6111–1T(Q&A-26 through Q&A-32). The regulations under section 6111(d) are amended to clarify that a person is a promoter only if the person participates in the organization, management or sale of a tax shelter under the rules in section 6111(e)(1) and §301.6111–1T(Q&A-26 through Q&A-33), or is related to such person under section 267 or 707(b).

The regulations are also modified to clarify that only promoters that are classified as organizers under section 6111(e)(1) are required to register tax shelters.

5. *Investor List Requirement of Section 6112*

Any person who organizes or sells an interest in a confidential corporate tax shelter must maintain a list of persons who were sold an interest in the tax shelter and such other information as required by section 6112. See §301.6112–1T. The temporary regulations under section 6112 require that, in addition to the lists required for confidential corporate tax shelters, lists must also be maintained with respect to transactions for which the avoidance or evasion of Federal income tax is considered to be a significant purpose of the structure of the transaction, as determined in section 6111(d)(1)(A) and §301.6111–2T(b), whether or not the transactions are offered under conditions of confidentiality.

Section 6111(d)(1)(A) provides that the term *tax shelter* includes any entity, plan, arrangement, or transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax for a direct or indirect participant which is a corporation. The temporary regulations cross-reference section 6111(d)(1)(A) to provide the standard for determining whether the structure of a transaction has a significant purpose of avoidance or evasion of Federal income tax. The temporary regulations are amended to provide that a transaction may be subject to the list maintenance requirement whether or not the transaction is offered to corporate investors. Thus, a list of noncorporate investors will be required to be maintained whether or not the transaction is ever offered to a corporate investor. However, as discussed below, the temporary regulations are modified to include fee and tax reduction thresholds for list maintenance.

Two additional modifications are made to the temporary regulations. First, the definitions of organizer and seller are clarified for purposes of section 6112. Second, the procedure for designating a person to maintain the list under section 6112 is modified for transactions other than section 6111(c) shelters and projected income investments.

6. *Tax Reduction and Fee Thresholds for Investor List Requirement of Section 6112*

The temporary regulations under section 6112 do not limit the investors who must be included on the list. In response to comments, the IRS and Treasury have determined that in certain cases organizers and sellers of interests in potentially abusive tax shelters should be required to include on the list only investors that meet fee and tax reduction thresholds. Accordingly, the temporary regulations under section 6112 are amended to provide that, for a potentially abusive tax shelter that is not required to be registered under section 6111, is not a listed transaction described in §301.6111–2T(b)(2), and is not a projected income investment as described in §301.6111–1T A-57A, an organizer or seller of an interest in a shelter may, but is not required to, list an investor if the total consideration paid to all organizers and sellers with respect to such investor's acquisition of the interest is less than $25,000, or if the organizer reasonably believes that such investor's acquisition of the interest will not result in a reduction of the Federal income tax liability of any corporation or corporations that exceeds, or exceeds in the aggregate, $1 million in any single taxable year or a total of $2 million for any combination of taxable years and will not result in a reduction of the Federal income tax liability of any noncorporate taxpayer or taxpayers that exceeds, or exceeds in the aggregate, $250,000 in any single taxable year or a total of $500,000 for any combination of taxable years.

7. *Effective Date*

The regulations are applicable August 11, 2000. However, in general, taxpayers may rely on the regulations after February 28, 2000.

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 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. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Catherine Moore, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6011–4T is amended as follows:

1. The first sentence of paragraph (a) is revised.

2. Paragraph (d)(1), second sentence, is amended by removing the language "LM:PF" and adding "LM:PFTG:OTSA" in its place.

3. Paragraphs (e) and (g) are revised.

The revisions read as follows:

§1.6011–4T Requirement of statement disclosing participation in certain transactions by corporate taxpayers (Temporary).

(a) *In general*. Every taxpayer that is required to file a return for a taxable year with respect to a tax imposed under section 11, 594, 801, or 831 and that has participated, directly or indirectly, in a reportable transaction within the meaning of paragraph (b) of this section must attach to its return for the taxable year described in paragraph (d) of this section a disclosure statement in the form prescribed by paragraph (c) of this section. * * *

* * * * *

(e) *Retention of documents*. The taxpayer must retain a copy of all documents and other records related to a transaction subject to disclosure under this section that are material to an understanding of the facts of the transaction, the expected tax treatment of the transaction, or the corporation's decision to participate in the transaction. Such documents must be retained until the expiration of the statute of limitations applicable to the first taxable year for which disclosure of the transaction was made in accordance with the requirements of this section. (This document retention requirement is in addition to any document retention requirements that section 6001 generally imposes on the taxpayer.) Such documents generally include, but are not limited to, the following: marketing materials related to the transaction; written analyses used in decision-making related to the transaction; correspondence and agreements between the taxpayer and any promoter, advisor, lender, or other party to the reportable transaction that relate to the transaction; documents discussing, referring to, or demonstrating the tax benefits arising from the reportable transaction; and documents, if any, referring to the business purposes for the reportable transaction.

* * * * *

(g) *Effective date*. This section applies to Federal corporate income tax returns filed after February 28, 2000. However, paragraphs (a) and (e) of this section apply to Federal corporate income tax returns filed after August 11, 2000 and to documents and other records that the taxpayer acquires, prepares, or has in its possession on or after August 11, 2000. Taxpayers may rely on the rules in paragraphs (a) and (e) of this section for Federal corporate income tax returns filed after February 28, 2000, and for documents and other records that the taxpayer acquires, prepares, or has in its possession on or after February 28, 2000. Otherwise, the rules that apply with respect to Federal corporate income tax returns filed after February 28, 2000, and records that the taxpayer acquires, prepares, or has in its possession prior to August 11, 2000, are contained in §1.6011–4T in effect prior to August 11, 2000 (see 26 CFR part 1 revised as of April 1, 2000).

PART 301—PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. Section 301.6111–2T is amended as follows:

1. Paragraph (b)(3)(ii) is amended by removing the word "corporate".

2. Paragraph (c) is amended as follows:

a. The last two sentences of paragraph (c)(1) are revised.

b. Paragraph (c)(2) is revised.

c. Paragraph (c)(3) is added.

3. Paragraphs (f) and (g)(1) are revised.

4. Paragraph (h) is amended by adding three sentences at the end of the paragraph.

The revisions and additions read as follows:

§301.6111–2T Confidential corporate tax shelters (temporary).

* * * * *

(c) * * * (1) * * * Pursuant to section 6111(d)(2)(B), an offer will also be considered made under conditions of confidentiality in the absence of any such understanding or agreement if any tax shelter promoter knows or has reason to know that the offeree's use or disclosure of information relating to the structure or tax aspects of the transaction is limited for the benefit of any person other than the offeree in any other manner, such as where the transaction is claimed to be proprietary or exclusive to the tax shelter promoter or any party other than the offeree. An offeree's privilege to maintain the confidentiality of a communication relating to a tax shelter in which the offeree might participate or has agreed to participate, including an offeree's confidential communication with the offeree's attorney, is not itself a condition of confidentiality.

(2) *Securities law exception*. An offer is not considered made under conditions of confidentiality if disclosure of the structure or tax aspects of the transaction is subject to restrictions reasonably necessary to comply with federal or state securities laws and such disclosure is not otherwise limited.

(3) *Presumption*. Unless facts and circumstances clearly indicate otherwise, an offer is not considered made under conditions of confidentiality if the tax shelter promoter provides express written authorization to each offeree permitting the offeree (and each employee, representative, or other agent of such offeree) to disclose the structure and tax aspects of the transaction to any and all persons, without limitation of any kind on such disclosure.

* * * * *

(f) *Definition of tax shelter promoter*. For purposes of section 6111(d)(2) and this section, the term *tax shelter promoter* includes a tax shelter organizer and any other person who participates in the organization, management or sale of a tax shelter (as those persons are described in section 6111(e)(1) and §301.6111–1T (Q&A-26 through Q&A-33) or any person related (within the meaning of section 267 or 707) to such tax shelter organizer or such other person.

(g) *Person required to register*—(1) *Tax shelter promoters*. The rules in section 6111(a) and (e) and §301.6111–1T (Q&A-34 through Q&A-39) determine who is required to register a confidential corporate tax shelter. A promoter of a confidential corporate tax shelter must register the tax shelter only if it is a person required to register under the rules in section 6111(a) and (e) and §301.6111–1T (Q&A-34 through Q&A-39).

* * * * *

(h) * * * However, paragraphs (b)(3)(ii), (c)(1),(2) and (3), (f), and (g)(1) of this section apply to confidential corporate tax shelters in which any interests are offered for sale after August 11, 2000. The rules in paragraphs (b)(3)(ii), (c)(1),(2) and (3), (f), and (g)(1) of this section may be relied upon for confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000. Otherwise, the rules that apply to confidential corporate tax shelters in which any interests are offered for sale after February 28, 2000, are contained in §301.6111–2T in effect prior to August 11, 2000 (see 26 CFR part 301 revised as of April 1, 2000).

Par. 5. Section 301.6112–1T is amended as follows:

1. A-4(a) is revised.

2. The last two sentences of A-5 are removed and a new sentence is added in their place.

3. A-6 is amended as follows:

a. Paragraph (b) is amended by removing the language "and" at the end of the paragraph.

b. Paragraph (c) is amended by removing the period at the end of the paragraph and adding "; and" in its place.

c. Paragraph (d) is added immediately after paragraph (c).

4. The last sentence of A-7 is revised.

5. A-8 is amended as follows:

a. In A-8, introductory text and paragraphs (a) through (e) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) through (a)(5), respectively.

b. New paragraph (b) is added immediately after *Example (2)* in newly designated paragraph (a)(5).

6. The last two sentences of A-9 are amended by removing the language "paragraph (e)" and adding "paragraph(a)(5)" in its place.

7. One sentence is added at the end of A-10.

8. A-11 is amended as follows:

a. In A-11, introductory text and paragraphs (a) and (b) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) and (a)(2), respectively.

b. New paragraph (b) is added.

9. A-17 is amended as follows:

a. Paragraph (a)(3) is revised.

b. Paragraph (c) is added.

10. The first and second sentences of A-19 are amended by removing the language "paragraph (d) or paragraph (e)" and adding "paragraph (a)(4) or (5)" in its place.

11. A-22 is amended by adding three sentences before the last sentence.

The additions and revisions read as follows:

§301.6112–1T Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters (temporary).

* * * * *

A-4.(a) Yes; for purposes of the list requirement, a tax shelter includes any tax shelter that is a projected income investment, as defined in §301.6111–1T A-57A, and any transaction a significant purpose of the structure of which is the avoidance or evasion of Federal income tax within the meaning of section 6111(d)(1)(A) and §301.6111–2T(b) (whether or not offered to any direct or indirect corporate participant). For this purpose, as under §301.6111–2T, the term *transaction* includes all of the factual elements necessary to support the tax benefits that are expected to be claimed with respect to any entity, plan, or arrangement, including any series of related steps carried out as part of a prearranged plan.

* * * * *

A-5. * * * In addition, an organizer is any other person who participates in the organization or management of the tax shelter within the meaning of §301.6111–1T A-28 or A-29, except those persons whose activities do not constitute participation in the organization or management of a tax shelter under §301.6111–1T A-30 or A-33.

* * * * *

A-6. * * *

(d) Any other person who receives consideration in connection with another person's right to participate in a tax shelter, for services necessary to the organization or structure of such tax shelter (other than services that do not constitute participation in the organization or management of a tax shelter under §301.6111–1T A-30 or A-33), or for information that is integral to participation in such tax shelter.

* * * * *

A-7. * * * In addition, in any case in which a person has directly or indirectly paid consideration to an organizer or seller for the right to participate in a tax shelter, for services necessary to the organization or structure of such tax shelter (other than services that do not constitute participation in the organization or management of a tax shelter under §301.6111–1T A-30 or A-33), or for information that is integral to participation in such tax shelter, the participant shall be considered to have acquired an interest in the tax shelter and to have been sold an interest in the tax shelter by the organizer or seller.

* * * * *

A-8. * * *

(b) An organizer may, but is not required to, list a person that acquired an interest in a potentially abusive tax shelter if the shelter is not subject to registration under section 6111, is not a listed transaction described in §301.6111–2T(b)(2), and is not a projected income investment described in §301.6111–1T A-57A, if the total consideration paid to all organizers and sellers with respect to such person's acquisition of the interest is less than $25,000, or if the organizer reasonably believes that such person's acquisition of the interest will not result in a reduction of the Federal income tax liability of any corporation or corporations that exceeds, or exceeds in the aggregate, $1 million in any single taxable year or a total of $2 million for any combination of taxable years and will not result in a reduction of the Federal income tax liability of any noncorporate taxpayer or taxpayers that exceeds, or exceeds in the aggregate, $250,000 in any single taxable year or a total of $500,000 for any combination of taxable years. For purposes of this paragraph (b), the fees paid by or to, and the tax savings of, persons related within the meaning of section 267 or section 707(b) are aggregated.

* * * * *

A-10. * * * However, a seller may, but is not required to, list a person that is described in A-8(b) of this section.

* * * * *

A-11. * * *

(b) In the case of a confidential corporate tax shelter under section 6111(d) and §301.6111–2T or a tax shelter described in Q&A-4 of this section (other than one required to be registered under section 6111(c) or a projected income investment as described in §301.6111–1T A-57A), the rules contained in A-11(a)(1), A-13(a)(2), the second sentence of A-13(b), A-13(c) and A-14 of this section do not apply.

* * * * *

A-17. (a) * * *

(3) The name, address, and TIN (as defined in section 7701(a)(41)) of each person who is required to be included on the list under A-8 or A-10 of this section and, in the case of a tax shelter that is a transaction described in section 6111(d)(1)(A) and §301.6111–2T(b) whether or not the direct or indirect participant is a corporation, the name, address, and TIN of each investor and any indirect corporate participant in the shelter if known to the organizer or seller;

* * * * *

(c) No information needs to be included on a list with regard to any tax shelter for which no person is an investor required to be included on the list under A-8(b) or A-10 of this section.

* * * * *

A-22. * * * However, the rules in A-4(a), A-5, A-6(d), A-7, A-8(b), A-10, A-11(b), and A-17(a)(3) and (c) of this section apply to any interest acquired by an investor (within the meaning of paragraph (c) of A-6 of this section) in a potentially abusive tax shelter after August 11, 2000. The rules in A-4(a), A-5, A- 6(d), A-7, A-8(b), A-10, A-11(b), and A-17(a)(3) and (c) of this section may be relied upon for any interest acquired by an investor (within the meaning of paragraph (c) of A-6 of this section) in a potentially abusive tax shelter after February 28, 2000. Otherwise, the rules that apply with respect to interests acquired in potentially abusive tax shelters after February 28, 2000, are contained in §301.6112–1T in effect prior to August 11, 2000 (see 26 CFR part 301 revised as of April 1, 2000).

* * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved August 8, 2000.

Jonathan Talisman,
Acting Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on August 11, 2000, 8:45 a.m., and published in the issue of the Federal Register for August 16, 2000, 65 F.R. 49909)

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of September 2000. See Rev. Rul. 2000–41, page 248.

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 September 2000. See Rev. Rul. 2000–41, page 248.

Tax Avoidance Using Artificially High Basis

Notice 2000–44

In Notice 99–59, 1999–52 I.R.B. 761, the Internal Revenue Service and the Treasury Department described certain transactions that were being marketed to taxpayers for the purpose of generating artificial tax losses. This notice concerns other similar transactions that purport to generate tax losses for taxpayers.

As stated in Notice 99–59, a loss is allowable as a deduction for federal income tax purposes only if it is bona fide and reflects actual economic consequences. An artificial loss lacking economic substance is not allowable. See *ACM Partnership v. Commissioner*, 157 F.3d 231, 252 (3d Cir. 1998), *cert. denied*, 526 U.S. 1017 (1999) ("Tax losses such as these . . . which do not correspond to any actual economic losses, do not constitute the type of 'bona fide' losses that are deductible under the Internal Revenue Code and regulations."); *Scully v. United States*, 840 F.2d 478, 486 (7th Cir. 1988) (to be deductible, a loss must be a "genuine economic loss"); *Shoenberg v. Commissioner*, 77 F.2d 446, 448 (8th Cir. 1935) (to be deductible, a loss must be "actual and real"); § 1.165–1(b) of the Income Tax Regulations ("Only a bona fide loss is allowable. Substance and not mere form shall govern in determining a deductible loss.").

Notice 99–59 describes an arrangement that purported to give rise to deductible losses on disposition of stock by applying the rules relating to distributions of encumbered property to shareholders in order to create artificially high basis in the stock. The Service and the Treasury have become aware of similar arrangements that have been designed to produce noneconomic tax losses on the disposition of partnership interests. These arrangements purport to give taxpayers artificially high basis in partnership interests and thereby give rise to deductible losses on disposition of those partnership interests.

One variation involves a taxpayer's borrowing at a premium and a partnership's subsequent assumption of that indebtedness. As an example of this variation, a taxpayer may receive $3,000X in cash from a lender under a loan agreement that provides for an inflated stated rate of interest and a stated principal amount of only $2,000X. The taxpayer contributes the $3,000X to a partnership, and the partnership assumes the indebtedness. The partnership thereafter engages in investment activities. At a later time, the taxpayer sells the partnership interest.

Under the position advanced by the promoters of this arrangement, the taxpayer claims that only the stated principal amount of the indebtedness, $2,000X in this example, is considered a liability assumed by the partnership that is treated as a distribution of money to the taxpayer that reduces the basis of the taxpayer's partnership interest under § 752 of the Internal Revenue Code. Therefore, disregarding any additional amounts the taxpayer may contribute to the partnership, transaction costs, and any income realized or expenses incurred at the partnership level, the taxpayer purports to have a basis in the partnership interest equal to the excess of the cash contributed over the stated principal amount of the indebtedness, even though the taxpayer's net economic outlay to acquire the partnership interest and the value of the partnership interest are nominal or zero. In this example, the taxpayer purports to have a basis in the partnership interest of $1,000X (the excess of the cash contributed ($3,000X) over the stated principal amount of the indebtedness ($2,000X)). On disposition of the partnership interest, the taxpayer claims a tax loss with respect to that basis amount, even though the taxpayer has incurred no corresponding economic loss.

In another variation, a taxpayer purchases and writes options and purports to create substantial positive basis in a partnership interest by transferring those option positions to a partnership. For example, a taxpayer might purchase call options for a cost of $1,000X and simultaneously write offsetting call options, with a slightly higher strike price but the same expiration date, for a premium of slightly less than $1,000X. Those option positions are then transferred to a partnership which, using additional amounts contributed to the partnership, may engage in investment activities.

Under the position advanced by the promoters of this arrangement, the taxpayer claims that the basis in the taxpayer's partnership interest is increased by the cost of the purchased call options but is not reduced under § 752 as a result of the partnership's assumption of the taxpayer's obligation with respect to the written call options. Therefore, disregarding additional amounts contributed to the partnership, transaction costs, and any income realized and expenses incurred at the partnership level, the taxpayer purports to have a basis in the partnership interest equal to the cost of the purchased call options ($1,000X in this example), even though the taxpayer's net economic outlay to acquire the partnership interest and the value of the partnership interest are nominal or zero. On the disposition of the partnership interest, the taxpayer claims a tax loss ($1,000X in this example), even though the taxpayer has incurred no corresponding economic loss.

The purported losses resulting from the transactions described above do not represent bona fide losses reflecting actual economic consequences as required for purposes of § 165. The purported losses from these transactions (and from any similar arrangements designed to produce noneconomic tax losses by artificially overstating basis in partnership interests) are not allowable as deductions for federal income tax purposes. The purported tax benefits from these transactions may also be subject to disallowance under other provisions of the Code and regulations. In particular, the transactions may be subject to challenge under § 752, or under § 1.701–2 or other anti-abuse rules. In addition, in the case of individuals, these transactions may be subject to challenge under § 165(c)(2). See *Fox v. Commissioner*, 82 T.C. 1001 (1984). Furthermore, tax losses from similar transactions designed to produce noneconomic tax losses by artificially overstating basis in corporate stock or other property are not allowable as deductions for federal income tax purposes.

Appropriate penalties may be imposed on participants in these transactions or, as applicable, on persons who participate in the promotion or reporting of these transactions, including the accuracy-related penalty under § 6662, the return preparer penalty under § 6694, the promoter penalty under § 6700, and the aiding and abetting penalty under § 6701.

Transactions that are the same as or substantially similar to the transactions described in this Notice 2000–44 are identified as "listed transactions" for the purposes of § 1.6011–4T(b)(2) of the Temporary Income Tax Regulations and § 301.6111– 2T(b)(2) of the Temporary Procedure and Administration Regulations. See also § 301.6112–1T, A-4. It should be noted that, independent of their classification as "listed transactions" for purposes of §§ 1.6011–4T(b)(2) and 301.6111–2T(b)(2), the transactions described in this Notice 2000–44 may already be subject to the tax shelter registration and list maintenance requirements of §§ 6111 and 6112 under the regulations issued in February 2000 (§§ 301.6111–2T and 301.6112–1T, A-4), as well as the regulations issued in 1984 and amended in 1986 (§§ 301.6111–1T and 301.6112–1T, A-3). Persons required to register these tax shelters who have failed to register the shelters may be subject to the penalty under § 6707(a) and to the penalty under § 6708(a) if the requirements of § 6112 are not satisfied.

In addition, the Service and the Treasury have learned that certain persons who have promoted participation in transactions described in this notice have encouraged individual taxpayers to participate in such transactions in a manner designed to avoid the reporting of large capital gains from unrelated transactions on their individual income tax returns (Form 1040). Certain promoters have recommended that taxpayers participate in these transactions through grantor trusts and use the same grantor trusts as vehicles to realize the capital gains. Further, although each separate capital gain and loss attributable to a portion of a trust that is treated as owned by a grantor under the grantor trust provisions of the Code (§ 671 and following) is properly reported as a separate item on the grantor's individual income tax return (see § 1.671–2(c) and the Instructions to Form 1041, U.S. Income Tax Return for Estates and Trusts), the Service and the Treasury understand that these promoters have advised that the capital gains and losses from these transactions may be netted, so that only a small net capital gain or loss is reported on the taxpayer's individual income tax return. In addition to other penalties, any person who willfully conceals the amount of capital gains and losses in this manner, or who willfully counsels or advises such concealment, may be guilty of a criminal offense under §§ 7201, 7203, 7206, or 7212(a) or other provisions of federal law.

The principal authors of this notice are David A. Shulman of the Office of Associate Chief Counsel (Passthroughs and Special Industries) and Victoria S. Balacek of the Office of Associate Chief Counsel (Financial Instruments and Products). For further information regarding this notice, contact Mr. Shulman at (202) 622-3080 or Ms. Balacek at (202) 622-3930 (not toll free calls).

List of Plants, Grown in Commercial Quantities in the United States, Having a Preproductive Period in Excess of Two Years Based on the Nationwide Weighted Average Preproductive Period for Such Plant

Notice 2000–45

PURPOSE

This notice provides guidance to taxpayers engaged in the trade or business of farming in determining whether a plant has a preproductive period in excess of 2 years for purposes of § 263A(d) of the Internal Revenue Code. This guidance is derived from the nationwide weighted average preproductive period for various plants grown in commercial quantities in the United States.

BACKGROUND

Section 263A requires generally that the direct costs and an allocable share of indirect costs of real or tangible personal property produced by a taxpayer be capitalized. Under § 263A, taxpayers generally are required to capitalize the costs of producing property in a farming business (including animals and plants without regard to the length of their preproductive period).

Sections 263A(d) and (e) set forth special rules for property produced in the trade or business of farming. Under § 263A(d)(1) and § 1.263A–4(a)(2) of the Income Tax Regulations, taxpayers neither required by § 447 to use an accrual method nor prohibited by § 448(a)(3) from using the cash method ("qualified taxpayers") are not required to capitalize the costs of producing plants that have a preproductive period of 2 years or less or animals. In addition, under § 263A(d)(3) and § 1.263A–4(d), a qualified taxpayer may elect to have § 263A not apply to the cost of producing plants in a farming business. Thus, unless an election is made to have § 263A not apply in accordance with § 263A(d)(3), qualified taxpayers generally are required to capitalize the costs of producing plants that have a preproductive period in excess of 2 years.

Section 263A(e)(3)(B) and § 1.263A–4(b)(2)(i)(B) provide that, for purposes of determining whether a plant has a preproductive period in excess of 2 years, the preproductive period of plants grown in commercial quantities in the United States must be based on the nationwide weighted average preproductive period for such plants. The legislative history of § 263A explains that Congress expected the Treasury Department to periodically publish a list of the preproductive periods of various plants based on the nationwide weighted averages for such plants. *See* H.R. Rep. No. 426, 99th Cong., 1st Sess. 628 (1985), 1986–3 (Vol. 2) C.B. 628. A proposed list was included in the preamble of the proposed § 1.263A–4 regulations (62 FR 44542). The Internal Revenue Service and Treasury Department received and considered comment letters relating to this proposed list.

Based upon information provided by the United States Department of Agriculture, the Service Treasury Department have determined that plants producing the following crops or yields have a nationwide weighted average preproductive period in excess of 2 years:

almonds, apples, apricots, avocados, blackberries, blueberries, cherries, chestnuts, coffee beans, currants, dates, figs, grapefruit, grapes, guavas, kiwifruit, kumquats, lemons, limes, macadamia nuts, mangoes, nectarines, olives, oranges, papayas, peaches, pears, pecans, persimmons, pistachio nuts, plums, pomegranates, prunes, raspberries, tangelos, tangerines, tangors, and walnuts.

This guidance is not an all-inclusive list of plants that have a nationwide weighted average preproductive period in excess of 2 years. In the case of other plants grown in commercial quantities in the United States, the nationwide weighted average preproductive period must be determined based on available statistical data. The Service and Treasury Department intend to update this guidance periodically as needed.

DRAFTING INFORMATION

The principal author of this notice is Richard C. Farley, Jr. previously of the Office of the Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice contact Grant D. Anderson at (202) 622-4970 (not a toll-free call).

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26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 61, 108; 1.61-12, 1.108-2).

Rev. Proc. 2000–33

SECTION 1. PURPOSE

This revenue procedure provides guidance on whether an acquisition of corporate debt by a beneficiary of the decedent creditor's estate or by a beneficiary of a revocable trust that became irrevocable upon the creditor's death is a direct acquisition within the meaning of § 1.108–2(b) of the Income Tax Regulations.

SECTION 2. BACKGROUND

Section 61(a)(12) of the Internal Revenue Code provides that gross income includes income from the discharge of indebtedness.

Section 108(e)(4) provides that for purposes of determining the income of the debtor from discharge of indebtedness, to the extent provided in regulations prescribed by the Secretary, the acquisition of outstanding indebtedness by a person bearing a relationship to the debtor specified in § 267(b) or § 707(b)(1) from a person who does not bear such a relationship to the debtor shall be treated as the acquisition of such indebtedness by the debtor.

Section 1.108–2(a) provides that the acquisition of outstanding indebtedness by a person related to the debtor from a person who is not related to the debtor results in the realization by the debtor of income from discharge of indebtedness. The rules of that paragraph apply if indebtedness is acquired directly by a person related to the debtor in a direct acquisition or if a holder of indebtedness becomes related to the debtor in an indirect acquisition.

Section 1.108–2(b) provides in part that an acquisition of outstanding indebtedness is a direct acquisition if a person related to the debtor acquires the indebtedness from a person who is not related to the debtor. That paragraph further provides that notwithstanding the foregoing, the Commissioner may provide by Revenue Procedure or other published guidance that certain acquisitions of indebtedness described in the preceding sentence are not direct acquisitions for purposes of this section.

SECTION 3. SCOPE

This revenue procedure applies to any acquisition of corporate debt by a beneficiary of a decedent creditor's estate or by a beneficiary of a revocable trust that became irrevocable upon the creditor's death where the beneficiary of the estate is related to the corporate debtor, the decedent creditor was also related to the corporate debtor, but the estate or trust is not related to the corporate debtor.

SECTION 4. APPLICATION

The acquisition of a debt in the situation described in section 3 is not a direct acquisition within the meaning of § 1.108–2(b).

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective August 16, 2000. However, the Service will not challenge a taxpayer's application of the rule provided in section 4 of this revenue procedure in prior years to an acquisition of an indebtedness, provided the rule is applied consistently with respect to that indebtedness by the taxpayer and any relevant related parties in all affected years.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Vincent Daly of the Office of the Associate Chief Counsel (Corporate). For further information regarding this revenue procedure contact Mr. Daly on (202) 622-7770 (not a toll free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking

Modification of Tax Shelter Rules

REG–103735–00; REG–110311–98; REG–103736–00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cross-reference notice of proposed rulemaking.

SUMMARY: These proposed rules relate to the modification of tax shelters under sections 6011, 6111, and 6112. The proposed rules provide the public with additional guidance needed to comply with the disclosure rules, the registration requirement, and the list maintenance requirement applicable to tax shelters. The proposed rules affect corporations participating in certain reportable transactions, persons responsible for registering confidential corporate tax shelters, and organizers of potentially abusive tax shelters. The IRS is issuing temporary regulations, T.D. 8896 on page 249, modifying the rules relating to the requirement that certain corporate taxpayers file a statement with their Federal corporate income tax returns under section 6011(a), the registration of confidential corporate tax shelters under section 6111(d), and the maintenance of lists of investors in potentially abusive tax shelters under section 6112. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 14, 2000.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–103735–00; REG–110311–98; REG–103736–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–103735–00; REG–110311–98; REG–103736– 00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Catherine Moore, (202) 622-3070; concerning submissions, Guy Traynor, (202) 622-7180.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking previously have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). No material changes to these collections of information are proposed in these regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

The temporary regulations in T.D. 8896 on page 249 amend the Income Tax Regulations (26 CFR part 1) regarding rules relating to the filing and records requirements for certain corporate taxpayers under section 6011. The temporary regulations also amend the temporary procedure and administration regulations (26 CFR part 301) regarding the registration of confidential corporate tax shelters under section 6111 and the maintenance of lists of investors in potentially abusive tax shelters under section 6112.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations impose no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be 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 these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Catherine Moore, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301, which were proposed to be amended on

August 29, 1984, and March 2, 2000, are proposed to be further amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.6011–4 as proposed to be added at 65 F.R. 11271 (March 2, 2000) is amended as follows:

1. The first sentence of paragraph (a) is revised.

2. Paragraph (d)(1), second sentence, is amended by removing the language "LM:PF" and adding "LM:PFTG:OTSA" in its place.

3. Paragraphs (e) and (g) are revised.

The revisions read as follows:

§1.6011–4 Requirement of statement disclosing participation in certain transactions by corporate taxpayers.

[The text of the amendments to this proposed section is the same as the text of the amendments to §1.6011–4T published in T.D. 8896.]

PART 301— PROCEDURE AND ADMINISTRATION

Par. 3. The authority citation for part 301 continues to read in part as follows:

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

Par. 4. Section 301.6111–2 as proposed to be added at 65 F.R. 11274 (March 2, 2000) is amended as follows:

1. Paragraph (b)(3)(ii) is amended by removing the word "corporate".

2. Paragraph (c) is amended as follows:

a. The last two sentences of paragraph (c)(1) are revised.

b. Paragraph (c)(2) is revised.

c. Paragraph (c)(3) is added.

3. Paragraphs (f) and (g)(1) are revised.

4. Paragraph (h) is amended by adding three sentences at the end of the paragraph.

The revisions and additions read as follows:

§301.6111–2 Confidential corporate tax shelters.

[The text of the amendments to this proposed section is the same as the text of the amendments to §301.6111–2T published in T.D. 8896.]

Par. 5. Section 301.6112–1 as proposed to be added at 49 F.R. 34246 (August 29, 1984) and 65 F.R. 11272 (March 2, 2000) is amended as follows:

0. The section heading is added.

1. A-4(a) is revised.

2. The last two sentences of A-5 are removed and a new sentence is added in their place.

3. A-6 is amended as follows:

a. Paragraph (b) is amended by removing the language "and" at the end of the paragraph.

b. Paragraph (c) is amended by removing the period at the end of the paragraph and adding "; and" in its place.

c. Paragraph (d) is added immediately after paragraph (c).

4. The last sentence of A-7 is revised.

5. A-8 is amended as follows:

a. In A-8,introductory text and paragraphs (a) through (e) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) through (a)(5), respectively.

b. New paragraph (b) is added immediately after *Example (2)* in newly designated paragraph (a)(5).

6. The last two sentences of A-9 are amended by removing the language "paragraph (e)" and adding "paragraph (a)(5)" in its place.

7. One sentence is added at the end of A-10.

8. A-11 is amended as follows:

a. In A-11, introductory text and paragraphs (a) and (b) are redesignated as paragraph (a) introductory text and paragraphs (a)(1) and (a)(2), respectively.

b. New paragraph (b) is added.

9. A-17 is amended as follows:

a. Paragraph (a)(3) is revised.

b. Paragraph (c) is added.

10. The first and second sentences of A-19 are amended by removing the language "paragraph (d) or paragraph (e)" and adding "paragraph (a)(4) or (5)" in its place.

11. A-22 is amended by adding three sentences before the last sentence.

The additions and revisions read as follows:

§301.6112-1 Questions and answers relating to the requirement to maintain a list of investors in potentially abusive tax shelters.

[The text of the amendments to this proposed section is the same as the text of the amendments to §301.6112-1T published in T.D. 8896.]

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

(Filed by the Office of the Federal Register on August 11, 2000, 8:45 a.m., and published in the issue of the Federal Register for August 16, 2000, 65 F.R. 49955)

Availability of the Revised Forms W-2 and W-3

Announcement 2000–76

Background	Based on recommendations from the Information Reporting Program Advisory Committee (IRPAC), the Social Security Administration (SSA), and others, the Internal Revenue Service (IRS) initiated plans to revise Form W-2, Wage and Tax Statement, and Form W-3, Transmittal of Wage and Tax Statements, for 2001 to be filed in 2002. An April 26, 2000, announcement on the IRS Web Site requested comments on proposed changes to the 2001 Forms W-2 and W-3. Current drafts of the forms on the web site include adopted comments from the public.
Purpose	The purpose of this announcement is to provide guidance on when the 2001 Forms W-2 and W-3 containing all planned changes will be available.
Planned Changes to Forms W-2 and W-3	The IRS expects to post the 2001 Forms W-2 and W-3 containing all planned changes on the IRS Web Site by mid-October 2000. Access the latest drafts of Forms W-2 and W-3 on the IRS Web Site at http://www.irs.gov. Follow the links for "Tax Info for Business" / "Tax Professionals' Corner" / "Early Release DRAFTS of Forms."

Determination Letter Applications for Volume Submitter Plans

Announcement 2000–77

Purpose

The purpose of this announcement is to assist practitioners and plan sponsors in filing determination letter applications for volume submitter plans where the volume submitter specimen plan has not received an advisory letter that considers all the changes in the qualification requirements made by GUST. The announcement provides guidance on the types of plan amendments that may be needed to obtain a favorable determination letter. It also discusses certain procedural requirements related to the application process.

Background

Rev. Proc. 2000–27, 2000–26 I.R.B. 1272, provides that determination letter applications for individually-designed plans, including volume submitter plans, that are filed with the Service on or after June 26, 2000, will generally be reviewed taking into account all the changes in the qualification requirements made by GUST. (GUST is an acronym for the Uruguay Round Agreements Act (GATT), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the Small Business Job Protection Act of 1996 (SBJPA), the Taxpayer Relief Act of 1997 (TRA '97) and the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA '98).) A letter that takes into account all of the requirements of GUST is referred to as a GUST II letter.

Prior to June 26, 2000, plan sponsors could not request complete GUST letters except for terminating plans. Rather, they had the option of requesting one of two limited scope determination letters: a letter that excludes consideration of any of the qualification changes made by GUST, or a letter that generally considers GUST but excludes consideration of certain qualification changes effective after 1998. These letters are referred to as pre-GATT and GUST I letters, respectively. Until further notice, plan sponsors will continue to have the option of requesting either of these limited scope letters, except, of course, in the case of terminating plans. However, unless the plan sponsor requests a limited scope review in the cover letter for its application, a determination letter application for an individually-designed plan, including a volume submitter plan, that is filed on or after June 26, 2000, will be reviewed taking into account all of the requirements of GUST. *See* section 3.01 of Rev. Proc. 2000–27.

Volume submitter practitioners have been able to obtain GUST II advisory letters for their volume submitter specimen plans since March 8, 2000. However, as of now, the latest advisory letter issued for most specimen plans is either a pre-GATT letter or a GUST I letter.

General Guidelines for Determination Letter Applications for Volume Submitter Plans That Have Not Received GUST II Advisory Letters

The guidelines that follow are intended to ensure that volume submitter determination letter applications are processed efficiently and correctly. Practitioners and plan sponsors should note that failure to follow these guidelines may result in processing delays, unnecessary taxpayer contacts, requests for plan restatement, new applications or additional user fees, and possible issuance of incorrect letters.

The effect of Rev. Proc. 2000–27 on the review of applications for determination letters for volume submitter plans that are filed on or after June 26, 2000, is as follows: These applications will be reviewed as GUST II applications in all cases, even if the latest advisory letter for the specimen plan is a GUST I or pre-GATT letter, unless the application or cover letter specifically requests a GUST I or pre-GATT determination letter.

Consequently, practitioners and plan sponsors who will be filing determination letter applications for volume submitter plans where a GUST II advisory letter has not been issued for the specimen plan should carefully consider the requirements that may have to be satisfied in order to receive a GUST II determination letter. In addition to necessary plan amendments, these requirements may entail plan restatement, the filing of Form 5300 instead of Form 5307 and the payment of a higher user fee. These requirements, including certain plan amendments that may be needed, are discussed below under ***Specific Guidelines for Determination Letter Applications for Volume Submitter Plans That Have Not Received GUST II Advisory Letters.***

In addition, practitioners and plan sponsors are reminded that until proposed regulations under § 411(d)(6) of the Code are finalized, the Service will not issue a favorable determination letter for a plan that is amended to eliminate or reduce benefits in a manner that is not permitted under regulations now in effect. Therefore, plan sponsors who are considering submitting determination letter applications before the proposed regulations under § 411(d)(6) are finalized should also be aware that they may have to submit another application and pay another user fee if they wish to adopt plan amendments as a result of the final regulations. In view of the foregoing, plan sponsors may wish to consider deferring their requests for determination letters until the final § 411(d)(6) regulations have been issued and a GUST II letter has been issued for the volume submitter specimen plan. Also *see* section 19 of Rev. Proc. 2000–20, 2000–6 I.R.B. 553, and section 4 of Rev. Proc. 2000–27 regarding the remedial amendment period for volume submitter plan sponsors.

If the plan sponsor desires a GUST II letter, the determination letter application should include all necessary GUST amendments as well as any other permissible amendments the plan sponsor wishes to make. The practitioner and plan sponsor are also urged to include a cover letter stating that the application is for a GUST II determination letter. In accordance with section 9.08(2)(e) of Rev. Proc. 2000–6, 2000–1 I.R.B. 187, the application must also include a statement by the practitioner identifying and describing each deviation from the language of the approved specimen plan.

If the plan sponsor does not desire a GUST II letter, it must indicate on the application or in a cover letter whether it is requesting a pre-GATT or GUST I determination letter.

Specific Guidelines for Determination Letter Applications for Volume Submitter Plans That Have Not Received GUST II Advisory Letters

The following guidelines address the plan amendments that may be needed to obtain a GUST II determination letter where the specimen plan's latest advisory letter is a GUST I letter. The guidelines also address the situations in which a request for a GUST II determination letter may require plan restatement, use of Form 5300 instead of Form 5307 and payment of a higher user fee.

1. Where the latest advisory letter for the specimen plan is a GUST I letter:

A. If the plan is not intended to satisfy the safe harbors under § 401(k)(12) and § 401(m)(11), the plan amendments that may be needed for a GUST II determination letter should in most cases be limited. These include amendments related to the repeal of the combined plan limitation of § 415(e) and, for § 401(k), profit–sharing and stock bonus plans, amendments related to the addition of § 402(c)(4)(C) which changed the definition of eligible rollover distribution. *See* Notice 99–44, 1999–35 I.R.B. 326, Notice 99–5, 1999–3 I.R.B. 10, and Notice 2000–32, 2000–26 I.R.B. 1274, regarding these changes. These amendments should usually be minor and should not, of themselves, either require plan restatement or affect the plan sponsor's ability to use Form 5307.

B. If the plan is adding the safe harbors under § 401(k)(12) and § 401(m)(11), the plan must be restated and the plan sponsor cannot use Form 5307 but must instead use Form 5300 and pay the user fee for an individually-designed plan that is not a volume submitter plan.

2. Where the latest advisory letter for the specimen plan is a pre-GATT letter:

A. Except as provided in B., below, the plan must be restated and the plan sponsor cannot use Form 5307 but must instead use Form 5300 and pay the user fee for an individually-designed plan that is not a volume submitter plan.

B. If the plan is a defined contribution plan under which the only contributions are nonelective employer contributions, then the plan does not have to be restated and the plan sponsor can use Form 5307.

Announcement of the Consent Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 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 disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent or enrolled actuary, and date or 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 or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Stoppenhagen, Larry	Ft. Wayne, IN	CPA	April 14, 2000 to April 13, 2001
Chon, James	N. Hollywood, CA	CPA	May 22, 2000 to May 21, 2003
Bleyer, Stephen A.	Bala Cynwyd, PA	CPA	June 26, 2000 to December 25, 2000
Knutson, Owen	Ouray, CO	CPA	July 3, 2000 to January 2, 2003
Silverman, Richard E.	Fayetteville, NY	CPA	August 1, 2000 to March 31, 2004
Holt, Jeffrey	Little Rock, AR	Enrolled Agent	October 1, 2000 to March 31, 2003
Barbagallo, Joseph	Newton, PA	CPA	October 15, 2000 to October 14, 2004

Announcement of the Disbarment and Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under Section 330, Title 31 of the United States Code, the Secretary of the Treasury, after due notice and opportunity for hearing, is authorized to suspend or disbar from practice before the Internal Revenue Service any person who has violated the rules and regulations governing the recognition of attorneys, certified public accountants, enrolled agents or enrolled actuaries to practice before the Internal Revenue Service.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or under suspension from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents and enrolled actuaries to identify such disbarred or suspended practitioners, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public accountant, enrolled agent or enrolled actuary, and the date of disbarment or period of suspension. This announcement will appear in the weekly Bulletin for five successive weeks or as long as it is practicable for each attorney, certified public accountant, enrolled agent or enrolled actuary so suspended or disbarred and will be consolidated and published in the Cumulative Bulletin.

After due notice and opportunity for hearing before an administrative law judge, the following individuals has been disbarred from further practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Luebben, William	Hot Springs, AR	CPA	February 11, 2000

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 law 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 the 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 Contribution 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.—Statements 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[1]

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2000–1 through 2000–26 is in Internal Revenue Bulletin 2000–27, dated July 3, 2000.

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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

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