

## **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. 2002-64, page 688.**

**LIFO; price indexes; department stores.** The August 2002 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, August 31, 2002.

**Notice 2002-64, page 690.**

**New markets tax credit; other federal tax benefits.** This notice provides guidance to taxpayers on federal tax benefits that do not limit the availability of the new markets tax credit under section 45D of the Code.

**Notice 2002-65, page 690.**

This notice advises taxpayers and their representatives that the transaction it describes, which uses a straddle, an S corporation or a partnership, and one or more transitory shareholders or partners to claim a loss while deferring an offsetting gain, is subject to challenge by the Service on several grounds. This notice holds that the described transaction is a "listed transaction" and warns of penalties that may be imposed if taxpayers claim losses from such a transaction.

### **EXEMPT ORGANIZATIONS**

**Announcement 2002-92, page 709.**

This document requests comments regarding proposed revisions of Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, and *Instructions for Form 1023*.

### **ADMINISTRATIVE**

**Rev. Proc. 2002-63, page 691.**

**Per diem allowances.** This procedure provides rules for deeming substantiated the amount of certain reimbursed traveling expenses of an employee as well as optional rules for determining the amount of deductible meals and incidental expenses while traveling away from home. Rev. Proc. 2001-47 superseded.

**Rev. Proc. 2002-65, page 700.**

**Business expenses; capital expenditures; railroad track maintenance costs.** This procedure provides a safe harbor method of accounting (track maintenance allowance method) for track structure expenditures paid or incurred by certain railroads. It also provides procedures for a qualifying taxpayer to obtain automatic consent from the Commissioner to change to the track maintenance allowance method. In addition, this procedure provides an option for certain qualifying taxpayers to settle the issue of track structure expenditures for open taxable years using the track maintenance allowance method. Rev. Procs. 2001-46 and 2002-9 modified and amplified.

**Announcement 2002-93, page 709.**

This document contains a correction to the date and location of a public hearing on proposed regulations (REG-165868-01, 2002-31 I.R.B. 270) under section 419A of the Code, which provide guidance regarding whether a welfare benefit plan is part of a 10-or-more employer plan.

Finding Lists begin on page ii.



# The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all.

## Introduction

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

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

The Bulletin is divided into four parts as follows:

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

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

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

**Part IV.—Terms 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 62.—Adjusted Gross Income Defined

26 CFR 1.62–2: Reimbursements and other expense allowance arrangements.

Rules are provided under which a reimbursement or other expense allowance arrangement for the cost of lodging, meal, and incidental expenses, or of meal and incidental expenses, incurred by an employee while traveling away from home will satisfy the requirements of § 62(c) of the Code as to substantiation of the amount of the expenses. See Rev. Proc. 2002-63, page 691.

## Section 162.—Trade or Business Expenses

26 CFR 1.162–17: Reporting and substantiation of certain business expenses of employees.

Rules are provided for substantiating the amount of a deduction of an expense for meal and incidental expenses, or for incidental expenses only, incurred while traveling away from home. See Rev. Proc. 2002-63, page 691.

## Section 267.—Losses, Expenses, and Interest With Respect to Transactions Between Related Taxpayers

26 CFR 1.267(a)–1: Deductions disallowed.

When a payor provides a per diem allowance to an employee who is a related party, the rules provided for the deemed substantiation to the payor of the amount of the employee's ordinary and necessary business expenses for lodging, meal, and inci-

denal expenses incurred while traveling away from home do not apply. See Rev. Proc. 2002-63, page 691.

## Section 274.—Disallowance of Certain Entertainment, etc., Expenses

26 CFR 1.274–5: Substantiation requirements.

Rules are provided for an optional method for substantiating the amount of ordinary and necessary business expenses of an employee for lodging, meal, and incidental expenses, or for meal and incidental expenses, incurred while traveling away from home when a payor provides a per diem allowance under a reimbursement or other expense allowance arrangement. Rules are also provided for an optional method for employees and self-employed individuals to use in computing the deductible costs of business meal and incidental expenses, or incidental expenses only, paid or incurred while traveling away from home. See Rev. Proc. 2002-63, page 691.

## Section 446.—General Rule for Methods of Accounting

26 CFR 1.446–1: General rule for methods of accounting.

A safe harbor method of accounting is provided for track structure expenditures paid or incurred by Class II or III railroads, as well as procedures for automatic consent to change to this method. See Rev. Proc. 2002-65, page 700.

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

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

**LIFO; price indexes; department stores.** The August 2002 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, August 31, 2002.

## Rev. Rul. 2002–64

The following Department Store Inventory Price Indexes for August 2002 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472–1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to August 31, 2002.

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

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

Groups	August 2001	August 2002	Percent Change from August 2001 to August 2002 <sup>1</sup>
1. Piece Goods	485.7	481.8	-0.8
2. Domestic and Draperies	591.8	577.9	-2.3
3. Women's and Children's Shoes	655.4	634.4	-3.2
4. Men's Shoes	856.4	892.1	4.2
5. Infant's Wear	609.5	600.1	-1.5
6. Women's Underwear	567.5	532.7	-6.1
7. Women's Hosiery	354.8	342.7	-3.4
8. Women's and Girl's Accessories	547.2	523.9	-4.3
9. Women's Outerwear and Girls' Wear	361.6	361.5	0.0

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

Groups	August 2001	August 2002	Percent Change from August 2001 to August 2002 <sup>1</sup>
10. Men's Clothing-----	579.2	563.8	-2.7
11. Men's Furnishings-----	583.9	589.4	0.9
12. Boys' Clothing and Furnishings-----	469.2	439.2	-6.4
13. Jewelry-----	936.3	887.0	-5.3
14. Notions-----	793.0	793.2	0.0
15. Toilet Articles and Drugs-----	969.9	969.2	-0.1
16. Furniture and Bedding-----	633.9	623.9	-1.6
17. Floor Coverings-----	623.8	621.3	-0.4
18. Housewares-----	767.6	749.4	-2.4
19. Major Appliances-----	226.9	221.8	-2.2
20. Radio and Television-----	53.4	47.9	-10.3
21. Recreation and Education <sup>2</sup> -----	89.3	85.7	-4.0
22. Home Improvements <sup>2</sup> -----	125.8	125.4	-0.3
23. Auto Accessories <sup>2</sup> -----	109.4	111.8	2.2
Groups 1 - 15: Soft Goods-----	575.5	565.9	-1.7
Groups 16 - 20: Durable Goods-----	421.8	408.4	-3.2
Groups 21 - 23: Misc. Goods <sup>2</sup> -----	98.2	96.2	-2.0
Store Total <sup>3</sup> -----	518.8	508.3	-2.0

<sup>1</sup>Absence of a minus sign before the percentage change in this column signifies a price increase.

<sup>2</sup>Indexes on a January 1986=100 base.

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

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622-7718 (not a toll-free call).

**Section 481.—Adjustments  
Required by Changes in  
Method of Accounting**

*26 CFR 1.481-1: Adjustments in general.*

A safe harbor method of accounting is provided for track structure expenditures paid or incurred by Class II or III railroads, as well as procedures for automatic consent to change to this method. See Rev. Proc. 2002-65, page 700.

## Part III. Administrative, Procedural, and Miscellaneous

### Section 45D New Markets Tax Credit

#### Notice 2002-64

##### PURPOSE

This notice provides guidance to taxpayers on federal tax benefits that do not limit the availability of the new markets tax credit under § 45D of the Internal Revenue Code.

##### BACKGROUND

Section 45D(a)(1) allows a new markets tax credit on a credit allowance date (as defined in § 45D(a)(3)) to a taxpayer who holds a qualified equity investment in a qualified community development entity (CDE), as defined in § 45D(c).

Section 45D(b)(1) provides that an equity investment in a CDE is a “qualified equity investment” only if, among other things, the CDE uses substantially all of the proceeds of the investment to make qualified low-income community investments.

Section 45D(d) provides that the term “qualified low-income community investment” means (A) any capital or equity investment in, or loan to, any qualified active low-income community business, (B) the purchase from another CDE of any loan made by the entity which is a qualified low-income community investment, (C) financial counseling and other services specified in regulations prescribed by the Secretary to businesses located in, or residents of, low-income communities, and (D) any equity investment in, or loan to, any CDE.

Section 45D(i)(1) authorizes the Secretary to prescribe regulations as may be appropriate to carry out § 45D including regulations that limit the new markets tax credit for investments that are directly or indirectly subsidized by other federal tax benefits (including the low-income housing credit under § 42 and the exclusion from gross income under § 103).

On December 26, 2001, the Treasury Department and the Internal Revenue Service published temporary regulations (T.D. 8971, 2002-3 I.R.B. 308 [66 FR 66307]) in the **Federal Register**. The text of the temporary regulations does not provide

guidance as to what federal tax benefits limit the availability of the new markets tax credit.

##### DISCUSSION

Until further guidance is provided, the availability of federal tax benefits, other than § 42, does not limit the availability of the new markets tax credit. The Treasury Department and the Service are studying how § 42 may limit the availability of the new markets tax credit.

Federal tax benefits that do not limit the availability of the new markets tax credit include, for example: (1) the rehabilitation credit under § 47; (2) all depreciation deductions under §§ 167 and 168, including the additional first-year depreciation for certain property acquired after September 10, 2001, and before September 11, 2004, under § 168(k), and the expense deduction for certain depreciable property under § 179; and (3) all tax benefits relating to certain designated areas such as empowerment zones and enterprise communities under §§ 1391 through 1397D, the District of Columbia Enterprise Zone under §§ 1400 through 1400B, renewal communities under §§ 1400E through 1400J, and the New York Liberty Zone under § 1400L.

Taxpayers may rely on this notice prior to the issuance of further guidance. In the future, the Secretary may issue guidance that limits the new markets tax credit for investments which are directly or indirectly subsidized by other federal tax benefits.

##### DRAFTING INFORMATION

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

### Passthrough Entity Straddle Tax Shelter

#### Notice 2002-65

The Internal Revenue Service and the Treasury Department have become aware of a type of transaction, described below,

that is being used by taxpayers for the purpose of generating deductions. This notice alerts taxpayers and their representatives that the tax benefits purportedly generated by these transactions are not allowable for federal income tax purposes. This notice also alerts taxpayers, their representatives, and promoters of these transactions of certain responsibilities that may arise from participating in these transactions.

##### FACTS

This transaction involves a series of pre-planned steps. First, Taxpayer and one or more other shareholders form a corporation that elects to be treated as an S corporation under § 1362(a) of the Internal Revenue Code. Taxpayer initially has a minority stock interest in the S corporation.

The S corporation enters into straddles on foreign currencies and may acquire other assets. The S corporation terminates the gain leg of a foreign currency straddle, and allocates the gain to the shareholders pro rata according to their stock ownership. The gain increases each shareholder's basis in the stock of the S corporation under § 1367(a)(1). The S corporation redeems the stock of all of the shareholders other than Taxpayer, and the other shareholders claim a loss as a result of the redemption. The S corporation files an election under § 1377(a)(2) to treat the S corporation's taxable year as though it consists of two separate taxable years, with the first year ending on the date of the redemption.

After the redemption, the S corporation terminates the loss leg of the foreign currency straddle. In order to maximize the allowable loss, Taxpayer also may engage in a transaction that is intended to increase Taxpayer's basis in the S corporation. For example, Taxpayer may make a loan to the S corporation.

The entire loss from the loss leg of the straddle passes through to Taxpayer, the sole remaining shareholder in the S corporation, under § 1366. The loss reduces Taxpayer's basis in the stock (and indebtedness, if any) of the S corporation under § 1367(a)(2). Due to the reduction in Taxpayer's basis in the S corporation's stock (and indebtedness, if any), Taxpayer will recognize gain when the corporation makes

additional payments to Taxpayer or Taxpayer disposes of Taxpayer's interest in the S corporation.

Similar transactions may be structured using a partnership in the place of the S corporation.

## ANALYSIS

The transaction described in this notice has been designed to use a straddle, one or more transitory shareholders, and the rules of subchapter S to allow Taxpayer to claim an immediate loss while deferring an offsetting gain in Taxpayer's investment in the S corporation. The Service intends to challenge the purported tax benefits from this transaction on a number of grounds. First, the Service may disallow Taxpayer's loss under § 165(c)(2) by asserting that the loss was not incurred in a transaction undertaken for profit. See *Smith v. Commissioner*, 78 T.C. 350 (1982) and *Fox v. Commissioner*, 82 T.C. 1001 (1984) (disallowing losses from straddle transactions). Second, the Service may disregard the transitory ownership of the shareholders other than Taxpayer. See *Comtel Corporation v. Commissioner*, 376 F.2d 791 (2d Cir. 1967) (transitory shareholders' interests not respected). Under this argument, the Service would allocate all of the income and losses from the activities of the S corporation to Taxpayer. Third, the Service may disallow Taxpayer's loss deduction under § 269 by asserting that Taxpayer acquired control of the S corporation with the principal purpose of avoiding or evading federal income tax. In addition, the Service may challenge the allowance of the loss deduction based on other statutory provisions, including § 988, and judicial doctrines, including the step transaction doctrine and the doctrines of economic substance, business purpose, and substance over form. Transactions that use a partnership instead of an S corporation also will be challenged under the partnership anti-abuse rule contained in § 1.701-2 of the Income Tax Regulations. See § 1.701-2(d) (Ex. 8).

Transactions that are the same as, or substantially similar to, the transaction described in this notice are identified as "listed transactions" for 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. The transaction described in this notice and

the transaction described in Notice 2002-50, 2002-28 I.R.B. 98, (Partnership Straddle Tax Shelter) are substantially similar transactions. For purposes of § 1.6011-4T(b)(2) and § 301.6111-2T(b)(2), a transaction will be considered the same as, or substantially similar to, the transaction described in this notice even if the gain and loss legs of the straddle are triggered in separate taxable years, or if, at the time relevant for making such determination, the corporation in the transaction has not elected under § 1377(a)(2) to treat the S corporation's taxable year as though it consisted of two separate taxable years. Further, 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), transactions that are the same as, or substantially similar to, the transaction described in this notice may already be subject to the disclosure requirements of § 6011, the tax shelter registration requirements of § 6111 or the list maintenance requirements of § 6112 (§§ 1.6011-4T, 301.6111-1T, 301.6111-2T and 301.6112-1T, A-3 and A-4).

Persons who are required to satisfy the registration requirement of § 6111 with respect to the transaction described in this notice and who fail to do so may be subject to the penalty under § 6707(a). Persons who are required to satisfy the list-keeping requirement of § 6112 with respect to the transaction and who fail to do so may be subject to the penalty under § 6708(a). In addition, the Service may impose penalties on participants in this transaction or substantially similar transactions, or, as applicable, on persons who participate in the promotion or reporting of this transaction or substantially similar 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.

The principal author of this notice is Demetri Yatrakis of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Yatrakis at (202) 622-3060 (not a toll-free call).

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

(Also Part I, §§ 62, 162, 267, 274; 1.62-2, 1.162-17, 1.267(a)-1, 1.274-5.)

## Rev. Proc. 2002-63

### SECTION 1. PURPOSE

This revenue procedure updates Rev. Proc. 2001-47, 2001-2 C.B. 332, by providing rules under which the amount of ordinary and necessary business expenses of an employee for lodging, meal, and incidental expenses or for meal and incidental expenses incurred while traveling away from home will be deemed substantiated under § 1.274-5 of the Income Tax Regulations when a payor (the employer, its agent, or a third party) provides a *per diem* allowance under a reimbursement or other expense allowance arrangement to pay for such expenses. In addition, this revenue procedure provides an optional method for employees and self-employed individuals who pay or incur meal costs to use in computing the deductible costs of business meal and incidental expenses paid or incurred while traveling away from home. This revenue procedure also provides an optional method for use in computing the deductible costs of incidental expenses paid or incurred while traveling away from home by employees and self-employed individuals who do not pay or incur meal costs and who are not reimbursed for the incidental expenses. Use of a method described in this revenue procedure is not mandatory, and a taxpayer may use actual allowable expenses if the taxpayer maintains adequate records or other sufficient evidence for proper substantiation. This revenue procedure does not provide rules under which the amount of an employee's lodging expenses will be deemed substantiated when a payor provides an allowance to pay for those expenses but not meal and incidental expenses.

### SECTION 2. BACKGROUND AND CHANGES

.01 Section 162(a) of the Internal Revenue Code allows a deduction for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Under that provision, an employee or self-employed in-

dividual may deduct expenses paid or incurred while traveling away from home in pursuit of a trade or business. However, under § 262, no portion of the travel expenses that is attributable to personal, living, or family expenses is deductible.

.02 Section 274(n) generally limits the amount allowable as a deduction under § 162 for any expense for food, beverages, or entertainment to 50 percent of the amount of the expense that otherwise would be allowable as a deduction. In the case of any expenses for food or beverages consumed while away from home (within the meaning of § 162(a)(2)) by an individual during, or incident to, the period of duty subject to the hours of service limitations of the Department of Transportation, § 274(n)(3) gradually increases the deductible percentage to 80 percent for taxable years beginning in 2008. For taxable years beginning in 2002, the deductible percentage for these expenses is 65 percent.

.03 Section 274(d) provides, in part, that no deduction shall be allowed under § 162 for any traveling expense (including meals and lodging while away from home) unless the taxpayer complies with certain substantiation requirements. The section further provides that regulations may prescribe that some or all of the substantiation requirements do not apply to an expense that does not exceed an amount prescribed by such regulations.

.04 Section 1.274-5(g) of the regulations, in part, grants the Commissioner the authority to prescribe rules relating to reimbursement arrangements or *per diem* allowances for ordinary and necessary expenses paid or incurred while traveling away from home. Pursuant to this grant of authority, the Commissioner may prescribe rules under which such arrangements or allowances, if in accordance with reasonable business practice, will be regarded (1) as equivalent to substantiation, by adequate records or other sufficient evidence, of the amount of such travel expenses for purposes of § 1.274-5(c), and (2) as satisfying the requirements of an adequate accounting to the employer of the amount of such travel expenses for purposes of § 1.274-5(f).

.05 For purposes of determining adjusted gross income, § 62(a)(2)(A) allows an employee a deduction for expenses allowed by Part VI (§ 161 and following), subchapter B, chapter 1 of the Code, paid

or incurred by the employee in connection with the performance of services as an employee under a reimbursement or other expense allowance arrangement with a payor.

.06 Section 62(c) provides that an arrangement will not be treated as a reimbursement or other expense allowance arrangement for purposes of § 62(a)(2)(A) if it—

(1) does not require the employee to substantiate the expenses covered by the arrangement to the payor, or

(2) provides the employee with the right to retain any amount in excess of the substantiated expenses covered under the arrangement.

Section 62(c) further provides that the substantiation requirements described therein shall not apply to any expense to the extent that, under the grant of regulatory authority prescribed in § 274(d), the Commissioner has provided that substantiation is not required for such expense.

.07 Under § 1.62-2(c)(1) a reimbursement or other expense allowance arrangement satisfies the requirements of § 62(c) if it meets the requirements of business connection, substantiation, and returning amounts in excess of expenses as specified in the regulations. Section 1.62-2(e)(2) specifically provides that substantiation of certain business expenses in accordance with rules prescribed under the authority of § 1.274-5(g) or 1.274-5(j) will be treated as substantiation of the amount of such expenses for purposes of § 1.62-2. Under § 1.62-2(f)(2), the Commissioner may prescribe rules under which an arrangement providing *per diem* allowances will be treated as satisfying the requirement of returning amounts in excess of expenses, even though the arrangement does not require the employee to return the portion of such an allowance that relates to days of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated pursuant to rules prescribed under § 274(d), provided the allowance is reasonably calculated not to exceed the amount of the employee's expenses or anticipated expenses and the employee is required to return any portion of such an allowance that relates to days of travel not substantiated.

.08 Section 1.62-2(h)(2)(i)(B) provides that if a payor pays a *per diem* allowance that meets the requirements of § 1.62-2(c)(1), the portion, if any, of the allow-

ance that relates to days of travel substantiated in accordance with § 1.62-2(e), that exceeds the amount of the employee's expenses deemed substantiated for such travel pursuant to rules prescribed under § 274(d) and § 1.274-5(g) or § 1.274-5(j), and that the employee is not required to return, is subject to withholding and payment of employment taxes. See §§ 31.3121(a)-3, 31.3231(e)-1(a)(5), 31.3306(b)-2, and 31.3401(a)-4 of the Employment Tax Regulations. Because the employee is not required to return this excess portion, the reasonable period of time provisions of § 1.62-2(g) (relating to the return of excess amounts) do not apply to this portion.

.09 Under § 1.62-2(h)(2)(i)(B)(4), the Commissioner may, in his or her discretion, prescribe special rules regarding the timing of withholding and payment of employment taxes on *per diem* allowances.

.10 Section 1.274-5(j)(1) grants the Commissioner the authority to establish a method under which a taxpayer may elect to use a specified amount for meals paid or incurred while traveling away from home in lieu of substantiating the actual cost of meals.

.11 The Internal Revenue Service intends to issue regulations pursuant to § 274(d) granting the Commissioner the authority to establish a method under which a taxpayer may elect to use a specified amount for incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual cost of incidental expenses. The regulations are expected to apply to incidental expenses paid or incurred after September 30, 2002.

.12 Sections 3.02, 4.04(5), and 5.06 provide transition rules for the last 3 months of calendar year 2002 due to changes in the effective date of the CONUS rates published by GSA.

.13 Section 3.02(3) of this revenue procedure contains revisions to the definition of incidental expenses.

.14 Section 4.03 of this revenue procedure contains revisions to the optional method for substantiating meal and incidental expenses.

.15 Section 4.05 of this revenue procedure is added to provide a new optional method for substantiating incidental expenses.

.16 Section 5.04 of this revenue procedure contains revisions to the list of high-

cost localities and to the high-low rates for purposes of section 5.

.17 Section 7 of this revenue procedure is revised by renumbering section 7.07 of Rev. Proc. 2001-47 as section 7.08 in this revenue procedure; by renumbering section 7.08 of Rev. Proc. 2001-47 as section 7.10 in this revenue procedure; and by inserting sections 7.07 and 7.09 in this revenue procedure to describe the application of section 4.05 of this revenue procedure.

### SECTION 3. DEFINITIONS

.01 *Per diem allowance.* The term “*per diem allowance*” means a payment under a reimbursement or other expense allowance arrangement that meets the requirements specified in § 1.62-2(c)(1) and that is —

(1) paid with respect to ordinary and necessary business expenses incurred, or which the payor reasonably anticipates will be incurred, by an employee for lodging, meal, and incidental expenses or for meal and incidental expenses for travel away from home in connection with the performance of services as an employee of the employer,

(2) reasonably calculated not to exceed the amount of the expenses or the anticipated expenses, and

(3) paid at or below the applicable federal *per diem* rate, a flat rate or stated schedule, or in accordance with any other Service-specified rate or schedule.

.02 *Federal per diem rate and federal M&IE rate.*

(1) *General rule.* The federal *per diem* rate is equal to the sum of the applicable federal lodging expense rate and the applicable federal meal and incidental expense (M&IE) rate for the day and locality of travel.

(a) *CONUS rates.* The rates for localities in the continental United States (“CONUS”) are set forth in Appendix A to 41 C.F.R. ch. 301. However, in applying section 4.01, 4.02, or 4.03 of this revenue procedure, taxpayers may continue to use the CONUS rates in effect for the first 9 months of 2002 for expenses of all CONUS travel away from home that are paid or incurred during calendar year 2002 in lieu of the updated GSA rates. A taxpayer must consistently use either these rates or the updated rates for the period of October 1, 2002, through December 31, 2002.

(b) *OCONUS rates.* The rates for localities outside the continental United States (“OCONUS”) are established by the Secretary of Defense (rates for non-foreign localities, including Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, and the possessions of the United States) and by the Secretary of State (rates for foreign localities), and are published in the *Per Diem Supplement to the Standardized Regulations (Government Civilians, Foreign Areas)* (updated on a monthly basis).

(c) *Internet access to the rates.* The CONUS and OCONUS rates may be found on the Internet at [www.policyworks.gov/perdiem](http://www.policyworks.gov/perdiem).

(2) *Locality of travel.* The term “locality of travel” means the locality where an employee traveling away from home in connection with the performance of services as an employee of the employer stops for sleep or rest.

(3) *Incidental expenses.*

(a) *Travel before January 1, 2003.* For travel away from home before January 1, 2003, the term “incidental expenses” includes, but is not limited to, expenses for laundry, cleaning and pressing of clothing, and fees and tips for services, such as for porters and baggage carriers. The term “incidental expenses” does not include taxicab fares, lodging taxes, or the costs of telegrams or telephone calls.

(b) *Travel after December 31, 2002.* For travel away from home after December 31, 2002, the term “incidental expenses” has the meaning given to it in the Federal Travel Regulations, 41 C.F.R. Part 300 (2002). For example, the term “incidental expenses” includes fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants in foreign countries but does not include expenses for laundry, cleaning and pressing of clothing, lodging taxes, or the costs of telegrams or telephone calls.

.03 *Flat rate or stated schedule.*

(1) *In general.* Except as provided in section 3.03(2) of this revenue procedure, an allowance is paid at a flat rate or stated schedule if it is provided on a uniform and objective basis with respect to the expenses described in section 3.01 of this revenue procedure. Such allowance may be paid with respect to the number of days away from home in connection with the performance of services as an employee or on any

other basis that is consistently applied and in accordance with reasonable business practice. Thus, for example, an hourly payment to cover meal and incidental expenses paid to a pilot or flight attendant who is traveling away from home in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule. Likewise, a payment based on the number of miles traveled (such as cents per mile) to cover meal and incidental expenses paid to an over-the-road truck driver who is traveling away from home in connection with the performance of services as an employee is an allowance paid at a flat rate or stated schedule.

(2) *Limitation.* For purposes of this revenue procedure, an allowance that is computed on a basis similar to that used in computing the employee’s wages or other compensation (such as the number of hours worked, miles traveled, or pieces produced) does not meet the business connection requirement of § 1.62-2(d), is not a *per diem* allowance, and is not paid at a flat rate or stated schedule, unless, as of December 12, 1989, (a) the allowance was identified by the payor either by making a separate payment or by specifically identifying the amount of the allowance, or (b) an allowance computed on that basis was commonly used in the industry in which the employee is employed. See § 1.62-2(d)(3)(ii).

### SECTION 4. PER DIEM SUBSTANTIATION METHOD

.01 *Per diem allowance.* If a payor pays a *per diem* allowance in lieu of reimbursing actual expenses for lodging, meal, and incidental expenses incurred or to be incurred by an employee for travel away from home, the amount of the expenses that is deemed substantiated for each calendar day is equal to the lesser of the *per diem* allowance for such day or the amount computed at the federal *per diem* rate (see section 3.02 of this revenue procedure) for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure).

.02 *Meals only per diem allowance.* If a payor pays a *per diem* allowance only for meal and incidental expenses in lieu of reimbursing actual expenses for meal and incidental expenses incurred or to be incurred by an employee for travel away from home, the amount of the expenses that is deemed



substantiated for each calendar day is equal to the lesser of the *per diem* allowance for such day or the amount computed at the federal M&IE rate for the locality of travel for such day (or partial day). A *per diem* allowance is treated as paid only for meal and incidental expenses if (1) the payor pays the employee for actual expenses for lodging based on receipts submitted to the payor, (2) the payor provides the lodging in kind, (3) the payor pays the actual expenses for lodging directly to the provider of the lodging, (4) the payor does not have a reasonable belief that lodging expenses were or will be incurred by the employee, or (5) the allowance is computed on a basis similar to that used in computing the employee's wages or other compensation (such as the number of hours worked, miles traveled, or pieces produced).

**.03 Optional method for meals and incidental expenses only deduction.** In lieu of using actual expenses in computing the amount allowable as a deduction for ordinary and necessary meal and incidental expenses paid or incurred for travel away from home, employees and self-employed individuals who pay or incur meal expenses may use an amount computed at the federal M&IE rate for the locality of travel for each calendar day (or partial day) the employee or self-employed individual is away from home. Such amount will be deemed substantiated for purposes of paragraphs (b)(2) and (c) of § 1.274-5, provided the employee or self-employed individual substantiates the elements of time, place, and business purpose of the travel for that day (or partial day) in accordance with those regulations. See section 6.05(1) of this revenue procedure for rules related to the application of the limitation found in § 274(n) to amounts determined under this section 4.03. See section 4.05 of this revenue procedure for a method for incidental expenses that may be used by employees or self-employed individuals who do not pay or incur meal expenses.

**.04 Special rules for transportation industry.**

(1) *In general.* This section 4.04 applies to (a) a payor that pays a *per diem* allowance only for meal and incidental expenses for travel away from home as described in section 4.02 of this revenue procedure to an employee in the transportation industry, or (b) an employee or self-employed individual in the transportation

industry who computes the amount allowable as a deduction for meal and incidental expenses for travel away from home in accordance with section 4.03 of this revenue procedure.

(2) *Rates.* A taxpayer described in section 4.04(1) of this revenue procedure may treat \$40 as the federal M&IE rate for any CONUS locality of travel, and \$45 as the federal M&IE rate for any OCONUS locality of travel. A payor that uses either (or both) of these special rates with respect to an employee must use the special rate(s) for all amounts subject to section 4.02 of this revenue procedure paid to that employee for travel away from home within CONUS and/or OCONUS, as the case may be, during the calendar year. Similarly, an employee or self-employed individual that uses either (or both) of these special rates must use the special rate(s) for all amounts computed pursuant to section 4.03 of this revenue procedure for travel away from home within CONUS and/or OCONUS, as the case may be, during the calendar year. See section 4.04(5) of this revenue procedure for transition rules.

(3) *Periodic rule.* A payor described in section 4.04(1) of this revenue procedure may compute the amount of the employee's expenses that is deemed substantiated under section 4.02 of this revenue procedure periodically (not less frequently than monthly), rather than daily, by comparing the total *per diem* allowance paid for the period to the sum of the amounts computed at the federal M&IE rate(s) for the localities of travel for the days (or partial days) the employee is away from home during the period. For example, assume an employee in the transportation industry travels away from home within CONUS on 17 days (including partial days) during a calendar month and receives a *per diem* allowance only for meal and incidental expenses from a payor that uses the special rule under section 4.04(2) of this revenue procedure. The amount deemed substantiated under section 4.02 of this revenue procedure is equal to the lesser of the total *per diem* allowance paid for the month or \$680 (17 days at \$40 per day).

(4) *Transportation industry defined.* For purposes of this section 4.04, an employee or self-employed individual is "in the transportation industry" only if the employee's or individual's work (a) is of the type that directly involves moving people

or goods by airplane, barge, bus, ship, train, or truck, and (b) regularly requires travel away from home which, during any single trip away from home, usually involves travel to localities with differing federal M&IE rates. For purposes of the preceding sentence, a payor must determine that an employee or a group of employees is "in the transportation industry" by using a method that is consistently applied and in accordance with reasonable business practice.

(5) *Transition rules.* Under the calendar-year convention provided in section 4.04(2), a taxpayer who used the federal M&IE rates during the first 9 months of calendar year 2002 to substantiate the amount of an individual's travel expenses under sections 4.02 or 4.03 of Rev. Proc. 2001-47 may not use, for that individual, the special transportation industry rates provided in this section 4.04 until January 1, 2003. Similarly, a taxpayer who used the special transportation industry rates during the first 9 months of calendar year 2002 to substantiate the amount of an individual's travel expenses may not use, for that individual, the federal M&IE rates until January 1, 2003.

**.05 Optional method for incidental expenses only deduction.** In lieu of using actual expenses in computing the amount allowable as a deduction for ordinary and necessary incidental expenses paid or incurred for travel away from home, employees and self-employed individuals who do not pay or incur meal expenses for a calendar day (or partial day) of travel away from home may use an amount computed at the rate of \$2 per day for each calendar day (or partial day) the employee or self-employed individual is away from home. Such amount will be deemed substantiated for purposes of paragraphs (b)(2) and (c) of § 1.274-5, provided the employee or self-employed individual substantiates the elements of time, place, and business purpose of the travel for that day (or partial day) in accordance with those regulations. See section 4.03 of this revenue procedure for a method that may be used by employees or self-employed individuals who pay or incur meal expenses. The method authorized by this section 4.05 may not be used by payors that use section 4.01, 4.02 or 5.01 of this revenue procedure, or by employees or self-employed individuals who use the method described

in section 4.03 of this revenue procedure. See section 6.05(4) of this revenue procedure for rules related to the application of the limitation found in § 274(n) to amounts determined under this section 4.05.

**SECTION 5. HIGH-LOW SUBSTANTIATION METHOD**

.01 *General rule.* If a payor pays a *per diem* allowance in lieu of reimbursing actual expenses for lodging, meal, and incidental expenses incurred or to be incurred by an employee for travel away from home and the payor uses the high-low substantiation method described in this section 5 for travel within CONUS, the amount of the expenses that is deemed substantiated for each calendar day is equal to the lesser of the *per diem* allowance for such day or the

amount computed at the rate set forth in section 5.02 of this revenue procedure for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure). Except as provided in section 5.06 of this revenue procedure, this high-low substantiation method may be used in lieu of the *per diem* substantiation method provided in section 4.01 of this revenue procedure, but may not be used in lieu of the meals only substantiation method provided in section 4.02 or 4.03 of this revenue procedure.

.02 *Specific high-low rates.* Except as provided in section 5.06 of this revenue procedure, the *per diem* rate set forth in this section 5.02 is \$204 for travel to any “high-cost locality” specified in section 5.03 of this revenue procedure, or \$125 for travel

to any other locality within CONUS. Whichever *per diem* rate applies, it is applied as if it were the federal *per diem* rate for the locality of travel. For purposes of applying the high-low substantiation method and the § 274(n) limitation on meal expenses (see section 6.05 of this revenue procedure), the federal M&IE rate shall be treated as \$45 for a high-cost locality and \$35 for any other locality within CONUS.

.03 *High-cost localities.* The following localities have a federal *per diem* rate of \$165 or more, and are high-cost localities for all of the calendar year or the portion of the calendar year specified in parenthesis under the key city name, except as provided in section 5.06 of this revenue procedure:

<i>Key City</i>	<i>County or other defined location</i>
California	
Napa (April 1–November 15)	Napa
Palm Springs (January 1–May 31)	Riverside
San Francisco	San Francisco
San Mateo/Redwood City	San Mateo
Santa Monica (June 1–September 30)	City limits of Santa Monica
Sunnyvale/Palo Alto/San Jose	Santa Clara
Tahoe City	Placer
Colorado	
Aspen (January 1–April 30)	Pitkin
Silverthorne/Keystone	Summit
Telluride (December 20–September 30)	San Miguel
Vail (December 1–March 31)	Eagle
District of Columbia	
Washington, D.C.	Washington, D.C. (also the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, in Virginia; and the counties of Montgomery and Prince George’s in Maryland)
Florida	
Key West (January 1–April 30)	Monroe

<i>Key City</i>	<i>County or other defined location</i>
Idaho	
Sun Valley	City limits of Sun Valley
Illinois	
Chicago	Cook and Lake
Louisiana	
New Orleans/St. Bernard (January 1–May 31)	Orleans, St. Bernard Plaquemine, and Jefferson Par- ishes
Maine	
Kennebunk/Kittery/Sanford (June 15–October 31)	York
Maryland	
(For the counties of Montgomery and Prince George's, see District of Columbia)	
Baltimore	Baltimore
Ocean City (June 15–October 31)	Worcester
Massachusetts	
Boston	Suffolk
Cambridge	Middlesex (except Lowell)
Martha's Vineyard (June 1–October 15)	Dukes
Nantucket (June 15–October 15)	Nantucket
Michigan	
Mackinac Island	Mackinac
Traverse City	Grand Traverse
Montana	
Big Sky	Gallatin (except West Yellowstone)
Nevada	
Stateline	Douglas
New Jersey	
Atlantic City (June 1–November 30)	Atlantic
Cape May (June 1–November 30)	Cape May (except Ocean City)
Edison	Middlesex (except Piscataway)
Newark	Essex, Bergen, Hudson and Passaic
Ocean City (June 15–September 15)	City limits of Ocean City
Piscataway/Belle Mead	Somerset; and the city limits of Piscataway

<i>Key City</i>	<i>County or other defined location</i>
Princeton/Trenton	Mercer
New York	
The Bronx/Brooklyn/Queens	The boroughs of The Bronx, Brooklyn, and Queens
Manhattan	The borough of Manhattan
Nassau County/Great Neck	Nassau
Staten Island	Richmond
Suffolk County	Suffolk
White Plains	City limits of White Plains
Pennsylvania	
Hershey (June 1–September 15)	City limits of Hershey
King of Prussia/Ft. Washington/Bala Cynwyd (April 1–November 30)	Montgomery
Philadelphia	Philadelphia
Utah	
Ogden/Layton/Davis County (January 15–February 28)	Weber and Davis
Park City (December 15–March 31)	Summit
Provo (January 15–February 28)	Utah
Salt lake City (January 15–February 28)	Salt Lake, Dugway Proving Ground, and Tooele Army Depot
Virginia	
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia)	
Wintergreen	Nelson
Washington	
Seattle	King

.04 *Changes in high-cost localities.* The list of high-cost localities in section 5.03 of this revenue procedure differs from the list of high-cost localities in section 5.03 of Rev. Proc. 2001–47.

(1) The following localities (listed by key cities) have been added to the list of high-cost localities: Santa Monica, California; Baltimore, Maryland; Staten Island, New York; King of Prussia/Ft. Washington/Bala Cynwyd, Pennsylvania; Philadelphia, Pennsylvania; and Seattle, Washington.

(2) The portion of the year for which the following is a high-cost locality (listed by key city) has been changed: Ogden/Layton/Davis County, Utah.

(3) The following locality has been removed from the list of high-cost localities: Palm Beach, Florida.

.05 *Specific limitation.*

(1) Except as provided in section 5.05(2) of this revenue procedure, a payor that uses the high-low substantiation method with respect to an employee must use that method for all amounts paid to that employee for travel away from home within CONUS during the calendar year. See section 5.06 of this revenue procedure for transition rules.

(2) With respect to an employee described in section 5.05(1) of this revenue procedure, the payor may reimburse actual expenses or use the meals only *per*

*diem* method described in section 4.02 of this revenue procedure for any travel away from home, and may use the *per diem* substantiation method described in section 4.01 of this revenue procedure for any OCONUS travel away from home.

.06 *Transition rules.* A payor who used the substantiation method of section 4.01 of Rev. Proc. 2001–47 for an employee during the first 9 months of calendar year 2002 may not use the High-Low Substantiation Method in section 5 of this revenue procedure for that employee until January 1, 2003. A payor who used the High-Low Substantiation Method of section 5 of Rev. Proc. 2001–47 for an employee during the first 9 months of calendar year 2002 must

continue to use the High-Low Substantiation Method for the remainder of calendar year 2002 for that employee. A payor described in the previous sentence may use the rates and high-cost localities published in section 5 of Rev. Proc. 2001-47, in lieu of the updated rates and high-cost localities provided in section 5 of this revenue procedure, for travel on or after October 1, 2002, and before January 1, 2003, if those rates and localities are used consistently during this period for all employees reimbursed under this method.

## SECTION 6. LIMITATIONS AND SPECIAL RULES

.01 *In general.* The federal *per diem* rate and the federal M&IE rate described in section 3.02 of this revenue procedure for the locality of travel will be applied in the same manner as applied under the Federal Travel Regulations, 41 C.F.R. Part 301-11 (2002), except as provided in sections 6.02 through 6.04 of this revenue procedure.

.02 *Federal per diem rate.* A receipt for lodging expenses is not required in determining the amount of expenses deemed substantiated under section 4.01 or 5.01 of this revenue procedure. See section 7.01 of this revenue procedure for the requirement that the employee substantiate the time, place, and business purpose of the expense.

.03 *Federal per diem or M&IE rate.* A payor is not required to reduce the federal *per diem* rate or the federal M&IE rate for the locality of travel for meals provided in kind, provided the payor has a reasonable belief that meal and incidental expenses were or will be incurred by the employee during each day of travel.

.04 *Proration of the federal per diem or M&IE rate.* Pursuant to the Federal Travel Regulations, in determining the federal *per diem* rate or the federal M&IE rate for the locality of travel, the full applicable federal M&IE rate is available for a full day of travel from 12:01 a.m. to 12:00 midnight. The method described in section 6.04(1) of this revenue procedure must be used for purposes of determining the amount deemed substantiated under section 4.03 or 4.05 of this revenue procedure for partial days of travel away from home. For purposes of determining the amount deemed substantiated under section 4.01, 4.02, 4.04 or 5 of this revenue procedure for partial days of travel away

from home, either of the following methods may be used to prorate the federal M&IE rate to determine the federal *per diem* rate or the federal M&IE rate for the partial days of travel:

(1) The rate may be prorated using the method prescribed by the Federal Travel Regulations. Currently the Federal Travel Regulations allow three-fourths of the applicable federal M&IE rate for each partial day during which the employee or self-employed individual is traveling away from home in connection with the performance of services as an employee or self-employed individual. The same ratio may be applied to prorate the allowance for incidental expenses described in section 4.05 of this revenue procedure; or

(2) The rate may be prorated using any method that is consistently applied and in accordance with reasonable business practice. For example, if an employee travels away from home from 9 a.m. one day to 5 p.m. the next day, a method of proration that results in an amount equal to two times the federal M&IE rate will be treated as being in accordance with reasonable business practice (even though only one and a half times the federal M&IE rate would be allowed under the Federal Travel Regulations).

.05 *Application of the appropriate § 274(n) limitation on meal expenses.* Except as provided in section 6.05(4), all or part of the amount of an expense deemed substantiated under this revenue procedure is subject to the appropriate limitation under § 274(n) (see section 2.02 of this revenue procedure) on the deductibility of food and beverage expenses.

(1) When an amount for meal and incidental expenses is computed pursuant to section 4.03 of this revenue procedure, the taxpayer must treat such amount as an expense for food and beverages.

(2) When a *per diem* allowance is paid only for meal and incidental expenses, the payor must treat an amount equal to the lesser of the allowance or the federal M&IE rate for the locality of travel for such day (or partial day, see section 6.04 of this revenue procedure) as an expense for food and beverages.

(3) When a *per diem* allowance is paid for lodging, meal, and incidental expenses, the payor must treat an amount equal to the federal M&IE rate for the locality of travel for each calendar day (or partial day) the

employee is away from home as an expense for food and beverages. For purposes of the preceding sentence, when a *per diem* allowance for lodging, meal, and incidental expenses is paid at a rate that is less than the federal *per diem* rate for the locality of travel for such day (or partial day), the payor may treat an amount equal to 40 percent of such allowance as the federal M&IE rate for the locality of travel for such day (or partial day).

(4) When an amount for incidental expenses is computed under section 4.05 of this revenue procedure, none of the amount so computed is subject to limitation under § 274(n) on the deductibility of food and beverage expenses.

.06 *No double reimbursement or deduction.* If a payor pays a *per diem* allowance in lieu of reimbursing actual expenses for lodging, meal, and incidental expenses or for meal and incidental expenses in accordance with section 4 or 5 of this revenue procedure, any additional payment with respect to such expenses is treated as paid under a nonaccountable plan, is included in the employee's gross income, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. Similarly, if an employee or self-employed individual computes the amount allowable as a deduction for meal and incidental expenses for travel away from home in accordance with section 4.03 or 4.04 of this revenue procedure, no other deduction is allowed to the employee or self-employed individual with respect to such expenses. For example, assume an employee receives a *per diem* allowance from a payor for lodging, meal, and incidental expenses or for meal and incidental expenses incurred while traveling away from home. During that trip, the employee pays for dinner for the employee and two business associates. The payor reimburses as a business entertainment meal expense the meal expense for the employee and the two business associates. Because the payor also pays a *per diem* allowance to cover the cost of the employee's meals, the amount paid by the payor for the employee's portion of the business entertainment meal expense is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes.

.07 *Related parties.* Sections 4.01 and 5 of this revenue procedure will not apply in any case in which a payor and an employee are related within the meaning of § 267(b), but for this purpose the percentage of ownership interest referred to in § 267(b)(2) shall be 10 percent.

## SECTION 7. APPLICATION

.01 If the amount of travel expenses is deemed substantiated under the rules provided in section 4 or 5 of this revenue procedure, and the employee actually substantiates to the payor the elements of time, place, and business purpose of the travel for that day (or partial day) in accordance with paragraphs (b)(2) and (c) (other than subparagraph (2)(iii)(A) thereof) of § 1.274-5, the employee is deemed to satisfy the adequate accounting requirements of § 1.274-5(f) as well as the requirement to substantiate by adequate records or other sufficient evidence for purposes of § 1.274-5(c). See § 1.62-2(e)(1) for the rule that an arrangement must require business expenses to be substantiated to the payor within a reasonable period of time.

.02 An arrangement providing *per diem* allowances will be treated as satisfying the requirement of § 1.62-2(f)(2) with respect to returning amounts in excess of expenses if the employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)) any portion of such an allowance that relates to days of travel not substantiated, even though the arrangement does not require the employee to return the portion of such an allowance that relates to days of travel substantiated and that exceeds the amount of the employee's expenses deemed substantiated. For example, assume a payor provides an employee an advance *per diem* allowance for meal and incidental expenses of \$200, based on an anticipated 5 days of business travel at \$40 per day to a locality for which the federal M&IE rate is \$34, and the employee substantiates 3 full days of business travel. The requirement to return excess amounts will be treated as satisfied if the employee is required to return within a reasonable period of time (as defined in § 1.62-2(g)) the portion of the allowance that is attributable to the 2 unsubstantiated days of travel (\$80), even though the employee is not required to return the portion of the allowance (\$18) that exceeds the amount of the

employee's expenses deemed substantiated under section 4.02 of this revenue procedure (\$102) for the 3 substantiated days of travel. However, the \$18 excess portion of the allowance is treated as paid under a nonaccountable plan as discussed in section 7.04 of this revenue procedure.

.03 An employee is not required to include in gross income the portion of a *per diem* allowance received from a payor that is less than or equal to the amount deemed substantiated under the rules provided in section 4 or 5 of this revenue procedure if the employee substantiates the business travel expenses covered by the *per diem* allowance in accordance with section 7.01 of this revenue procedure. See § 1.274-5(f)(2)(i). In addition, such portion of the allowance is treated as paid under an accountable plan, is not reported as wages or other compensation on the employee's Form W-2, and is exempt from the withholding and payment of employment taxes. See § 1.62-2(c)(2) and (c)(4).

.04 An employee is required to include in gross income only the portion of the *per diem* allowance received from a payor that exceeds the amount deemed substantiated under the rules provided in section 4 or 5 of this revenue procedure if the employee substantiates the business travel expenses covered by the *per diem* allowance in accordance with section 7.01 of this revenue procedure. See § 1.274-5(f)(2)(ii). In addition, the excess portion of the allowance is treated as paid under a nonaccountable plan, is reported as wages or other compensation on the employee's Form W-2, and is subject to withholding and payment of employment taxes. See § 1.62-2(c)(3)(ii), (c)(5), and (h)(2)(i)(B).

.05 If the amount of the expenses that is deemed substantiated under the rules provided in section 4.01, 4.02, or 5 of this revenue procedure is less than the amount of the employee's business expenses for travel away from home, the employee may claim an itemized deduction for the amount by which the business travel expenses exceed the amount that is deemed substantiated, provided the employee substantiates all the business travel expenses, includes on Form 2106, *Employee Business Expenses*, the deemed substantiated portion of the *per diem* allowance received from the payor, and includes in gross income the portion (if any) of the *per diem* allowance received from the payor that exceeds the amount

deemed substantiated. See § 1.274-5(f)(2)(iii). However, for purposes of claiming this itemized deduction with respect to meal and incidental expenses, substantiation of the amount of the expenses is not required if the employee is claiming a deduction that is equal to or less than the amount computed under section 4.03 of this revenue procedure minus the amount deemed substantiated under sections 4.02 and 7.01 of this revenue procedure. The itemized deduction is subject to the appropriate limitation (see section 2.02 of this revenue procedure) on meal and entertainment expenses provided in § 274(n) and the 2-percent floor on miscellaneous itemized deductions provided in § 67.

.06 An employee who pays or incurs amounts for meal expenses and does not receive a *per diem* allowance for meal and incidental expenses may deduct an amount computed pursuant to section 4.03 of this revenue procedure only as an itemized deduction. This itemized deduction is subject to the appropriate limitation on meal and entertainment expenses provided in § 274(n) and the 2-percent floor on miscellaneous itemized deductions provided in § 67. See section 7.07 of this revenue procedure for the treatment of an employee who does not pay or incur amounts for meal expenses and does not receive a *per diem* allowance for incidental expenses.

.07 An employee who does not pay or incur amounts for meal expenses and does not receive a *per diem* allowance for incidental expenses may deduct an amount computed pursuant to section 4.05 of this revenue procedure only as an itemized deduction. This itemized deduction is subject to the 2-percent floor on miscellaneous itemized deductions provided in § 67. See section 7.06 of this revenue procedure for the treatment of an employee who pays or incurs amounts for meal expenses and does not receive a *per diem* allowance for meal and incidental expenses.

.08 A self-employed individual who pays or incurs meal expenses for a calendar day (or partial day) of travel away from home may deduct an amount computed pursuant to section 4.03 of this revenue procedure in determining adjusted gross income under § 62(a)(1). This deduction is subject to the appropriate limitation on meal and entertainment expenses provided in § 274(n).

.09 A self-employed individual who does not pay or incur meal expenses for a calendar day (or partial day) of travel away from home may deduct an amount computed pursuant to section 4.05 of this revenue procedure in determining adjusted gross income under § 62(a)(1).

.10 If a payor's reimbursement or other expense allowance arrangement evidences a pattern of abuse of the rules of § 62(c) and the regulations thereunder, all payments under the arrangement will be treated as made under a nonaccountable plan. Thus, such payments are included in the employee's gross income, are reported as wages or other compensation on the employee's Form W-2, and are subject to withholding and payment of employment taxes. See § 1.62-2(c)(3), (c)(5), and (h)(2).

## SECTION 8. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES

.01 The portion of a *per diem* allowance, if any, that relates to the days of business travel substantiated and that exceeds the amount deemed substantiated for those days under section 4.01, 4.02, or 5 of this revenue procedure is subject to withholding and payment of employment taxes. See § 1.62-2(h)(2)(i)(B).

.02 In the case of a *per diem* allowance paid as a reimbursement, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the days of travel substantiated. See § 1.62-2(h)(2)(i)(B)(2).

.03 In the case of a *per diem* allowance paid as an advance, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the days of travel with respect to which the advance was paid are substantiated. See § 1.62-2(h)(2)(i)(B)(3). If some or all of the days of travel with respect to which the advance was paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those days within a reasonable period of time, the portion of the allowance that relates to those days is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. See § 1.62-2(h)(2)(i)(A).

.04 In the case of a *per diem* allowance only for meal and incidental expenses for travel away from home paid to an employee in the transportation industry by a payor that uses the rule in section 4.04(3) of this revenue procedure, the excess of the *per diem* allowance paid for the period over the amount deemed substantiated for the period under section 4.02 of this revenue procedure (after applying section 4.04(3) of this revenue procedure), is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. See § 1.62-2(h)(2)(i)(B)(4).

.05 For example, assume that an employer pays an employee a *per diem* allowance to cover business expenses for meals and lodging for travel away from home at a rate of 120 percent of the federal *per diem* rate for the localities to which the employee travels. The employer does not require the employee to return the 20 percent by which the reimbursement for those expenses exceeds the federal *per diem* rate. The employee substantiates 6 days of travel away from home: 2 days in a locality in which the federal *per diem* rate is \$100 and 4 days in a locality in which the federal *per diem* rate is \$125. The employer reimburses the employee \$840 for the 6 days of travel away from home (2 x (120% x \$100) + 4 x (120% x \$125)), and does not require the employee to return the excess payment of \$140 (2 days x \$20 (\$120-\$100) + 4 days x \$25 (\$150-\$125)). For the payroll period in which the employer reimburses the expenses, the employer must withhold and pay employment taxes on \$140. See section 8.02 of this revenue procedure.

## SECTION 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2001-47 is hereby superseded (except to the extent specified in sections 4.04(5) and 5.06 of this revenue procedure) for *per diem* allowances that are paid both (1) to an employee on or after October 1, 2002, and (2) with respect to lodging, meal, and incidental expenses or with respect to meal and incidental expenses paid or incurred for travel away from home on or after October 1, 2002. Rev. Proc. 2001-47 is also hereby superseded (except to the extent specified in section 4.04(5) of this revenue procedure) for pur-

poses of computing the amount allowable as a deduction for meal and incidental expenses or for incidental expenses only paid or incurred by an employee or self-employed individual for travel away from home on or after October 1, 2002.

## DRAFTING INFORMATION

The principal author of this revenue procedure is John P. Moriarty, of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Moriarty at (202) 622-4930 (not a toll-free call).

26 CFR 601.204: Changes in accounting periods and in methods of accounting.

(Also Part I, §§ 446, 481; 1.446-1, 1.481-1.)

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## SECTION 1. PURPOSE

This revenue procedure provides a safe harbor method of accounting for track structure expenditures paid or incurred by a Class II or Class III railroad (“track main-

tenance allowance method”). This revenue procedure also provides procedures for a qualifying taxpayer to obtain automatic consent from the Commissioner of Internal Revenue to change to the track maintenance allowance method, including rules relating to the limitations, terms, and conditions the Commissioner deems necessary to make the change. In addition, this revenue procedure provides an optional procedure for a qualifying taxpayer whose treatment of track structure expenditures is an issue under consideration in examination, before an area appeals office, or before the United States Tax Court (“Tax Court”) to settle open taxable years using the track maintenance allowance method.

## SECTION 2. BACKGROUND

.01 Under § 446(b) of the Internal Revenue Code, the Commissioner has broad authority to determine whether a method of accounting clearly reflects income. If a taxpayer’s method of accounting does not clearly reflect income, the computation of taxable income must be made under a method that, in the opinion of the Secretary, does clearly reflect income. *See Thor Power Tool Co. v. Commissioner*, 439 U.S. 522 (1979); *Commissioner v. Hansen*, 360 U.S. 446 (1959); § 1.446-1(c)(2)(ii) of the Income Tax Regulations.

.02 Section 446(e) and § 1.446-1(e) provide that, except as otherwise provided, a taxpayer must secure the consent of the Commissioner before changing a method of accounting for federal income tax purposes. Section 1.446-1(e)(3)(ii) authorizes the Commissioner to prescribe administrative procedures setting forth the limitations, terms, and conditions deemed necessary to permit a taxpayer to obtain consent to change a method of accounting.

.03 Rev. Proc. 2002-18, 2002-13 I.R.B. 678, provides the procedures under § 446(b) and § 1.446-1(b) for changes in method of accounting imposed by the Internal Revenue Service. Rev. Proc. 2002-18 also provides the procedures that the Service will use for accounting method issues resolved by the Service on a nonaccounting-method-change basis.

.04 A railroad incurs track structure expenditures as a result of performing various activities to acquire, construct, maintain, repair, and improve track structure. To minimize disputes regarding the accounting for

these track structure expenditures, the Service will permit a railroad that complies with the requirements of this revenue procedure to account for track structure expenditures using the track maintenance allowance method described in section 5 of this revenue procedure.

## SECTION 3. SCOPE

This revenue procedure applies to a taxpayer that chooses to account for track structure expenditures under the method described in section 5 of this revenue procedure, and that meets the following requirements: 1) the taxpayer is a Class II or Class III railroad as designated by the Surface Transportation Board, in accordance with 49 C.F.R. Part 1201.1-1; and 2) the taxpayer does not file, and is not a member of a combined reporting group that files, a Railroad Annual Report R-1 (“Form R-1”) with the Surface Transportation Board.

## SECTION 4. DEFINITIONS

The following definitions apply solely for purposes of this revenue procedure:

.01 *Track Structure*. “Track structure” means the combination of a taxpayer’s rail and other track material (OTM), ties, and ballast, which provides a track for rail cars and equipment powered by locomotives.

.02 *Track Structure Expenditures*. “Track structure expenditures” for a particular taxable year are the sum of the taxpayer’s expenditures for that year for current additions (including new track structure), operating items, and removal costs.

.03 *Current Additions*. “Current additions” are the amounts included in track structure expenditures that represent capital additions to the taxpayer’s track structure for financial reporting purposes and that are taken into account for federal income tax purposes (*see, e.g.*, §§ 404 and 461). Thus, for example, current additions do not include the assigned value of relay materials.

.04 *New Track Structure*. “New track structure” means the amounts included in track structure expenditures that reflect the taxpayer’s expenditures for (1) track structure laid where none previously existed; (2) existing track structure acquired by the taxpayer; or (3) track structure previously abandoned by the taxpayer that must be rehabilitated or improved to make it suit-



able for the use intended by the taxpayer, that are taken into account for federal income tax purposes. New track structure includes the cost of acquiring and installing new track structure as well as the cost of any rehabilitation or improvement necessary to put newly acquired or previously abandoned track structure into operation. New track structure does not include any removal costs.

.05 *Assigned Value of Relay Materials.* The “assigned value of relay materials” means the amounts that reflect the taxpayer’s fair market value adjustments (excluding rewelding and other processing costs) for track materials relaid that were previously retired for financial reporting purposes. The assigned value of relay materials does not include relay track materials purchased by the taxpayer.

.06 *Operating Items.* “Operating items” are the amounts included in track structure expenditures that represent expenditures for track structure that are deducted for financial reporting purposes and that are taken into account for federal income tax purposes. Thus, for example, operating items do not include salvage material credits or the assigned value of relay materials.

.07 *Salvage Material Credits.* “Salvage material credits” means the amounts that reflect credits for the value of salvaged materials.

.08 *Removal Costs.* “Removal costs” means the amount included in track structure expenditures that represents the taxpayer’s expenditures for track removal for financial reporting purposes not already included in current additions or operating items and that are taken into account for federal income tax purposes.

## SECTION 5. TRACK MAINTENANCE ALLOWANCE METHOD FOR CLASS II AND III RAILROADS

.01 *In General.* Under the track maintenance allowance method, the taxpayer must determine the amount of its track structure expenditures that may be currently deducted under section 5.02 of this revenue procedure (the track maintenance allowance) and the amount required to be capitalized under section 5.03 of this revenue procedure (the capitalized amount). A taxpayer that uses the track maintenance allowance method described in this section 5 must use that method for all of its track structure expenditures.

.02 *Track Maintenance Allowance.* The track maintenance allowance for a particular taxable year under the track maintenance allowance method is determined as follows:

- (1) Determine the track structure expenditures for the taxable year;
- (2) Subtract from the track structure expenditures in (1) new track structure; and
- (3) Multiply the resulting amount in (2) by 75 percent.

.03 *Capitalized Amount.* The capitalized amount for the taxable year under the track maintenance allowance method is determined as follows:

- (1) Determine the track structure expenditures for the taxable year (see section 5.02(1));
- (2) Subtract from the track structure expenditures in (1) the track maintenance allowance determined under section 5.02 for the taxable year to determine the capital track structure expenditures;
- (3) Allocate the capital track structure expenditures determined in (2) to each track account (Rail and OTM, Ties, and Ballast) first to new track to the extent of the new track structure for each track account. The remaining capitalized amount

represents replacement track and should be allocated to each track account in proportion to adjusted current additions (*i.e.*, current additions for each track account after excluding the amount allocated to new track from each account). If after allocating the capital track structure expenditures to new track there are no adjusted current additions, the remaining capitalized amount must be allocated to each track account in proportion to the ending book account balance in each track capital account for the taxable year. For purposes of determining basis, the amounts allocated to each track account must be allocated further to the assets within each account using any reasonable method;

(4) For each track account, apply the taxpayer’s method of accounting for uniform capitalization, as governed by § 263A and the regulations thereunder, to the amounts capitalized to new track and to replacement track (*i.e.*, the amounts determined in (3)) to determine the additional § 263A costs (as defined in § 1.263A-1(d)(3)), and, if applicable, interest costs, that must be capitalized;

(5) For each track account, add the amounts capitalized to new track and to replacement track in (3) to the § 263A costs and interest costs determined in (4) to determine the total capitalized amount;

(6) For each track account, treat the total capitalized amount determined in (5) as a capital expenditure and depreciate that amount in accordance with § 167 and the regulations thereunder.

.04 *Example.*

(1) *Facts.* X is a railroad that owns and maintains track structure in the United States. X uses a calendar year for tax purposes. For the year ending December 31, 2001, X treats the following amounts as capital additions to its track structure for financial reporting purposes:

Ties	\$1,180,000
Rail & OTM	370,000
Ballast	<u>600,000</u>
Total	\$2,150,000

Included in this amount are:

New track structure	Ties	\$150,000
	Rail & OTM	\$250,000
	Ballast	<u>\$100,000</u>
	Total	\$500,000
Assigned value of relay materials	Ties	\$ 30,000
	Rail & OTM	\$120,000
	Ballast	<u>\$ 0</u>
	Total	\$150,000

All of these amounts are taken into account for federal income tax purposes in the taxable year ended December 31, 2001, except for the assigned value of relay materials. Thus, X's current additions for the taxable year ending December 31, 2001, are \$2,000,000 (\$2,150,000 – \$150,000).

For the same taxable year, X has expenditures for its track structure that are deducted for financial reporting purposes in the amount of \$2,250,000.

Included in this amount are:

Salvage material credits	(\$50,000)
Assigned value of relay materials	\$100,000

All of X's expenditures for track structure that are deducted for financial reporting purposes are taken into account for federal income tax purposes in the taxable year ended December 31, 2001, except for the salvage material credits and the assigned value of relay materials. Thus, X's

operating items for the taxable year ended December 31, 2001, are \$2,200,000 (\$2,250,000 + \$50,000 – \$100,000). For the taxable year ended December 31, 2001, X incurred removal costs in the amount of \$300,000, which were not included in current additions or operating items, but which

are taken into account for federal income tax purposes in that year.

(2) *Track maintenance allowance.* To determine the track maintenance allowance for the taxable year ended December 31, 2001, X first determines its track structure expenditures, as follows:

\$2,000,000	current additions
2,200,000	operating items
<u>+300,000</u>	removal costs
\$4,500,000	track structure expenditures

X then adjusts its track structure expenditures as follows:

\$4,500,000	track structure expenditures
<u>(500,000)</u>	new track structure
\$4,000,000	adjusted track structure expenditures

X then determines the track maintenance allowance as follows:

\$4,000,000	adjusted track structure expenditures
x .75	allowance
<u>\$3,000,000</u>	track maintenance allowance

(3) *Capitalized amount.* To determine the capitalized amount, X first determines the capital track structure expenditures by subtracting the track maintenance allowance determined in (2) as follows:

\$4,500,000	track structure expenditures
-------------	------------------------------

(3,000,000) track maintenance allowance  
 \$ 1,500,000 capital track structure expenditures

X then allocates its capital track structure expenditures to each track account (Rail and OTM, Ties, and Ballast) first to new track to the extent of the \$500,000 of new track structure for each track account. The remaining \$1,000,000 of capital track structure expenditures is then allocated to replacement track for each track account in proportion to the adjusted current additions. Thus, X allocates these amounts as follows:

	Current Additions	Amount Capitalized— New Track	Adjusted Current Additions	Amount Capitalized— Replacement Track
Ties	\$1,150,000	\$150,000	\$1,000,000	\$ 666,667
Rail & OTM	\$ 250,000	250,000	0	0
Ballast	<u>600,000</u>	<u>100,000</u>	<u>500,000</u>	<u>333,333</u>
Total	\$2,000,000	\$500,000	\$1,500,000	\$1,000,000

For each track account, X applies its method of accounting for uniform capitalization under § 263A to the amounts capitalized to new track and to replacement track to determine the additional § 263A costs that must be capitalized. The total capitalized amount for each track account is determined by combining the amounts capitalized to new track and to replacement track with the § 263A costs for each track account. X must depreciate the total capitalized amount for each track account in accordance with § 167 and the regulations thereunder.

#### SECTION 6. CHANGE IN METHOD OF ACCOUNTING

.01 *In General.* A change in a taxpayer's treatment of track structure expenditures to the track maintenance allowance method is a change in method of accounting to which §§ 446 and 481 apply.

.02 *Issue Not Under Consideration.* If a taxpayer within the scope of this revenue procedure wants to change to the track maintenance allowance method for either its first or second taxable year ending on or after December 31, 2001, ("year of change") and the treatment of its track structure expenditures is not an issue under consideration in examination, before an area appeals office, or before a federal court (within the meaning of section 3.09 of Rev. Proc. 2002-9, 2002-3 I.R.B. 327) on September 30, 2002, the taxpayer must follow the automatic change in method of accounting provisions in Rev. Proc. 2002-9 (or its successor) with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply.

(2) A taxpayer that wants to change to the track maintenance allowance method for its first taxable year ending on or after December 31, 2001, and that, on or before November 29, 2002, files its original federal income tax return for its first taxable year ending on or after December 31, 2001, is not subject to the filing requirements in section 6.02(3)(a) of Rev. Proc. 2002-9, provided that it complies with the following filing requirements. The taxpayer must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's amended federal income tax return for its first taxable year ending on or after December 31, 2001. This amended return must be filed no later than June 30, 2003. A copy of the Form 3115 must be filed with the national office (see section 6.02(6)(a) of Rev. Proc. 2002-9 for the address) no later than when the taxpayer's amended return is filed.

(3) To assist the Service in processing changes in method of accounting under this section of the revenue procedure, and to ensure proper handling, section 6.02(4) of Rev. Proc. 2002-9 is modified to require that a Form 3115 filed under this revenue procedure include the statement: "Automatic Change Filed Under Rev. Proc. 2002-65." This statement should be legibly printed or typed at the top of any Form 3115 filed under this revenue procedure.

.03 *Issue Under Consideration.* If a taxpayer within the scope of this revenue procedure wants to change to the track maintenance allowance method for either

its first or second taxable year ending on or after December 31, 2001, ("year of change") and the treatment of its track structure expenditures is an issue under consideration in examination, before an area appeals office, or before a federal court (within the meaning of section 3.09 of Rev. Proc. 2002-9) on September 30, 2002, the taxpayer must follow the automatic change in method of accounting provisions in Rev. Proc. 2002-9 with the following modifications:

(1) The scope limitations in section 4.02 of Rev. Proc. 2002-9 do not apply.

(2) A taxpayer that wants to change to the track maintenance allowance method for its first taxable year ending on or after December 31, 2001, and that, on or before November 29, 2002, files its original federal income tax return for its first taxable year ending on or after December 31, 2001, is not subject to the filing requirements in section 6.02(3)(a) of Rev. Proc. 2002-9, provided that it complies with the following filing requirements. The taxpayer must complete and file a Form 3115 in duplicate. The original must be attached to the taxpayer's amended federal income tax return for its first taxable year ending on or after December 31, 2001. This amended return must be filed no later than June 30, 2003. A copy of the Form 3115 must be filed with the national office (see section 6.02(6)(a) of Rev. Proc. 2002-9 for the address) no later than when the taxpayer's amended return is filed.

(3) To assist the Service in processing changes in method of accounting under this section of the revenue procedure,

and to ensure proper handling, section 6.02(4) of Rev. Proc. 2002-9 is modified to require that a Form 3115 filed under this revenue procedure include the statement: "Automatic Change Filed Under Rev. Proc. 2002-65." This statement should be legibly printed or typed at the top of any Form 3115 filed under this revenue procedure.

(4) The change to the track maintenance allowance method will be made using a "cut-off method." Under a cut-off method, only the items arising on or after the beginning of the year of change are accounted for under the track maintenance allowance method. Any items arising before the year of change continue to be accounted for under the taxpayer's former method of accounting, unless such method of accounting is changed as a result of an examination or a return filed for a year before the year of change. Because no items are duplicated or omitted from income when a cut-off method is used to effect a change in accounting method, no § 481(a) adjustment is necessary.

(5) Section 7 of Rev. Proc. 2002-9 does not apply. The taxpayer does not receive audit protection in connection with a change to the track maintenance allowance method.

.04 *Special Rule for Certain Taxpayers with Issue Under Consideration.* If a taxpayer is within the scope of this revenue procedure, and the treatment of its track structure expenditures is an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002-9) in examination, before an area appeals office, or before the Tax Court on September 30, 2002, the taxpayer may change to the track maintenance allowance method for its first or second taxable year ending on or after December 31, 2001, under section 6.03 of this revenue procedure or, alternatively, for an earlier taxable year under section 8 of this revenue procedure.

.05 *Special Rule for Taxpayers Reclassified as Class I Railroads.* In the event that a Class II or Class III railroad is reclassified as a Class I railroad by the Surface Transportation Board and required to file a Form R-1, the railroad is not eligible to use the method under this revenue procedure for any taxable year that it is a Class

I railroad and must change its method of accounting for track structure expenditures, beginning with its first full taxable year as a Class I railroad. The reclassified railroad may adopt the safe harbor method of accounting for track structure expenditures of Rev. Proc. 2001-46, 2001-2 C.B. 263, if it otherwise qualifies, and must do so on a cut-off basis. To this extent, section 6.06 of Rev. Proc. 2001-46 is amplified.

.06 *Changes Not Made under this Revenue Procedure.* A taxpayer that wants to change to the track maintenance allowance method described in section 5 of this revenue procedure that does not change its method of accounting under section 6 or 8 of this revenue procedure must follow the change in method of accounting provisions in Rev. Proc. 97-27, 1997-1 C.B. 680 (or any successor).

## SECTION 7. RECORD KEEPING

Section 6001 provides that every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. The books or records required by § 6001 must be kept at all times available for inspection by authorized internal revenue officers or employees, and must be retained so long as the contents thereof may become material in the administration of any internal revenue law. Section 1.6001-1(e). In order to satisfy the record keeping requirements of § 6001 and the regulations thereunder, a taxpayer that changes to the track maintenance allowance method should maintain records substantiating all aspects of entitlement to the deduction, including, but not limited to, the following:

.01 Work papers or reports that identify and extract the taxpayer's costs for current additions, operating items, and new track structure, including costs to rehabilitate or improve newly acquired or previously abandoned track structure;

.02 Work papers or reports that identify and extract the taxpayer's assigned value of relay materials and salvage material credits; and

.03 Work papers or reports that identify the amount of removal costs.

## SECTION 8. OPTIONAL SETTLEMENT FOR TAXPAYERS UNDER EXAMINATION, BEFORE AN AREA APPEALS OFFICE, OR BEFORE THE TAX COURT

.01 *In General.* If a taxpayer is within the scope of this revenue procedure; the treatment of its track structure expenditures is an issue under consideration (within the meaning of section 3.09 of Rev. Proc. 2002-9) in examination, before an area appeals office, or before the Tax Court on September 30, 2002; and the taxpayer does not change to the track maintenance allowance method under section 6.03 of this revenue procedure, the Service offers to settle the track structure expenditure issue by changing the taxpayer's method of accounting for track structure expenditures to the track maintenance allowance method in the earliest open taxable year after which there is no closed taxable year.

.02 *Terms of Settlement.*

(1) The Service will change the taxpayer's method of accounting for track structure expenditures to the track maintenance allowance method described in section 5 of this revenue procedure.

(2) The change to the track maintenance allowance method will be made in the earliest open taxable year after which there is no closed taxable year using a cut-off method.

(3) The taxpayer must reflect the settlement on its federal income tax returns for any affected succeeding taxable years. For example, an amount required to be capitalized during a taxable year covered by the settlement should be depreciated in that taxable year and in affected succeeding taxable years (whether or not covered by the settlement) in accordance with the taxpayer's method of accounting for depreciation.

(4) The Service will not require the taxpayer to change its method of accounting for track structure expenditures to a method other than the track maintenance allowance method for any taxable year for which a federal income tax return has been

filed as of the date of the closing agreement or other appropriate settlement agreement, provided that:

(a) the taxpayer has complied with all the applicable provisions of the closing agreement or other appropriate settlement agreement;

(b) there has been no taxpayer fraud, malfeasance, or misrepresentation of a material fact;

(c) there has been no change in the material facts on which the closing agreement or other appropriate settlement agreement was based; and

(d) there has been no change in the applicable law on which the closing agreement or other appropriate settlement agreement was based.

(5) The taxpayer must execute a closing agreement under § 7121 or other appropriate settlement agreement as described in section 8.05 of this revenue procedure.

#### *.03 Procedures for Requesting the Settlement.*

##### *(1) Initiating the request.*

(a) *Taxable years under examination or in Appeals.* A taxpayer that wants to request a settlement under this section for taxable years under examination or in Appeals must submit its request in writing to the first line examination manager or appeals officer (whichever is applicable) on or before June 30, 2003.

(b) *Taxable years before the Tax Court.* A taxpayer that wants to request a settlement under this section for taxable years before the Tax Court must submit its request in writing to the Chief Counsel attorney assigned to the case on or before the earlier of June 30, 2003, or the date that is 30 days before the date the case is first set for trial, which is the date scheduled for the calendar call.

(2) *Statement of facts, law, and arguments.* The request for settlement must include the following information:

(a) the taxpayer's name, address, telephone number, and taxpayer identification number;

(b) the taxable years covered by the proposed settlement;

(c) the taxpayer's earliest open taxable year after which there is no closed taxable year;

(d) the taxpayer's current method of accounting for track structure expenditures;

(e) a statement of the material facts, including the track maintenance allowance and the capitalized amount under the track maintenance allowance method for each taxable year under examination, before an area appeals office, or before the Tax Court, and an explanation of the computations used to determine those amounts; and

(f) a statement of whether the track maintenance allowance for each taxable year under examination, before an area appeals office, or before the Tax Court is taken into account for federal income tax purposes, for example, whether the amount was incurred under § 461 in that taxable year, and, if § 404 applies to any portion of the amount in a particular taxable year, whether that portion meets the deductibility requirements of § 404.

(3) *Perjury statement.* The request for settlement must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete." This declaration must be signed by, or on behalf of, the taxpayer by an individual with the authority to bind the taxpayer in these matters. The declaration may not be signed by the taxpayer's representative.

#### *.04 Procedures for Processing the Request.*

(1) *Receipt of request acknowledged.* The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will acknowledge receipt of the taxpayer's request for settlement in writing within 15 business days of receipt.

(2) *Factual development.* The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will contact the taxpayer to discuss any questions the Service may have, or ask for additional information believed to be necessary to execute the settlement (for example, to verify the correctness of the taxpayer's information).

(3) *Acceptance.* The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will accept the taxpayer's request for settlement if the request complies with the applicable terms of this revenue procedure. For

taxable years before the Tax Court, the settlement is subject to the approval of the Court.

(4) *Notification of acceptance.* The first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) will notify the taxpayer in writing when the Service agrees to the settlement requested by the taxpayer.

#### *.05 Procedures for Implementing the Settlement.*

(1) *Closing agreement or other appropriate settlement agreement required.* A taxpayer implementing a settlement is required to execute a closing agreement under § 7121 or other appropriate settlement agreement.

(2) *Contents of closing agreement or other appropriate settlement agreement.* A closing agreement or other appropriate settlement agreement must comply with the requirements of Rev. Proc. 68-16, 1968-1 C.B. 770, and, in the case of a closing agreement, must be substantially in the form set forth in the APPENDIX of this revenue procedure. Settlement agreements in cases pending before the Tax Court must conform substantially to the provisions set forth in the APPENDIX of this revenue procedure and must conform to the rules and procedures of the Tax Court.

(3) *Review and execution of closing agreement or other appropriate settlement agreement.*

(a) *Taxpayers under examination.* The first line examination manager will prepare a closing agreement. The first line examination manager should submit the closing agreement to the Ground Transportation Technical Advisor and his assigned counsel for review prior to submitting the closing agreement to the taxpayer for execution. Failure to submit the closing agreement to the Technical Advisor or his assigned counsel for review will not invalidate the closing agreement. After the closing agreement has been executed by the taxpayer, it will be executed on behalf of the Service by the Director, Field Operations (LMSB) MCT, New Jersey.

(b) *Taxpayers before an area appeals office.* The appeals officer or appeals team case leader will prepare a closing agreement. After the closing agreement has been executed by the taxpayer, it will be executed on behalf of the Service by an authorized official from Appeals.

(c) *Taxpayers before the Tax Court.* For docketed tax years before the Tax Court, the taxpayer and the Chief Counsel attorney must prepare an appropriate settlement document, settlement stipulation, or stipulated decision document, pursuant to the rules and procedures of the court. Such settlement document, settlement stipulation, or stipulated decision document is subject to the approval of the court.

(4) *Amended returns.*

(a) *In general.* In cases pending before examination or appeals, the Service will make the adjustments necessary to reflect the settlement to the taxpayer's returns for the taxable years under examination or before an area appeals office. In cases pending before the Tax Court, the settlement agreement will include adjustments necessary to reflect the settlement with respect to the year(s) before the court. The taxpayer is required to file amended returns to reflect the settlement for any other affected taxable years for which a federal income tax return has been filed as of the date of the closing agreement. The amended returns must include the adjustments to taxable income necessary to reflect the new method and any collateral adjustments to taxable income or tax liability resulting from the change. A taxpayer eligible to file a "qualified amended return" under Rev. Proc. 94-69, 1994-2 C.B. 804, may satisfy the requirements of this section by filing a qualified amended return in accordance with that revenue procedure.

(b) *Time and manner.* The taxpayer must file any required amended returns on or before the date it executes the closing agreement or other appropriate settlement agreement. The taxpayer must provide a copy of the amended returns to the first line examination manager, appeals officer, or Chief Counsel attorney (whichever is applicable) at the time it files the amended returns.

(5) *Application of Rev. Proc. 2002-18.* Except as otherwise provided in this revenue procedure, the provisions of Rev. Proc. 2002-18 will apply to any settlement under section 8 of this revenue procedure.

.06 *Effect on Other Offices of the Service.* If a taxpayer is before an area appeals office or the Tax Court regarding the treatment of its track structure expenditures and does not settle this issue under the

provisions of this section 8, an appropriate representative from an area appeals office or Chief Counsel office may settle a particular taxpayer's case involving this issue on a more favorable or less favorable basis than provided in this revenue procedure. For example, an appeals officer may settle a case based on the hazards of litigation.

#### SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for taxable years ending on or after December 31, 2001.

#### SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-9 is modified and amplified to include this accounting method change in the APPENDIX. Rev. Proc. 2001-46 is amplified to address the reclassification of a Class II or III railroad to a Class I railroad.

#### DRAFTING INFORMATION

The principal author of this revenue procedure is Patricia Zweibel of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Zweibel at (202) 622-5020 (not a toll-free call).

#### APPENDIX

Department of the Treasury Internal Revenue Service

Closing Agreement on Final Determination Covering Specific Matters

Under § 7121 of the Internal Revenue Code of 1986, [Taxpayer's name, address, telephone number, and identifying number] ("the taxpayer") and the Commissioner of Internal Revenue make the following closing agreement:

#### WHEREAS:

1. The taxpayer is a Class II or Class III railroad, as designated by the Surface Transportation Board, that is not required to file a Form R-1.

2. The issue covered in this closing agreement is the taxpayer's treatment of track structure expenditures incurred as a result of performing various activities to acquire, construct, maintain, repair, and improve track structure. The definition of "track structure expenditures" and other

terms defined in section 4 of Rev. Proc. 2002-65, apply for purposes of this closing agreement.

3. The taxable years covered by this closing agreement are [insert applicable taxable years].

4. The taxpayer currently accounts for track structure expenditures as follows: [insert taxpayer's current method of accounting for track structure expenditures].

5. The taxpayer and the Internal Revenue Service ("Service") rely on the following facts and representations in making this closing agreement: [insert relevant facts, including the track maintenance allowance and the capitalized amount under the track maintenance allowance method for each taxable year under examination, before an area appeals office, or before the Tax Court, an explanation of the computations used to determine those amounts, and a statement of whether the track maintenance allowance for each of those taxable years is taken into account for federal income tax purposes].

NOW IT IS HEREBY DETERMINED AND AGREED for federal income tax purposes:

1. That the Service is changing the taxpayer's method of accounting for track structure expenditures to the track maintenance allowance method of accounting described in section 5 of Rev. Proc. 2002-65, for the taxable year ending [insert earliest open taxable year after which there is no closed taxable year].

2. That the method change will be implemented using a cut-off method.

3. That the adjustments to taxable income necessary to reflect the new method, and any collateral adjustments to taxable income or tax liability resulting from the change for each of the taxable years covered by this agreement, are as follows: [insert appropriate adjustments].

4. (If appropriate), That the taxpayer has filed any amended returns required by section 8.05(4) of Rev. Proc. 2002-65, to reflect the settlement.

5. That the Service will not require the taxpayer to change its method of accounting for track structure expenditures to a method other than the track maintenance allowance method for any taxable year for which a federal income tax return has been filed as of the date of this closing agreement, provided that: (a) the taxpayer has complied with all the applicable provi-

sions of the closing agreement; (b) there has been no taxpayer fraud, malfeasance, or misrepresentation of a material fact; (c) there has been no change in the material facts on which the closing agreement was based; and (d) there has been no change in the applicable law on which the closing agreement was based.

6. That the Service is not precluded from challenging the computation of the track maintenance allowance for any taxable year covered by this closing agreement on a basis unrelated to the track maintenance allowance method (for example, that all or

a portion of the amount is not incurred under § 461 or that the taxpayer has not properly applied the uniform capitalization rules of § 263A and the regulations thereunder).

7. That the taxpayer accepts this settlement and agrees to the applicable terms of Rev. Proc. 2002-65.

This agreement is final and conclusive except:

(1) The matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of a material fact;

(2) It is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for § 7122) notwithstanding any law or rule of law; and

(3) If it relates to a tax period ending after the date of this agreement, it is subject to any law enacted after the agreement date, that applies to the tax period.

By signing, the parties certify that they have read and agreed to the terms of this document.

Taxpayer (other than individual):

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Commissioner of Internal Revenue:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Instructions

[This agreement must be signed and filed in triplicate. (All copies must have original signatures.) The original and copies of the agreement must be identical. The name of the taxpayer must be stated accurately. The agreement may relate to one or more years.

If an attorney or agent signs the agreement for the taxpayer, the power of attorney (or a copy) authorizing that person to sign must be attached to the agreement.

If the taxpayer is a corporation, the agreement must be dated and signed with the name of the corporation, the signature and title of an authorized officer or officers, or the signature of an authorized attorney or agent. It is not necessary that a copy of an enabling corporate resolution be attached.

Use additional pages if necessary and identify them as part of this agreement.

Please see Rev. Proc. 68-16, 1968-1 C.B. 770, for a detailed description of practices and procedures applicable to most closing agreements.]

I have examined the specific matters involved and recommend the acceptance of the proposed agreement

(Receiving Officer) \_\_\_\_\_

(Date) \_\_\_\_\_

(Title) \_\_\_\_\_

I have examined the specific matters involved and recommend the acceptance of the proposed agreement

(Receiving Officer) \_\_\_\_\_

(Date) \_\_\_\_\_

(Title) \_\_\_\_\_

## Part IV. Items of General Interest

### Request for Comments Regarding Application for Recognition of Exemption

#### Announcement 2002-92

The Internal Revenue Service (IRS) is revising Form 1023, *Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code*, and *Instructions for Form 1023*. To ensure that this process considers the needs of all who have an interest in the application filed by organizations to obtain recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code, we are seeking comments from exempt organizations, practitioners, state regulators, vendors, and others.

#### BACKGROUND

In order to be recognized as exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3), the law requires that most organizations submit an application with a detailed statement of their proposed activities sufficient to establish that they qualify for exemption. This draft application and accompanying instructions takes into consideration this requirement and comments we previously received from those involved in the application process with suggestions for improvements.

#### REQUEST FOR PUBLIC COMMENT

The IRS requests comments from exempt organizations, practitioners, and all interested stakeholders on proposed revisions to the current Form 1023 and Instructions. The proposed revisions have been posted on the IRS website, at [www.irs.gov/eo](http://www.irs.gov/eo).

Interested parties should provide a statement explaining their interest in the Form 1023 and any information that will be useful in revising it. We are particularly interested in comments that address the following:

1. Ease of comprehension,

2. Customer burden,
3. Technical accuracy, and
4. Sufficiency of information requested.

Public comments should be submitted in writing on or before December 2, 2002, to the following address:

Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224  
Attn: Amy Henchey - Form 1023  
Announcement  
T:EO:CEO

Comments may also be sent via electronic mail to [\\*TE/GE-EO-2@irs.gov](mailto:*TE/GE-EO-2@irs.gov). Please note that the \* asterisk symbol is an integral part of the address.

#### DRAFTING INFORMATION

The principal author of this announcement is Amy Henchey of Exempt Organizations. For further information regarding this announcement, contact Amy Henchey at (202) 283-8856 or Cindy Westcott at (513) 263-3519 (not a toll-free call).

### 10 or More Employer Plans; Hearing

#### Announcement 2002-93

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date and location of public hearing.

SUMMARY: This document changes the date and location of a public hearing on proposed regulations (REG-165868-01, 2002-31 I.R.B. 270) relating to 10 or more employer plans under section 419 of the Internal Revenue Code.

DATES: The public hearing originally scheduled for Tuesday, November 5, 2002, at 10 a.m., in room 4718, is rescheduled for Thursday, November 14, 2002, at 10 a.m., in room 2140.

ADDRESSES: The public hearing originally scheduled to be in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC, will be held in room 2140 of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION: Guy R. Traynor of the Regulations Unit, Associate Chief Counsel (Income Tax & Accounting), (202) 622-7180 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Thursday, July 11, 2002 (67 FR 45933), announced that a public hearing on proposed regulations relating to 10 or more employer plans under section 419 of the Internal Revenue Code would be held on Tuesday, November 5, 2002, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC.

The date and location of the public hearing has changed. The hearing is scheduled for Thursday, November 14, 2002, beginning at 10 a.m. in room 2140, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. We must receive requests to speak and outlines of oral comments by October 24, 2002. Because of the controlled access restrictions, attendees are not admitted beyond the lobby of the Internal Revenue Building until 9:30 a.m. The Service will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,  
Chief, Regulations Unit,  
Associate Chief Counsel  
(Income Tax & Accounting).

(Filed by the Office of the Federal Register on September 10, 2002, 8:45 a.m., and published in the issue of the Federal Register for September 11, 2002, 67 F.R. 57543)



# 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 Contributions Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign Corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.  
PHC—Personal Holding Company.

PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—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.

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2002–1 through 2002–25 is in Internal Revenue Bulletin 2002–26, dated July 1, 2002.

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#### 91–23

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Rev. Proc. 2002–52, 2002–31 I.R.B. 242

#### 91–26

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#### 95–18

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#### 96–13

Modified and superseded by  
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#### 96–14

Modified and superseded by  
Rev. Proc. 2002–52, 2002–31 I.R.B. 242

#### 96–53

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Rev. Proc. 2002–52, 2002–31 I.R.B. 242

#### 2001–12

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#### 2001–17

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#### 2001–26

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#### 2002–15

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#### 2002–19

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#### 55–534

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#### 55–606

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T.D. 9010, 2002–33 I.R.B. 341

#### 59–328

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T.D. 9010, 2002–33 I.R.B. 341

#### 64–36

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T.D. 9010, 2002–33 I.R.B. 341

#### 65–129

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T.D. 9010, 2002–33 I.R.B. 341

#### 67–197

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#### 69–259

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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2002–1 through 2002–25 is in Internal Revenue Bulletin 2002–26, dated July 1, 2002.

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### **70-608**

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### **76-225**

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### **85-50**

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### **92-17**

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### **93-70**

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### **8997**

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### **9013**

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