Internal Revenue
bulletin

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HIGHLIGHTS OF THIS ISSUE

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

SPECIAL ANNOUNCEMENTS

Announcement 2002–96, page 756.
The Service announces that the Appeals settlement initiative with respect to broad-based leveraged corporate owned life insurance (COLI) plans purchased after June 20, 1986, will be terminated. The Service will vigorously defend or prosecute all future COLI litigation. There will be a 45-day window within which taxpayers will be permitted to enter into the current settlement arrangement by submitting to the Internal Revenue Service a formal written offer to settle.

Announcement 2002–97, page 757.
Under the terms of this announcement, taxpayers who have engaged in basis-shifting transactions will be given the opportunity to resolve this issue with minimal further examination or other administrative proceedings. Participating taxpayers will enter into a settlement with fixed terms that are specified in the announcement.

INCOME TAX

Rev. Rul. 2002–65, page 729.
Low-income housing tax credit. This ruling advises taxpayers that rental assistance payments made to a building owner on behalf or in respect of a tenant under the *Rent Supplement Payment* program or the *Rental Assistance Payments* program are not grants made with respect to a building or its operation under section 42(d)(5) of the Code.

Notice 2002–69, page 730.
This notice provides interim guidance for determining interest rates and foreign loss payment patterns for certain foreign insurance companies under section 954(i) of the Code. Comments are requested by March 28, 2003.

Rev. Proc. 2002–67, page 733.
This document provides procedures for taxpayers who elect to participate in a settlement initiative aimed at resolving tax shelter cases involving "contingent liability transactions" that are the same or similar to those described in Notice 2001–17, 2001–1 C.B. 730. There are two resolution methodologies: a fixed concession procedure and a fast track dispute resolution procedure that includes binding arbitration.

Rev. Proc. 2002–68, page 753.
Optional election to make monthly 706(a) computations. This procedure allows certain partnerships that invest in assets exempt from taxation under section 103 of the Code to make an election that enables partners to take into account monthly the inclusions required under sections 702 and 707(c). Rev. Proc. 2002–16 modified and superseded.

EMPLOYEE PLANS

Notice 2002–68, page 730.
Weighted average interest rate update. The weighted average interest rate for October 2002 and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code are set forth.

EXEMPT ORGANIZATIONS

Announcement 2002–99, page 758.
Cedar Rapids Boxing Club, Inc., no longer qualifies as an organization to which contributions are deductible under section 170 of the Code.

ADMINISTRATIVE

Announcement 2002–98, page 758.
Publication 1187, *Specifications for Filing Form 1042–S, Foreign Person's U.S. Source Income Subject to Withholding, Magnetically or Electronically*, will not be revised for Tax Year 2002.

Finding Lists begin on page ii.

Department of the Treasury
Internal Revenue Service

The IRS Mission

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

Introduction

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

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

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

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

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

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

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

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The 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.

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

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

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

Section 42.—Low-Income Housing Credit

26 CFR 1.42–16: Eligible basis reduced by federal grants.

Rev. Rul. 2002–65

Pursuant to § 1.42–16(b)(3) of the Income Tax Regulations, the Internal Revenue Service has determined that rental assistance payments made to a building owner on behalf or in respect of a tenant under the *Rent Supplement Payment* program (12 U.S.C. § 1701s) or the *Rental Assistance Payments* program (12 U.S.C. § 1715z–1(f)(2)) are not grants made with respect to a building or its operation under § 42(d)(5) of the Internal Revenue Code.

Interest reduction payments made under mortgage insurance programs (for example, section 236 of the National Housing Act (12 U.S.C. § 1715z–1)) which the payments under the Rent Supplement Payment program and Rental Assistance Payments program are intended to augment are not included within the scope of this revenue ruling. The Treasury Department and the Internal Revenue Service are studying the proper treatment of these payments under § 42.

DRAFTING INFORMATION

The principal author of this revenue ruling is Christopher J. Wilson of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Susan Reaman at (202) 622–3040, or Mr. Wilson at (808) 539–2874 (not toll-free calls).

Section 103.—Interest on State and Local Bonds

May a partner in a partnership that invests in bonds that are exempt from taxation under § 103 make monthly allocations of partnership items under § 706(a)? See Rev. Proc. 2002–68, page 753.

Section 702.—Income and Credits of a Partner

May a partner in a partnership that invests in bonds that are exempt from taxation under § 103 make monthly allocations of partnership items under § 706(a)? See Rev. Proc. 2002–68, page 753.

Section 704.—Partner's Distributive Share

May a partner in a partnership that invests in bonds that are exempt from taxation under § 103 make monthly allocations of partnership items under § 706(a)? See Rev. Proc. 2002–68, page 753.

Section 706.—Taxable Years of Partner and Partnership

26 CFR 1.706–1: Taxable years of partner and partnership.
26 CFR 1.706–1(c): Closing of partnership year.
26 CFR 1.441–2T: Election of year consisting of 52–53 weeks (temporary).
26 CFR 1.761–2: Exclusion of certain unincorporated organizations from the application of all or part of subchapter K of chapter 1 of the Internal Revenue Code.
26 CFR 301.7701–4: Trusts.

May a partner in a partnership that invests in bonds that are exempt from taxation under § 103 make monthly allocations of partnership items under § 706(a)? See Rev. Proc. 2002–68, page 753.

Section 761.—Terms Defined

May a partner in a partnership that invests in bonds that are exempt from taxation under § 103 make monthly allocations of partnership items under § 706(a)? See Rev. Proc. 2002–68, page 753.

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 2002–68

Sections 412(b)(5)(B) and 412(l)(7)(C)(i) of the Internal Revenue Code provide that the interest rates used to calculate current liability for purposes of determining the full funding limitation under § 412(c)(7) and the required contribution under § 412(l) must be within a permissible range around the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year.

Notice 88–73, 1988–2 C.B. 383, provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of § 412(c)(7) of the Code.

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

The rate of interest on 30-year Treasury Securities for September 2002 is 4.76 percent. Pursuant to Notice 2002–26, 2002–15 I.R.B. 743, the Service has determined this rate as the monthly average of the daily determination of yield on the 30-year Treasury bond maturing in February 2031.

Section 405 of the Job Creation and Worker Assistance Act of 2002 amended § 412(l)(7)(C) of the Code to provide that for plan years beginning in 2002 and 2003 the permissible range is extended to 120 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 110% Permissible Range	90% to 120% Permissible Range
October	2002	5.60	5.04 to 6.16	5.04 to 6.72

Drafting Information

The principal author of this notice is Todd Newman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1–877–829–5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Mr. Newman may be reached at 1–202–283–9888 (not a toll-free number).

Interest Rates and Appropriate Foreign Loss Payment Patterns for Determining the Qualified Insurance Income of Certain Controlled Corporations Under Section 954(i)

Notice 2002–69

I. PURPOSE

This notice provides interim guidance for determining the interest rates and appropriate foreign loss payment patterns to be used by controlled foreign corporations in calculating their qualified insurance income under section 954(i) of the Internal Revenue Code. Taxpayers may rely on the guidance in this notice until regulations or other guidance are published.

II. BACKGROUND

In general, a United States shareholder of a controlled foreign corporation ("CFC") must include in gross income its *pro rata* share of the CFC's Subpart F income for each year. I.R.C. Sec. 951(a). Subpart F income includes, among other types of income, foreign base company income. Sec. 952(a). Section 954(a)(1) defines the term "foreign base company income" to include, among other types of income, foreign personal holding company income. Section 954(c)(1) sets forth the types of income (*e.g.*, interest and dividends) that are considered to be foreign personal holding company income. Sec. 954(c)(1)(A).

Section 954(i)(1) provides that for purposes of section 954(c)(1), foreign personal holding company income does not include "qualified insurance income" of a "qualifying insurance company". Section 954(i)(2) defines the term "qualified insurance income" to mean income of a qualifying insurance company falling into either of two categories. First, income received from unrelated persons and derived from investments made by a qualifying insurance company or qualifying insurance company branch (collectively referred to as a "QIC") either of its reserves allocable to exempt contracts or of 80 percent of its unearned premiums from exempt contracts (as both are determined in accordance with section 954(i)(4)). Sec. 954(i)(2)(A). Second, income received from unrelated persons and derived from investments made by a QIC of an amount of its assets allocable to exempt contracts equal to: (1) in the case of property, casualty, or health insurance contracts, one-third of the premiums earned on those contracts during such year; and (2) in the case of life insurance or annuity contracts, 10 percent of the reserves described in section 954(i)(2)(A) for such contracts. Sec. 954(i)(2)(B).

For purposes of determining the first category of qualified insurance income, section 954(i)(4)(A) provides that the unearned premiums and reserves of a QIC with re-

spect to property, casualty, or health insurance contracts shall be determined using the same methods and interest rates that would be used if such QIC were subject to tax under Subchapter L, subject to two modifications, discussed below. Under the general rules of Subchapter L, an insurance company (other than a life insurance company) determines its "discounted unpaid losses" (as defined under section 846), which is a type of insurance reserve, at the end of each taxable year by taking the sum of discounted unpaid losses separately computed with respect to unpaid losses in each line of business attributable to each accident year. Sec. 846(a)(1). The amount of discounted unpaid losses as of the end of any taxable year attributable to any accident year is the present value of such unpaid losses determined by using: (1) the amount of undiscounted unpaid losses; (2) the applicable interest rate; and (3) the applicable loss payment pattern. Sec. 846(a)(2).

For purposes of determining the unearned premiums and reserves of a QIC, section 954(i)(4)(A) makes two modifications to these general Subchapter L rules, as stated above. First, the QIC must use the interest rate determined for the functional currency of a QIC calculated in the same manner as the Federal mid-term rate under section 1274(d), except as provided by the Secretary. Sec. 954(i)(4)(A)(i). Second, the QIC must use the "appropriate foreign loss payment pattern". Sec. 954(i)(4)(A)(ii).

This notice provides rules for computing the discounted unpaid losses of a CFC by applying the general rules of section 846, as modified by section 954(i)(4), when determining: (1) the amount of undiscounted unpaid losses; (2) the applicable interest rate; and (3) the applicable loss payment pattern.

III. UNDISCOUNTED UNPAID LOSSES

A. *General Rule*

The term "undiscounted unpaid losses" means the unpaid losses shown on the annual statement filed by the taxpayer for the year ending with or within the taxable year of the taxpayer. Sec. 846(b)(1). The term "annual statement" means the annual statement approved by the National Association of Insurance Commissioners which the taxpayer is required to file with the insurance regulatory authorities of the State. Sec. 846(f)(3).

B. *Undiscounted Unpaid Losses for a QIC*

A QIC does not file an annual statement as defined under section 843(f)(3). As a result, a QIC shall use the undiscounted unpaid losses reflected on the statement or report filed with a foreign regulatory authority. If no statement or report is filed with a foreign regulatory authority, or if the statement or report that is filed does not reflect undiscounted unpaid losses, a QIC shall use the undiscounted unpaid losses used for financial reporting purposes in the United States.

IV. APPLICABLE INTEREST RATE

A. *General Rule*

The amount of discounted unpaid losses as of the end of any taxable year is the present value of the unpaid losses calculated by using the "applicable interest rate". Sec. 846(a)(2). The applicable interest rate for purposes of section 846 is the average of the applicable Federal mid-term rates (as defined in section 1274(d), but based on annual compounding) effective as of the beginning of each of the calendar months in the test period. Sec. 846(c)(2)(A). The test period is the most recent 60-calendar-month period ending before the beginning of the calendar year for which the determination is made. Sec. 846(c)(1)(B).

A. *Applicable Interest Rate For A QIC*

Section 954(i)(4)(A) provides that the unearned premiums and reserves of a QIC shall be determined using the same methods and interest rates as if such QIC were subject to Subchapter L, except that the interest rate determined for the functional currency of a QIC, except as provided by the Secretary, is substituted for the applicable Federal interest rate. Accordingly, if the functional currency of a QIC is the U.S. dollar, the applicable interest rate is a 60-month average of the applicable federal mid-term rates published in accordance with Treas. Reg. § 1.1274–4(b) (using annual compounding). If the functional currency of the QIC is a currency other than the U.S. dollar, the applicable interest rate is a 60-month average of the interest rates for the functional currency of the QIC determined in accordance with Treas. Reg. § 1.1274–4(d) (using annual compounding).

V. APPLICABLE LOSS PAYMENT PATTERN

A. *General Rule*

Section 846(d)(1) directs the Secretary to determine a loss payment pattern for each line of insurance business for each determination year. Any loss payment pattern determined by the Secretary shall apply to the accident year ending with the determination year and to each of four succeeding accident years. Sec. 846(d)(1). The term "line of business" means a category for the reporting of loss payment patterns determined on the basis of the annual statement for fire and casualty insurance companies for the calendar year ending with or within the taxable year, except that multiple peril lines of business are treated as a single line of business. Sec. 846(f)(4). The term "determination year" means calendar year 1987 and each fifth calendar year thereafter. Sec. 846(d)(4).

Determinations under section 846(d)(1) for any determination year are made by the Secretary: (1) by using the aggregate experience reported on the annual statements of insurance companies; (2) on the basis of the most recently published data from such annual statements relating to loss payment patterns available on the first day of the determination year; (3) as if losses paid or treated as paid during any year were paid during the middle of such year; and (4) in accordance with the computational rules set forth in section 846(d)(3). Sec. 846(d)(2).

Under section 846(e)(1), a taxpayer may elect to use a loss payment pattern for lines of business determined by reference to the taxpayer's loss payment patterns for the most recent calendar year for which an annual statement was filed before the beginning of the determination year. Sec. 846(e)(1). Any determination must be made with the application of the rules of section 846(d)(2)(C) and 846(d)(3). Sec. 846(e)(1). A taxpayer may elect to discount unpaid losses using its own historical loss payment pattern instead of the industry-wide pattern determined by the Secretary if it has one or more eligible lines of business. Treas. Reg. § 1.846–2(a). A taxpayer's election applies to all eligible lines of business. Treas. Reg. § 1.846–2(a). A line of business is an eligible line of business

in a determination year if, on the most recent annual statement filed by the taxpayer before the beginning of that determination year, the taxpayer reports losses and loss expenses for at least the number of accident years for which those losses and loss expenses are required to be reported on an annual statement. Treas. Reg. § 1.846–2(b).

An election is made separately for each determination year. Sec. 846(e)(2)(A). Unless revoked with consent of the Secretary, this election applies to accident years ending with the determination year and to each of the four succeeding accident years. Sec. 846(e)(2)(B). An election is made on the taxpayer's return for the taxable year in which the determination year ends. Sec. 846(e)(2)(C). No election is allowed for any international or reinsurance line of business. Sec. 846(e)(3).

B. *Appropriate Foreign Loss Payment Pattern for a QIC*

Section 954(i)(4)(A)(ii) states that a QIC shall use the "appropriate foreign loss payment pattern." A QIC may determine the appropriate foreign loss payment patterns for each respective line of insurance business under either of the following two options.

(1) A QIC may elect to use the most recent loss payment patterns for one or more lines of business published by the foreign country provided the Secretary has approved the use of such patterns in a Revenue Ruling or other published guidance. (Hereinafter referred to as Option 1.) Treasury and the Internal Revenue Service invite taxpayers to submit information regarding any existing or subsequently published foreign loss payment pattern so that the Secretary can make a determination and, if appropriate, issue guidance indicating that such foreign loss payment pattern may be used by a QIC under Option 1.

(2) A QIC may elect to use its own loss payment patterns for any lines of business sold by the QIC in a foreign country. (Hereinafter referred to as Option 2.) In general, to make this election, a QIC must have sufficient historical information for a line of business to qualify as an eligible line of business under Treas. Reg. § 1.846–2(b). However, for this purpose a line of business corresponding to one listed in section 846(d)(3)(A)(ii) may qualify as an eligible line of business if a QIC has historical data for that line of business for at least four years after the accident year.

As stated above, a QIC may make different elections for each separate line of business. Notwithstanding section 846(e)(3), an election may be made for any line of business conducted by a QIC, including any international or nonproportional reinsurance line of business. A QIC that makes an election to apply Option 1 or 2 for a taxable year with respect to a line of business must treat as a determination year for that line of business the accident year with which or during which the taxable year of the election ends. The election applies to the determination year and to each of the four succeeding accident years, unless the election is revoked with consent of the Secretary. If a QIC does not make an election to apply either Option 1 or 2 for one or more lines of business, then the appropriate foreign loss payment pattern for such line or lines of business shall be the applicable loss payment patterns set forth in the tables published by the Secretary under section 846(d).

Except as otherwise provided in section 954(i) and this Notice, section 846 and the regulations promulgated thereunder apply in determining the amount of a QIC's discounted unpaid losses.

Special Rules for Applying Option 2

For purposes of Option 2, the computational rules in section 846(d)(3) shall be followed in determining the appropriate foreign loss payment pattern for an eligible line of business, subject to the following modifications for lines of business corresponding to those listed in section 846(d)(3)(A)(ii). First, the period taken into account under section 846(d)(3)(A)(ii) shall be extended to at least the tenth year after the accident year, but not beyond the 15th year after the accident year. Second, the amount paid in the last year after the accident year for which data are available shall be treated as paid in each subsequent year (or, if lesser, the portion of the unpaid losses not theretofore taken into account shall be treated as being paid). However, if application of the previous sentence results in a payment pattern that ends before the tenth year after the accident year, then the amount of unpaid losses remaining after the years for which loss payment data are available shall be treated as paid equally in each year thereafter, ending in the tenth year after the accident year.

Example 1. A QIC has data for seven years after the accident year (AY+0) for its "private passenger auto liability" line. The percentage of losses paid are 32% for AY+0, 27% for AY+1 (one year after the accident year), 14% for AY+2, 8% for AY+3, 5% for AY+4, 3% for AY+5, 3% for AY+6, and 2% for AY+7. This is an eligible line. The QIC elects Option 2 for this line of business, and extends the payment period to AY+10. The payment percentages for the years AY+8, AY+9, and AY+10 are 2% in each year.

Example 2. Assume the same facts as in *Example 1*, except that the payment percentage for year AY+7 is 3%. In this case, use of 3% for the remaining years would terminate the payment pattern in AY+9. Accordingly, the QIC must treat 1.66% as being paid in years AY+8, AY+9, and AY+10.

Example 3. Assume the same facts as in *Example 1*, except that the payment percentage for year AY+7 is 1%. In this case, the QIC must extend the payment period to AY+14 and use 1% for the remaining years from AY+8 through AY+14.

If a taxpayer elects Option 2 for a line of business for which there are fewer than nine years of historical data after the accident year, then the taxpayer shall determine a new payment pattern using the computational rules of section 846(d)(3), as modified by this notice, for each year after the determination year, until such time that the taxpayer has historical data for nine years after the accident year.

Example 4. Assume the same facts as in *Example 1*. The taxpayer has elected Option 2 for this line of business, but has data in the determination year for only seven years after the accident year. Accordingly, the taxpayer must determine a new payment pattern for the accident year immediately following the determination year using updated information for the accident year plus eight years after the accident year. The taxpayer must also determine a new payment pattern for the second accident year following the determination year using updated information for the accident year plus nine years after the accident year. This last payment pattern shall apply to the last three accident years for which the 5-year election to use Option 2 is applicable.

VI. MANNER FOR MAKING ELECTION

Controlling U.S. shareholders shall make the elections referred to in this notice on behalf of a QIC by applying the rules of Treas. Reg. § 1.964–1(c)(3).

VII. EFFECTIVE DATE RULES

Regulations to be issued under section 954(i) concerning the issues addressed in this notice will be effective for taxable years beginning on or after the date such regulations are published as final in the Federal Register. Until such regulations are issued, controlling shareholders of a QIC may rely on this notice to determine the interest rates and appropriate foreign loss payment patterns of a QIC for purposes of section 954(i). Controlling U.S. shareholders also may apply the guidance in this notice to prior taxable years.

VIII. PAPERWORK REDUCTION ACT

The collections of information contained in the notice have been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1799.

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

The collections of information in this notice are in section V headed Applicable Loss Payment Patterns. This information is required by the IRS to determine whether a QIC is allowed to determine its income by using its own payment pattern data for a particular line of business. The information will be used on examination to determine whether a QIC is calculating its foreign loss payment patterns correctly. The likely respondents are U.S. shareholders that own foreign insurance companies.

The estimated total annual reporting burden is 300 hours.

The estimated average annual burden per respondent is 1 hour.

The estimated number of respondents is 300.

The estimated annual frequency of responses is once.

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

IX. REQUEST FOR COMMENTS AND DRAFTING INFORMATION

The IRS and Treasury request comments on the rules described in this notice and on the additional issues, if any, that should be addressed when regulations under section 954(i) are issued. Written comments may be submitted to the Associate Chief Counsel (International), Attention: Steven Jensen (Notice 2002–69), Room 4562, CC:INTL: Br5, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington DC 20224. Alternatively, taxpayers may submit comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/prod/tax_regs/comments.html.* Comments will be available for public inspection and copying. Treasury and the IRS request comments by March 28, 2003. For further information regarding this notice, contact Steven Jensen of the Office of Associate Chief Counsel (International) at 202–622–3870 (not a toll-free call).

Rev. Proc. 2002–67

Settlement of Section 351 Contingent Liability Tax Shelter Cases

SECTION 1. PURPOSE

.01 This revenue procedure prescribes procedures for Taxpayers who elect to participate in a settlement initiative aimed at resolving cases involving Contingent Liability Transactions that are the same as or substantially similar to those described in Notice 2001–17, 2001–1 C.B. 730 ("Contingent Liability Transactions").

.02 This revenue procedure provides for two resolution methodologies. The first option is a Fixed Concession Procedure set forth in Section 5. The second option is a Fast Track Dispute Resolution Procedure — Contingent Liability Cases set forth in Section 6; this second method includes the Binding Arbitration Procedure set forth in Section 7. The basic eligibility requirements for both options are set forth in Section 3. Additional eligibility requirements for the Fixed Concession Procedure are set forth in Section 5.01.

.03 Both resolution methodologies are designed to ensure that any tax benefits associated with the Contingent Liability Transactions are claimed no more than once, in the aggregate, by the Taxpayer or an entity that was a member of the Taxpayer's consolidated group (including any successor to such group) at any time. Any ambiguity in this revenue procedure should be resolved in favor of achieving this purpose.

.04 Both resolution methodologies are also designed to provide flexibility to accommodate a large variety of views on the relative merits of the case. The Arbitration Procedure is intended to require each party to realistically assess the merits of the case and achieve a resolution in the event of irreconcilable differences before a neutral expert who must choose between the divergent settlement proposals without modification. Maximum flexibility, within the stated range of concession, is provided for the negotiations. This resolution should provide strong incentives to resolve disputes with quick, competent review and certainty of repose at a reduced cost for both parties.

SECTION 2. BACKGROUND

.01 The transactions in question generally involve a transfer that purportedly complies with section 351 of the Internal Revenue Code of high basis, high value assets from a transferor corporation ("Taxpayer") to a transferee corporation controlled by the transferor. The assets are transferred in exchange for stock of the transferee corporation and the transferee's assumption of a liability of the transferor, which has not yet been taken into account for tax purposes. The Taxpayer takes the position that the basis of the stock of the transferee corporation received by the transferor is equal to the bases in the assets transferred, without a reduction in basis for the liability assumed. The transferor subsequently sells the stock at a reported capital loss equivalent to the present value of the assumed liability. When the liability ultimately is taken into account for tax purposes, the transferee claims the tax benefits associated with the liability.

.02 The Commissioner of the Internal Revenue Service and Treasury have designated these transactions as "listed transactions" for purposes of Temp. Treas. Reg. § 1.6011–4T(b)(2) in Notice 2001–17.

SECTION 3. SCOPE

.01 Except as provided in Section 3.02, this revenue procedure applies to any Taxpayer that has engaged in a Contingent Liability Transaction and timely elects to resolve the issues in dispute using this procedure. In order to participate in the resolution of a Contingent Liability Transaction under the procedures set forth in this revenue procedure, a Taxpayer must provide a written statement under penalties of perjury that each transferor involved in the Contingent Liability Transaction complied with the statutory requirements specified in the application described in Section 4.01. In addition, this statement must include a certification that each transferor involved in the Contingent Liability Transaction carried out the purported section 351 exchanges and subsequent sales in accordance with the applicable operating documents. The scope and contents of these statements are set forth in the application described in Section 4.01. The Service may request further information to verify the certifications described above.

.02 Taxpayers that have engaged in a Contingent Liability Transaction and meet the requirements set forth below (hereinafter referred to as "Eligible Taxpayers") may elect to participate under this revenue procedure if:

1) The underpayment of tax attributable to the Contingent Liability Transaction is not due to fraud;

2) The contingent liability was assumed on or before October 18, 1999;

3) The Contingent Liability Transaction is not in litigation, *i.e.*, at any time on or after October 4, 2002, a case containing the issue is not docketed in and under the jurisdiction of any court, including the Tax Court, a district court, a bankruptcy court, the Court of Federal Claims, a circuit court of appeals, or the Supreme Court for any year; and

4) The Contingent Liability Transaction issue has not been designated for litigation, or, if not designated for litigation, the Taxpayer has not been notified that the Contingent Liability Transaction issue is under consideration for designation for litigation, as of October 4, 2002. For purposes of this revenue procedure, the Contingent Liability Transaction issue has been designated for litigation if it has been designated under the procedures set forth in CCDM 35.3.14 or any subsequently issued procedures for designation.

.03 A Taxpayer ineligible to participate in the resolution methodologies set forth in the revenue procedure solely because of the restrictions set forth in Section 3.02(4), relating to issues designated for litigation, becomes an Eligible Taxpayer upon written receipt of notification from the Service that it will not designate the Contingent Liability Transaction issue for litigation (or that the Service will remove the designation in a previously designated case). After the Taxpayer becomes an Eligible Taxpayer, the Taxpayer may apply to participate as set forth in Section 4 on or before the 90th day after the mailing date of the written notification from the Service of the decision not to designate (or to remove the designation of) the Contingent Liability Transaction issue. For purposes of this revenue procedure, a day means a calendar day.

.04 Further eligibility requirements for Taxpayers electing the Fixed Concession Procedure are set forth in Section 5.01.

.05 Eligible Taxpayers who do not elect to participate in one of the resolution methodologies provided for under this revenue procedure may not take advantage of the settlement, mediation or arbitration procedures under Notice 2001–67 (LMSB/Appeals Fast Track Dispute Resolution Program), 2001–2 C.B. 544; Announcement 2002–60 (Extension of Test of Arbitration Procedure for Appeals), 2002–26 I.R.B. 28; and Rev. Proc. 2002–44 (Mediation Procedure for Appeals), 2002–26 I.R.B. 10.

SECTION 4. APPLICATION PROCESS

.01 An Eligible Taxpayer who wants to participate in one of the resolution methodologies provided under this revenue procedure must mail or deliver to the Service a written application on or before January 2, 2003. The application must be made on a completed Agreement to Participate and Selection of Settlement Option in the form appended to this revenue procedure as Exhibit 1. A separate application must be submitted for each Contingent Liability Transaction for which the Taxpayer elects to participate in one of the resolution methodologies provided for under this revenue procedure. Such applications must be sent to the Office of Tax Shelter Analysis ("OTSA"), LM:PFTG:OTSA, Attn: 351, 1111 Constitution Ave., N.W., Washington, DC 20024.

.02 With each application, the Taxpayer must submit the following:

1) A statement identifying the total capital loss reported on the Taxpayer's income tax return(s) for the sale(s) of any stock issued by the transferee corporation in the Contingent Liability Transaction, including the tax years affected and the amount of the capital loss used in each year (including any carryback and carryforward periods);

2) A description of each class of stock issued and outstanding by the transferee corporation at the completion of the purported section 351 exchanges, including the number of shares issued in each class in the exchanges, to whom the stock was issued, the issuing prices of the stock, the par values and any voting rights;

3) A statement identifying any shares issued in the purported section 351 exchanges in connection with the assumption of the contingent liability that have not been sold or otherwise disposed of by the Taxpayer;

4) A statement indicating the average selling price per share of any stock issued by the transferee corporation in the Contingent Liability Transaction;

5) A description of the type and bases of the assets transferred by the Taxpayer in the Contingent Liability Transaction; and

6) A description of the type and amount of the liability assumed by the transferee corporation in the Contingent Liability Transaction.

.03 An Eligible Taxpayer that elects the Fast Track Dispute Resolution Procedure — Contingent Liability Cases, described in Section 6, must also submit with its application a completed Arbitration Agreement in the form appended to this revenue procedure as Exhibit 2. If the Arbitration Agreement is executed by a person pursuant to a power of attorney executed by the Taxpayer, that power of attorney must clearly express the grant of authority by the Taxpayer to consent to disclose the returns and return information of the Taxpayer by the Service to third parties, and a copy of that power of attorney must be attached to the Arbitration Agreement.

.04 The Taxpayer will be notified in writing within 15 calendar days of the receipt of a complete application as to whether the Taxpayer's election has been accepted as in compliance with the eligibility and application requirements of this revenue procedure for the resolution methodology selected in the application. A Taxpayer becomes an electing taxpayer ("Electing Taxpayer") for purposes of this revenue procedure, after it has been notified that its application has been accepted.

.05 If the Service denies a Taxpayer's application for participation under the Fixed Concession Procedure because the Taxpayer does not satisfy either criterion under Section 5.01, the application may be amended in writing within 10 days of receipt of the notice issued under Section 4.04 to elect the Fast Track Dispute Resolution Procedure — Contingent Liability Cases set forth in Section 6.

.06 Denial of a Taxpayer's request to participate in either resolution methodology is not subject to judicial review.

SECTION 5. FIXED CONCESSION PROCEDURE

.01 The Fixed Concession Procedure is available to Eligible Taxpayers who have engaged in a Contingent Liability Transaction and meet the requirements set forth in Section 3.02 as well as the following additional requirements:

1) The Taxpayer filed a disclosure statement under the provisions set forth in Announcement 2002–2, 2002–2 I.R.B. 304; or

2) The Contingent Liability Transaction was already raised during an examination and, as a result, the Taxpayer was unable to make a disclosure as outlined in Announcement 2002–2. A Taxpayer qualifying under this provision must agree to provide the information required by Announcement 2002–2 and certify under penalties of perjury that the person signing the disclosure has examined the disclosure and that to the best of that person's knowledge and belief, the information provided contains all relevant facts and is true, correct and complete.

.02 Under the Fixed Concession Procedure, an Electing Taxpayer is permitted a capital loss deduction equal to 25% of the amount of the capital loss reported for the sale of the transferee stock received in the Contingent Liability Transaction. In order to prevent a duplication of the tax benefits associated with the Contingent Liability Transaction, the Electing Taxpayer must include an amount equal to the permitted capital loss as ordinary income in equal amounts per year over a period of 15 years beginning with the 2003 taxable year, unless no member of the Electing Taxpayer's consolidated group (including any successor to such group) is at any time entitled to any tax benefits associated with the deduction resulting from the liability assumed in the Contingent Liability Transaction. The Electing Taxpayer has the option of an alternative method to achieve the same economic result as the 15-year recovery based on a discount rate of ten percent. The closing agreement referenced in Section 5.07 shall ensure that no entity that was a member of the Electing Taxpayer's consolidated group (including any successor to such group) at any time will be entitled to both the permitted capital loss deduction and the tax benefits associated with the deduction resulting from the liability assumed in the Contingent Liability Transaction.

.03 No adjustment will be made to transactional cost deductions taken in connection with the Contingent Liability Transaction.

.04 When the assumed liability is ultimately taken into account for tax purposes, the tax benefits associated with it will be allowed, as appropriate, under applicable legal principles in accordance with the method of accounting of the corporation entitled to those benefits.

.05 No penalties under section 6662 will be imposed for any deficiency attributable to the resolution of the Contingent Liability Transaction under this Fixed Concession Procedure.

.06 The following conditions apply to any stock or property held on or after October 4, 2002. The tax basis of any unsold stock shall be equal to the average selling price per share of the stock that was sold that generated the reported capital losses ("Sold Stock"). Also, if the basis of any property other than the stock received in the purported section 351 exchanges was determined directly or indirectly by reference to the basis of the stock received in the purported section 351 exchanges, then the basis of such property as of the date of the Contingent Liability Transaction shall be computed as if the basis of the stock received in the purported section 351 exchanges was equal to the average selling price per share of the Sold Stock. For example, if the transferor contributed the stock received to another corporation ("Corporation 2") in return for stock in Corporation 2, then the transferor's basis in the stock of Corporation 2 shall be computed as if its basis in the stock contributed to Corporation 2 equaled the average selling price per share of the Sold Stock. This basis redetermination requirement applies to the Electing Taxpayer and to any person within the effective control of the Electing Taxpayer. The closing agreement referenced in Section 5.07 shall ensure that the basis of any property in the hands of any member of the Electing Taxpayer's consolidated group (including any successor to such group), having a carryover or substituted basis determined directly or indirectly by reference to the basis of the stock received in the purported section 351 exchanges, shall be computed as if the basis of the stock received in the purported section 351 exchanges was equal to the average selling price per share of the Sold Stock. The Electing Taxpayer shall provide all information needed to effect this provision. Taxpayers who cannot or will not provide this information cannot elect to participate under this revenue procedure.

.07 An Electing Taxpayer must enter into a closing agreement with the Commissioner that reflects the terms described above. The Compliance function within the Service will close the case using established issue or case closing procedures, including the preparation of a Form 906, *Closing Agreement on Final Determination Covering Specific Matters.*

SECTION 6. FAST TRACK DISPUTE RESOLUTION PROCEDURE — CONTINGENT LIABILITY CASES

.01 A Taxpayer electing the Fast Track Dispute Resolution Procedure — Contingent Liability Cases must participate in binding arbitration to resolve any issues that are not resolved in the accelerated settlement negotiations. *See* Section 7 below. A Taxpayer that elects the Fast Track Dispute Resolution Procedure — Contingent Liability Cases will not be eligible for any other settlement, mediation or arbitration procedure.

.02 The following issues will be considered in the Fast Track Dispute Resolution Procedure — Contingent Liability Cases:

1) The amount of capital loss permitted for the sale of stock received in the Contingent Liability Transaction;

2) The identity of the corporation that is entitled to the tax benefits associated with the deduction resulting from the assumed liability and whether that corporation is or has been a member of the Electing Taxpayer's consolidated group (including any successor to that group);

3) With respect to the Electing Taxpayer or any member of the Electing Taxpayer's consolidated group (including any successor to such group), the manner and timing of the reduction in the tax benefits necessary to eliminate any duplication in the tax benefits associated with the Contingent Liability Transaction in amounts that in the aggregate equal the capital loss permitted; and

4) The penalties under section 6662 applicable to any deficiency attributable to the resolution of the Contingent Liability Transaction under this Fast Track Dispute Resolution Procedure — Contingent Liability Cases, except that no penalties will be asserted if the Electing Taxpayer previously disclosed the Contingent Liability Transaction in accordance with Announcement 2002–2, or if the Electing Taxpayer did not disclose solely because the Contingent Liability Transaction was already raised during an examination and, as a result, the Electing Taxpayer was unable to make a disclosure as outlined in Announcement 2002-2. An Electing Taxpayer that qualifies for a waiver of penalties under this provision must agree to provide the information required by Announcement 2002-2 and certify under penalties of perjury that the person signing the disclosure has examined the disclosure and that to the best of that person's knowledge and belief, the information provided contains all relevant facts and is true, correct and complete.

.03 Under the Fast Track Dispute Resolution Procedure — Contingent Liability Cases, an Electing Taxpayer must concede between 50% and 90% of the amount of the capital loss reported for the sale of the stock, depending on the merits of the case. Electing Taxpayers may negotiate or arbitrate the identity of the corporation that is entitled to the tax benefits associated with the deduction resulting from the assumed liability, and the manner and timing of the reduction in the tax benefits associated with the Contingent Liability Transaction; provided that no reduction of such tax benefits is required unless the tax benefits associated with the deduction resulting from the assumed liability are taken into account by the Electing Taxpayer or an entity that was a member of its consolidated group (including any successor to such group) at any time. No adjustment will be made to transactional cost deductions taken in connection with the Contingent Liability Transaction. In addition, Electing Taxpayers may negotiate or arbitrate the applicability of any penalty proposed by the Service under section 6662 associated with the capital loss deduction. The tax basis of any unsold stock (or property the basis of which was determined directly or indirectly by reference to the basis in the hands of the Electing Taxpayer of the stock received in the purported section 351 exchanges), as of October 4, 2002, will be adjusted in the same manner as described in Section 5.06.

.04 When the assumed liability is ultimately taken into account for tax purposes, the tax benefits associated with it will be allowed, as appropriate under applicable legal principles in accordance with the method of accounting of the corporation entitled to those benefits.

.05 To the extent that the tax benefits associated with the deduction resulting from the liability assumed in the Contingent Liability Transaction are taken into account by the transferor or an entity that was a member of the transferor's consolidated group (including any successor to such group) at any time, the Electing Taxpayer must negotiate or arbitrate to eliminate any duplication in the tax benefits associated with the Contingent Liability Transaction using one of the following options: 1) reduce the amount of the deduction resulting from the liability assumed in connection with the Contingent Liability Transaction; or 2) recoup an amount equal to the permitted capital loss by including the amount of the permitted capital loss as ordinary income. The manner and time period over which such reduction or recoupment will occur is also subject to negotiation or arbitration.

.06 Within 90 days from the date of the notification to the Electing Taxpayer of its acceptance into the procedure, the Electing Taxpayer will provide to LMSB all of the information and documents specified in Exhibit 3. The Electing Taxpayer's failure to provide all of the information and documents specified in Exhibit 3 constitutes grounds for elimination from the Fast Track Dispute Resolution Procedure — Contingent Liability Cases and Binding Arbitration Procedure as set forth in Section 6.09. In cases not governed by this settlement initiative, the Service and the Department of Justice will not be limited to seeking the information set forth, described or requested in Exhibit 3.

.07 Within 120 days from receipt of the Electing Taxpayer's information and documents, LMSB will complete its review of the submission, issue additional document requests to the Electing Taxpayer, if necessary, and conduct any necessary interviews.

.08 Within 20 days after any supplemental requests for information by LMSB, the Electing Taxpayer will respond to the outstanding requests for information. Electing Taxpayers may request an extension of this period; however, the Service will grant extensions only in exceptional circumstances and subject to its sole discretion.

.09 If the Electing Taxpayer fails to provide the requested information that is in its possession or control, LMSB may elect to eliminate the Electing Taxpayer from the Fast Track Dispute Resolution Procedure — Contingent Liability Cases and Binding Arbitration Procedure and the case will be subject to the full range of Service audit and deficiency procedures. In addition, the Contingent Liability Transaction issue will not be considered under the settlement, mediation or arbitration procedures under Notice 2001–67 (LMSB/Appeals Fast Track Dispute Resolution Program), 2001–2 C.B. 544; Announcement 2002–60 (Extension of Test of Arbitration Procedure for Appeals), 2002–26 I.R.B. 28; and Rev. Proc. 2002–44 (Mediation Procedure for Appeals), 2002–26 I.R.B. 10. Elimination from the Fast Track Dispute Resolution Procedure — Contingent Liability Cases and Binding Arbitration Procedure will be reviewed and approved by the applicable LMSB Director of Field Operations. Such decision shall be final and not subject to judicial review.

.10 Within 30 days after the end of the period for examination (see Sections 6.07 and 6.08 above), the Electing Taxpayer and LMSB will exchange a written summary of the facts, law and argument applicable to the issues being considered under the Fast Track Dispute Resolution Procedure —

Contingent Liability Cases. After all the facts and circumstances have been evaluated, LMSB will determine whether penalties should be proposed.

.11 LMSB will promptly submit the administrative file related to the Contingent Liability Transaction and the written summaries to Appeals. Appeals and the Electing Taxpayer will schedule an initial meeting for the purpose of starting settlement discussions. Such meeting will be held on a date agreeable to the parties, but no later than 30 days from the receipt by Appeals of the administrative file and the summaries. A representative of the Electing Taxpayer with decision-making authority must participate in the settlement negotiation session or sessions.

.12 Appeals will attempt to facilitate an agreement between LMSB and the Electing Taxpayer regarding the Fast Track Dispute Resolution Procedure — Contingent Liability Cases issues, including penalties, if applicable. Under the Fast Track Dispute Resolution Procedure — Contingent Liability Cases, Appeals will evaluate the penalties based on the merits inherent in the penalty issue. Appeals may make a recommendation regarding the settlement of any or all issues. The parties have 60 days from the date of the first meeting to reach an agreed settlement on all disputed issues identified in Section 6.02.

.13 Any proposed settlement is subject to review and concurrence by an Appeals Coordinator. If the parties reach a basis of settlement, Appeals will effectuate the settlement of agreed issues using established issue or case closing procedures, including the preparation of a Form 906, *Closing Agreement on Final Determination Covering Specific Matters.*

SECTION 7. BINDING ARBITRATION

01. After the earlier of the expiration of the 60-day period for reaching agreement under Section 6.12, or the time the parties agree they will not reach a settlement under the Fast Track Dispute Resolution Procedure — Contingent Liability Cases, the parties will take part in Binding Arbitration procedures. The Binding Arbitration will be conducted in accordance with the provisions in the Arbitration Agreement, set forth in Exhibit 2. The provisions in the Arbitration Agreement are mandatory and the agreement must be executed by the Electing Taxpayer when the application to participate in the Fast Track Dispute Resolution Procedure — Contingent Liability Cases is filed, or, at the latest, when the application for the Fixed Concession Procedure is amended to elect the Fast Track Dispute Resolution Procedure — Contingent Liability Cases.

.02 The Service will have 30 days for additional factual development from the date that the Electing Taxpayer is notified that the Service has determined that the Fast Track Dispute Resolution Procedure — Contingent Liability Cases was unsuccessful.

1) During this period the Service may request additional information or documents to complete a record for submission to the Arbitrator and the Electing Taxpayer will provide a written response or documents within 15 days of receipt of the written request;

2) The Service may conduct interviews, transcribed and under oath, of individuals involved in any capacity with the transaction. Such identified witnesses, internal or external to the Electing Taxpayer's organization, may be interviewed in this manner regardless of whether such individuals were interviewed by LMSB representatives at an earlier phase of this resolution process or during audit. The Electing Taxpayer will make all witnesses who are employed by Electing Taxpayer's organization in any capacity available upon request and will make good faith efforts to make all other witnesses available during this 30-day period.

.03 The Arbitration Agreement provides that the parties agree to be bound by the decision of the Arbitrator in respect of the issue to be resolved.

.04 Appeals will assign an employee to act as the Administrator ("Administrator") to manage and supervise the arbitration proceeding and to act as liaison between the parties and between the parties and the Arbitrator.

.05 The Electing Taxpayer will select a neutral arbitrator from a qualified list ("Qualified List") that the Service is in the process of developing and that will be announced at a later time. The Qualified List will consist of persons not employed by the Department of the Treasury having expertise and experience in federal tax matters. The Qualified List will be used to provide a pool of candidates from which one arbitrator will be selected. Within 15 days of the date that the Service notifies the Electing Taxpayer that the Service has determined that the Fast Track Dispute Resolution Procedure — Contingent Liability Cases was unsuccessful, the Electing Taxpayer must select three names from the Qualified List and rank them in order of preference. The Administrator will arrange for the hiring of the Arbitrator, subject to applicable rules and regulations for Government procurement. If the first candidate is unavailable, the Administrator will contact the other candidates in the order indicated by the Electing Taxpayer.

.06 The Arbitrator shall have no official, financial, or personal conflict of interest with respect to the parties, unless such interest is fully disclosed in writing to the parties and the Administrator, and the parties agree to the continued participation of the Arbitrator. A selected arbitrator who has represented or currently represents a promoter or investor in a Contingent Liability Transaction, or whose firm has done so, is not neutral and, therefore, will be ineligible to serve as an arbitrator in a proceeding under this revenue procedure. Each party will pay one half of the Arbitrator's compensation, expenses, and related fees and costs.

.07 The Arbitrator will be disqualified from representing the Electing Taxpayer in any pending or future action that involves the transactions or issues that are the particular subject matter of the arbitration. This disqualification extends to representing any other parties involved in the transactions or issues that are the particular subject matter of the arbitration. Members or employees of the Arbitrator's firm will also be disqualified from representing the Electing Taxpayer or any other parties involved in the transactions or issues that are the particular subject matter of the arbitration in an action that involves the transactions or issues that are the particular subject matter of the arbitration, unless: (i) the Arbitrator disclosed the potential of such representation prior to the parties' acceptance of the Arbitrator; (ii) such action relates to a taxable year that is different from the taxable year(s) under arbitration; (iii) the firm's internal controls preclude the Arbitrator from any form of participation in the matter; and (iv) the firm does not allocate to the Arbitrator any part of the fee therefrom.

The Arbitrator will not be prohibited from receiving a salary, partnership share, or corporate distribution established by prior independent agreement. The Arbitrator and the firm are not disqualified from representing the Electing Taxpayer or any other parties involved in the arbitration in any matter unrelated to the transactions or issues that are the particular subject matter of the arbitration.

.08 The arbitration will be conducted using Final Offer Arbitration, also known as "baseball" arbitration. Because the parties may continue negotiations during the arbitration proceeding, the final settlement offers ("Final Offers") proposed by each party shall be clearly labeled as such. The Final Offers of both parties shall result in a concession by the Electing Taxpayer of between 50% and 90% of the capital loss reported by the Electing Taxpayer on the sale of the stock. The Final Offers will identify the corporation that the party contends is entitled to the tax benefits associated with the deduction resulting from the assumed liabilities, indicate whether that corporation is a member of the Electing Taxpayer's consolidated group (including any successor to such group), and state the means for eliminating any duplication in the tax benefits associated with the Contingent Liability Transaction. In addition, the Final Offers shall make clear whether any penalty is proposed and accepted or rejected. Not more than 10 days after submission of the memorandums supporting their respective positions ("Memorandum in Support"), *see* Section 7.12 below, the parties shall submit their Final Offers.

.09 Only the following issue will be submitted to the Arbitrator:

Which of the two Final Offers presented by the parties best reflects the hazards of litigating the Electing Taxpayer's entitlement to a capital loss deduction from the sale of stock received as part of the Contingent Liability Transaction?

.10 The Arbitrator is not permitted to make any conclusions of law or provide reasoning that represents an interpretation of the law; however, it is necessary for the Arbitrator to refer to the existing applicable law in considering the submitted issue. Legal guidance will be provided by the parties for purposes of establishing context, limited to guidance on the specific arguments presented in the Fast Track Dispute Resolution Procedure — Contingent Liability Cases. With respect to factual information, the Electing Taxpayer may only submit to the Arbitrator for consideration material that was previously provided to LMSB and Appeals in the Fast Track Dispute Resolution Procedure — Contingent Liability Cases. The Service may also present facts developed under Section 7.02. The Arbitrator is not permitted to make any findings of fact, except for resolving the issue stated in Section 7.09.

.11 The parties to the arbitration will be the Electing Taxpayer and the Commissioner. The Electing Taxpayer may choose to have the representation of counsel or an authorized representative assist in preparing for and conducting the arbitration proceeding. The Office of Chief Counsel will represent the Commissioner in the arbitration proceeding.

.12 Within 60 days of the date the proposed arbitrator is selected, the parties will submit to the Administrator for submission to the Arbitrator, the administrative record developed prior to and during the Fast Track Dispute Resolution Procedure — Contingent Liability Cases and a stipulation of facts based on the record. The Service is permitted to include additional factual information developed pursuant to Section 7.02 in these submissions. In addition, each party will submit the legal guidance on which it intends to rely as set forth in section 6 of the Arbitration Agreement. The legal guidance will consist of a list of citations or copies of relevant cases and legal authority. Each party will also submit a Memorandum in Support, not to exceed 30 pages, stating each party's respective legal and factual contentions. The memorandum shall be typed only on one side of opaque unglazed paper, 8 1/2 inches wide by 11 inches long. All pages shall have margins on both sides of each page that are no less than 1 inch wide, and margins on the top and bottom of each page that are no less than 3/4 inch wide. Text and footnotes shall appear in consistent typeface no smaller than 12 characters per inch, with double spacing between each line of text and single spacing between each line of indented quotations and footnotes. Quotations in excess of five lines shall be set off from the surrounding text and indented.

.13 The Administrator will ensure that each party receives the materials submitted by the opposing party. Any objections to statements of fact, not previously presented, will be submitted to the Administrator within 10 days. If there are no objections, the Administrator will forward the submissions to the Arbitrator no earlier than the date the employment contract with the Arbitrator has been approved.

.14 Within 45 days of the date the Arbitrator receives the information set forth in Section 7.12 above, the Arbitrator will contact the parties through the Administrator and set the time for an arbitration hearing, if the Arbitrator decides that a hearing is necessary. Any such hearing will not exceed 8 hours, which shall include any oral arguments or the presentation of witnesses, as the Arbitrator may deem necessary. Alternatively, the Arbitrator may elect to render a decision based on the written record alone, without a hearing.

.15 If, at any time prior to the date set for the arbitration hearing, or if no hearing is ordered, prior to the decision of the Arbitrator, the parties reach an agreement resolving all issues relating to the Contingent Liability Transaction, the parties may withdraw from the arbitration process by notifying the Administrator. Any such settlement negotiated by Appeals will be subject to the concurrence of Counsel. If a settlement is reached, Appeals will effectuate the settlement of agreed issues using established issue or case closing procedures.

.16 Within 30 days after the hearing, the Arbitrator will select one of the Final Offers proposed by the parties. After the Arbitrator renders a decision and advises the Administrator and the parties of the decision, the case or issues will be closed using established procedures for case closing, including preparation of a Form 906, Specific Matters Closing Agreement.

.17 The tax basis of any unsold stock (or property the basis of which was determined directly or indirectly by reference to the basis in the hands of the Electing Taxpayer of the stock received in the purported section 351 exchanges), as of October 4, 2002, will be adjusted in the same manner as described in Section 5.06.

SECTION 8. GENERAL PROVISIONS

These provisions apply to any Taxpayer who has elected to participate in any of the resolution methodologies set forth in this revenue procedure.

.01 Any issue that is not resolved through the resolution methodologies set forth in this revenue procedure will be resolved using normal audit and deficiency procedures.

.02 If applicable, a settlement entered into as a result of any of the resolution methodologies set forth in this revenue procedure will be reported to the Joint Committee on Taxation in accordance with section 6405.

.03 Any Taxpayer electing to participate in any of the resolution methodologies set forth in this revenue procedure agrees to waive the prohibition against *ex parte* communications between Appeals employees and other Service employees, provided by section 1001(a) of the Internal Revenue Service Restructuring and Reform Act of 1998, for purposes of pursuing settlement under this revenue procedure.

.04 The Binding Arbitration Procedure set forth in this revenue procedure is confidential. Any dispute resolution communication related to the arbitration proceeding is confidential and may not be disclosed by any party, nonparty participant, or arbitrator except as provided under 5 U.S.C. § 574. A dispute resolution communication includes all oral or written communications prepared for purposes of a dispute resolution proceeding. *See* 5 U.S.C. § 571(5).

.05 The results of any settlement reached through the resolution methodologies set forth in this revenue procedure, including the decision of the Arbitrator, may not be used as precedent by any Taxpayer and will not be binding on, or otherwise control, the parties for taxable years not covered by a specific matters closing agreement executed by the parties.

.06 Service and Treasury employees who participate in any way in the settlement procedures described in this revenue procedure and, pursuant to section 6103(n) of the Internal Revenue Code of 1986, as amended, any person under contract to the Service, including the Arbitrator, that the Service invites to participate will be subject to the confidentiality and disclosure provisions of the Code, including sections 6103, 7213, and 7431. *See also* 5 U.S.C. § 574.

.07 A Taxpayer that elects to participate in any of the resolution methodologies set forth in this revenue procedure consents to the disclosure by the Service of the Taxpayer's returns and return information incident to the settlement procedures provided in this revenue procedure to the Arbitrator and any participant identified in any list of participants provided for in the Arbitration Agreement, to any participant for the Taxpayer identified in writing by the Taxpayer subsequent to execution of the Agreement, and to any persons, including witnesses, who participate in the arbitration proceeding on behalf of either party.

.08 Any Taxpayer electing to participate in any of the resolution methodologies set forth in this revenue procedure acknowledges that employees of the Service and all other Treasury employees involved in these proceedings are bound by section 7214(a)(8) and must report information concerning violations of any revenue law to the Secretary.

.09 The Commissioner is not precluded or impeded under section 7605(b) or any administrative provisions adopted by the Commissioner from conducting a later examination or inspection of records with respect to any taxable year of a participating Taxpayer by inspecting information, documents and materials supplied in connection with this revenue procedure.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective October 4, 2002.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1801. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB number.

The collection of information in this revenue procedure is in the sections titled APPLICATION PROCESS, FIXED CONCESSION PROCEDURE and FAST TRACK DISPUTE RESOLUTION PROCEDURE — CONTINGENT LIABILITY CASES. This information is required to apply the terms of the settlements set forth in this revenue procedure and determine the appropriate amount of penalties due, if any. The information will be used to determine whether the taxpayer has reported the disclosed items properly for income tax purposes. The collection of information is required to obtain the benefits described in this revenue procedure. The likely respondents are businesses or other for-profit institutions.

The estimated total annual reporting burden is 7,500 hours.

The estimated annual burden per respondent is an average of 50 hours, depending on individual circumstances. The estimated number of respondents is 150.

The estimated frequency of responses is one time per respondent.

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

CONTACT INFORMATION

For information regarding this revenue procedure, call Jo Ann Prager, Manager at (202) 283–8445 (not a toll-free call). Ms. Prager may also be reached by fax at (202) 283–8406 or electronically at the following email address: *otsa@irs.gov.* Please include "Revenue Procedure 2002–67" in the subject line of any electronic communication.

Exhibit 1

Agreement to Participate and Selection of Settlement Option

1) **Agreement to Participate and Selection of Settlement Option.** The undersigned desire(s) to participate in a settlement initiative described in Rev. Proc. 2002–67 for resolving cases involving Notice 2001–17 contingent liability transactions. This settlement procedure is available to any taxpayer that has engaged in a contingent liability transaction, satisfies the requirements of Section 3.02 of Rev. Proc. 2002–67 and elects to resolve the issues in dispute using this procedure.

By signing this agreement to participate under the settlement initiative described in Rev. Proc. 2002–67, the undersigned acknowledges that the decision to participate is irrevocable and that, if the taxpayer fails to provide all of the information and documents specified in Rev. Proc. 2002–67, the contingent liability transaction issue will be subject to the full range of Internal Revenue Service audit and deficiency procedures. The undersigned acknowledges that the contingent liability transaction issue will not be considered under the settlement, mediation or arbitration procedures under Notice 2001–67 (LMSB/Appeals Fast Track Dispute Resolution Program), 2001–2 C.B. 544; Announcement 2002–60 (Extension of Test of Arbitration Procedure for Appeals), 2002–26 I.R.B. 28; and Rev. Proc. 2002-44 (Mediation Procedure for Appeals), 2002–26 I.R.B. 10.

The following is the option selected for this process:

____ Fixed Concession Procedure

____ Fast Track Dispute Resolution Procedure — Contingent Liability Cases

By choosing the Fast Track Dispute Resolution Procedure — Contingent Liability Cases, the undersigned agree(s) to participate in Binding Arbitration, as set forth in Section 7 of Rev. Proc. 2002–67, if the Fast Track Dispute Resolution Procedure — Contingent Liability Cases is unsuccessful. Those taxpayers selecting the Fast Track Dispute Resolution Procedure — Contingent Liability Cases must also submit with this form a completed Arbitration Agreement. *See* Section 7 and Exhibit 2 of Rev. Proc. 2002–67.

All requirements and provisions set forth in Rev. Proc. 2002–67 are incorporated herein by reference.

2) **Application Process.** The undersigned will be notified in writing within 15 calendar days of the receipt of this completed form as to whether its election has been accepted.

If a taxpayer is denied participation under the Fixed Concession Procedure, its application may be amended in writing within 10 calendar days of receipt of the notice described above to elect the Fast Track Dispute Resolution Procedure — Contingent Liability Cases, as set forth in Section 6 of Rev. Proc. 2002–67. *See* Section 4.05 of Rev. Proc. 2002–67.

Denial of a taxpayer's request to participate in either resolution method is not subject to judicial review.

3) **Waiver of Prohibition on Ex Parte Communications.** In accordance with the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–226, 112 Stat. 685 (RRA '98), and Rev. Proc. 2000–43, 2000–2 C.B. 404, it has been determined that ex parte communications may occur during the course of the settlement process. As defined in Rev. Proc. 2000–43, "ex-parte communications" are "communications that take place between Appeals and another Service function without the participation of the taxpayer or the taxpayer's representative."

The undersigned acknowledge(s) that waiver of this prohibition is voluntary. By signing this agreement, the undersigned further acknowledge(s) that the concerns regarding ex parte communications are understood, but in the interest of facilitating resolution of this case, the undersigned agree(s) to waive the prohibition between Appeals and other Service personnel who are involved in pursuing settlement under the initiative described in Rev. Proc. 2002–67. This waiver covers all communications in the entire settlement process. This waiver will expire upon the date the settlement process with respect to this case is completed or ends.

4) **Location of Settlement Conference.** The undersigned requests that all meetings between the undersigned and the Service relating to the settlement proceedings take place at [Insert City, State].

5) **Participants.** The persons listed in this paragraph below are the primary participants in this settlement process on behalf of the taxpayers. Additional persons who will participate will be listed at the end of this agreement.

Taxpayer Name:
Taxpayer EIN:
Address
Corporate Officer: Title:
Telephone: Fax: Email:

Taxpayer Representative:
Name of Firm:
Address:
Telephone: Fax: Email:

If the Taxpayer identifies a representative, the Taxpayer must attach a power of attorney to this agreement that authorizes the representative to participate in the settlement and arbitration process.

6) **Case status.**

a) Is the case open in Compliance or Appeals?
b) If so, who is the Service contact?
c) Was the contingent liability transaction disclosed under Announcement 2002–2, 2002–2 I.R.B. 304?

7) **Certification of Compliance.** Under penalties of perjury, the undersigned certifies:

a) that each transferor involved in the contingent liability transaction carried out the purported section 351 exchanges and subsequent sales in accordance with the applicable operating documents;
b) that one or more persons transferred property to the transferee corporation solely in exchange for stock in such corporation (or such stock and other property or money) and immediately after the exchange such person (or persons) was in control (as defined in section 368(c)) of the transferee corporation; and,
c) that the transferee is not an investment company within the meaning of section 351(e).

8) **Attachments.** With this form, the undersigned must also submit the following, as specified in Section 4.02 of Rev. Proc. 2002–67:

a) A statement identifying the total capital loss reported on the taxpayer's income tax return(s) for the sale(s) of any stock issued by the transferee corporation in the contingent liability transaction, including the tax years affected and the amount of the capital loss used in each year (including any carryback and carryforward periods);
b) A description of each class of stock issued and outstanding by the transferee corporation at the completion of the purported section 351 exchanges, including the number of shares issued in each class in the exchanges, to whom the stock was issued, the issuing prices of the stock, the par values and any voting rights;
c) A statement identifying any shares issued in the purported section 351 exchanges in connection with the assumption of the contingent liability that have not been sold or otherwise disposed of by the taxpayer;
d) A statement indicating the average selling price per share of any stock issued by the transferee corporation in the contingent liability transaction;
e) A description of the type and bases of the assets transferred by the taxpayer in the contingent liability transaction; and
f) A description of the type and amount of the liability assumed by the transferee corporation in the contingent liability transaction.

9) **Statement of Agreement.** By signing this Agreement to Participate and Selection of Settlement Option, the undersigned certifies that it has read and agrees to the terms of this document.

s/Taxpayer, Date

s/Taxpayer Representative, Date

Exhibit 2

Arbitration Agreement

1. **THE ARBITRATION PROCESS.** Arbitration is mandatory as part of the procedures outlined in Rev. Proc. 2002–67 and will be used to assist_____ (hereinafter "Taxpayer") and the Commissioner of the Internal Revenue Service (collectively the "Parties") in resolving certain issues relating to the Taxpayer's participation in a Contingent Liability Transaction, a transaction designated by the Commissioner and Treasury as a "listed transaction" in Notice 2001–17, 2001–1 C.B. 730. The applicable provisions and requirements of Rev. Proc. 2002–67 are hereby incorporated in this Agreement by reference.

The Parties have agreed to use Final Offer Arbitration, also known as baseball arbitration. The Final Offers of both Parties shall reflect the following:

a) The amount of capital loss permitted on the sale of stock received in the Contingent Liability Transaction, which amount will reflect a concession by the Taxpayer of between 50% and 90% of the capital loss reported by the Taxpayer on the sale of the stock received in the Contingent Liability Transaction.

b) The identity of the corporation that is entitled to the tax benefits associated with the deduction resulting from the liability assumed in the Contingent Liability Transaction, including whether such corporation is or has been a member of the Taxpayer's consolidated group (including any successor to such group).

c) With respect to the Electing Taxpayer or an entity that was a member of the Electing Taxpayer's consolidated group (including any successor to such group) at any time, the manner and timing of the reduction in the tax benefits necessary to eliminate any duplication in the tax benefits associated with the Contingent Liability Transaction in amounts that, in the aggregate, equal the capital loss permitted under (a) above.

d) The amount of any penalty under section 6662.

The Arbitrator, after reviewing the Final Offers and the accompanying information, will choose one Final Offer. Each Party's Final Offer shall state an amount that reflects the above, including the effect of any present value calculation, as appropriate.

The Parties to this Agreement (see section 2 below) agree to be bound by the Arbitrator's determination. There can be no ex parte communications between the Arbitrator and any Party, third party, witness, agent, or other person regarding the issues for arbitration. All communications between the Arbitrator and either Party, unless otherwise stated, including requesting and transferring documentation and information, will be made through an Administrator. The Administrator for this Arbitration Session will be an Appeals employee to be assigned by Appeals. The Administrator will inform and discuss with the Parties the rules and procedures pertaining to the Arbitration process.

2. **PARTICIPANTS.** The Parties to the arbitration will be the Taxpayer and the Commissioner. The Taxpayer may elect to have the representation of counsel or an authorized representative to assist in preparing for and conducting the arbitration proceeding. The Office of Chief Counsel will represent the Commissioner in the arbitration proceeding. The specific participants on behalf of the Taxpayer in the Arbitration Session will be:

Taxpayer:

For Taxpayer:

No later than two weeks before commencement of the Arbitration Session, each Party will submit, to the Administrator and the other Party by facsimile, a complete and final list of participants who will attend the Arbitration Session. The list must identify, for each participant, their position with the Party or other affiliation (e.g., a member of the XYZ law firm, counsel to the Taxpayer), and their address, telephone and fax numbers.

3. **SELECTION OF ARBITRATOR.** The Parties have agreed to select an Arbitrator from a qualified list of eligible persons prepared by the Service, as described in Section 7.05 of Rev. Proc. 2002–67. Within 15 days of the date that the Service notifies the Electing Taxpayer that the Service has determined that the Fast Track Dispute Resolution Procedure — Contingent Liability Cases was unsuccessful, the Taxpayer must select three names from the qualified list and rank them in order of preference. If the first candidate is unavailable, the Administrator will contact the other candidates in the order indicated by the Taxpayer. The fees and costs of the Arbitrator will be shared equally by the Parties. The Administrator will arrange for the hiring of the Arbitrator, subject to applicable rules and regulations for Government procurement.

A selected Arbitrator who has represented or currently represents a promoter or investor in a Contingent Liability Transaction, or whose firm has done so, is not neutral and, therefore, will be ineligible to serve as an arbitrator in a proceeding under this revenue procedure. The selected Arbitrator will be disqualified from representing the Taxpayer in any pending or future action that involves the transactions or issues that are the particular subject matter of the arbitration. This disqualification extends to representing any other parties involved in transactions or issues that are the particular subject matter of the arbitration. Members or employees of the Arbitrator's firm will also be disqualified from representing the Electing Taxpayer or any other parties involved in the transactions or issues that are the particular subject matter of the arbitration in an action that involves the transactions or issues that are the particular subject matter of the arbitration, unless: (i) the Arbitrator disclosed the potential of such representation prior to the parties' acceptance of the Arbitrator; (ii) such action relates to a taxable year that is different from the taxable year(s) under arbitration; (iii) the firm's internal controls preclude the Arbitrator from any form of participation in the matter; and (iv) the firm does not allocate to the Arbitrator any part of the fee therefrom.

The Arbitrator will not be prohibited from receiving a salary, partnership share, or corporate distribution established by prior independent agreement. The Arbitrator and the firm are not disqualified from representing the Electing Taxpayer or any other parties involved in the arbitration in any matter unrelated to the transactions or issues that are the particular subject matter of the arbitration.

The Arbitrator shall have no official, financial or personal conflict of interest with respect to the Parties, unless such interest is fully disclosed in writing to the Parties and the Parties agree to the continued participation of the Arbitrator. *See* 5 U.S.C. § 573(a).

4. **ISSUE TO BE ARBITRATED.** The Parties agree that only the following issue will be submitted to the Arbitrator:

> Which of the two Final Offers presented by the Parties best reflects the hazards of litigating the Taxpayer's entitlement to a capital loss deduction from the sale of stock received as part of the Contingent Liability Transaction?

In reaching a determination on the issue submitted, the Arbitrator may only consider the legal and factual arguments made in the Fast Track Dispute Resolution Procedure — Contingent Liability Cases, including the facts developed under Section 7.02 of Rev. Proc. 2002–67.

5. **BURDEN OF PROOF.** In choosing between the Final Offers, the Arbitrator shall consider that the Taxpayer has the burden of proving the facts by a preponderance of the evidence. To the extent the Taxpayer, in support of its Final Offer, argues under section 357(b) that the liabilities assumed by the transferee in the Contingent Liability Transaction should not be considered as money received by the Taxpayer on the exchange, the Arbitrator must take into account the burden of proof standard as stated in section 357(b)(2).

6. **GUIDANCE FOR ARBITRATOR.** Legal guidance for the Arbitrator shall be provided by the parties for purposes of establishing context, limited to guidance on the specific arguments presented in the Fast Track Dispute Resolution Procedure — Contingent Liability Cases. The legal guidance will consist of a list of citations or copies of relevant cases and legal authority. With respect to factual information, the Taxpayer may only submit to the Arbitrator for consideration material that was previously provided to LMSB and Appeals in the Fast Track Dispute Resolution Procedure — Contingent Liability Cases. The Service is permitted to include additional factual information developed pursuant to Section 7.02 of Rev. Proc. 2002–67. All material for the Arbitrator will be provided through the Administrator.

The Arbitrator is not permitted to make any conclusions of law or provide reasoning that represents an interpretation of the law; however, it is necessary for the Arbitrator to refer to the existing applicable law in considering the submitted issue. The Arbitrator shall look solely to the legal guidance provided by the Parties in determining the issue presented and conducting the Arbitration Session. The Arbitrator is not permitted to make any findings of fact, except for resolving the issue stated in section 4 of this Agreement.

If any legal guidance for the Arbitrator was overlooked, at the sole request of the Arbitrator, made through the Administrator, the Parties may agree upon further legal guidance and the manner in which it is to be communicated to the Arbitrator.

7. **SUBMISSION OF MATERIALS.** Within 60 days of the date the proposed Arbitrator is selected, the Parties will submit to the Administrator for submission to the Arbitrator, the administrative record developed prior to and during the Fast Track Dispute Resolution Procedure — Contingent Liability Cases, any additional factual information developed by the Service pursuant to Section 7.02 of Rev. Proc. 2002–67, a stipulation of facts based on the record and the legal guidance set forth in Section 6 of this Agreement. In addition, each Party will submit a memorandum supporting its respective positions, not to exceed 30 pages. The memorandum shall be typed only on one side of opaque unglazed paper, 8 1/2 inches wide by 11 inches long. All pages shall have margins on both sides of each page that are no less than 1 inch wide, and margins on the top and bottom of each page that are no less than 3/4 inch wide. Text and footnotes shall appear in consistent typeface no smaller than 12 characters per inch, with double spacing between each line of text and single spacing between each line of indented quotations and footnotes. Quotations in excess of five lines shall be set off from the surrounding text and indented. Not more than 10 days after submission of its memorandum, each Party shall submit its Final Offer. No additional factual information may be submitted by either Party after their Final Offer has been made.

Any and all information and materials that a Party provides throughout the Arbitration Session shall be submitted to the Administrator. The Administrator will ensure that each Party receives the materials submitted by the opposing Party. Any objections to statements of fact, not previously presented, will be submitted to the Administrator within 10 days. If there are no objections, the Administrator will forward the submissions to the Arbitrator no earlier than the date the employment contract with the Arbitrator has been approved.

a. The Parties shall have no right to offer witnesses at the Arbitration Session. The Arbitrator has the sole power to request the testimony of witnesses during the Arbitration Session and to direct the questioning of such witnesses.

b. The Arbitrator may order a Party to produce other documents, exhibits or evidence deemed necessary or appropriate.

c. At the Arbitrator's sole discretion, oral arguments may be requested at the Arbitration Session. In the absence of such a request, there will be no oral presentation by the Parties at the Arbitration Session.

d. The Parties agree to clarify issues that may arise in calculating any deficiency or overpayment resulting from the Arbitrator's decision.

e. The Arbitrator's decision will be used by the Parties to determine the Taxpayer's tax liability and penalties, if applicable.

f. The Parties agree that statutory interest will apply to any deficiency, including penalties, resulting from the Arbitrator's decision.

8. **CONTACT WITH ARBITRATOR.** The Parties agree that there shall be no ex parte communications between the Arbitrator and either Party or agent for a Party. In addition, the Arbitrator may not have contact with any other individuals, including witnesses outside the Arbitration Session, concerning the arbitration matter without the express approval of the Parties. Any contact with the Arbitrator by either Party must be in the presence of the other Party and the Administrator. Should the Parties require additional information or clarification regarding the Arbitration process, they shall contact the Administrator.

9. **TIME OF ARBITRATION SESSION.** Within 45 days of the date the Arbitrator receives the information to be provided by the Parties under Section 7 of this Agreement, the Arbitrator will contact the parties and set the time for the Arbitration Session, if the Arbitrator decides that a hearing is necessary. The Arbitrator will decide on the necessity of oral arguments and presentation of witnesses during the Arbitration Session. If there are to be oral arguments during the Arbitration Session, the Arbitrator will decide the time allotted for the arguments. The Arbitrator is free to allocate time necessary for presentation of witnesses without regard for equal time between the Parties; however, any such hearing will not exceed 8 hours, including any oral arguments or the presentation of witnesses. Alternatively, the Arbitrator may elect to render a decision based on the written record alone, without a hearing.

10. **PLACE OF ARBITRATION.** The Taxpayer has selected [City, State] as the site for the Arbitration Session, subject to change by agreement among the Parties and the Arbitrator. The Service will provide the space and facilities for the Arbitration Session.

11. **CONFIDENTIALITY.** Service and Treasury employees who participate in any way in the arbitration process and any person under contract to the Service pursuant to section 6103(n) of the Internal Revenue Code of 1986, as amended, including the Arbitrator, that the Service invites to participate will be subject to the confidentiality and disclosure provisions of the Internal Revenue Code, including sections 6103, 7213, and 7431. Any dispute resolution communication related to the arbitration proceeding is confidential and may not be disclosed by any party, nonparty participant, or arbitrator except as provided under 5 U.S.C. § 574. A dispute resolution communication includes all oral or written communications prepared for purposes of a dispute resolution proceeding. *See* 5 U.S.C. § 571(5).

The Taxpayer consents to the disclosure by the Service of the Taxpayer's returns and return information incident to the arbitration to any participant for the Taxpayer identified in the initial list of participants in section 2 of this Agreement, to any participant for the Taxpayer identified in writing by the Taxpayer subsequent to execution of this Agreement, and to any persons, including witnesses, who participate in this Arbitration Session on behalf of either Party. If the Arbitration Agreement is executed by a person pursuant to a power of attorney executed by the Taxpayer, that power of attorney must clearly express the grant of authority by the Taxpayer to consent to disclose the returns and return information of the Taxpayer by the Service to third parties, and a copy of that power of attorney must be attached to this Agreement.

12. **I.R.C. SECTION 7214(a)(8) DISCLOSURE.** The Parties acknowledge that employees of the Service and all other Treasury employees involved in this arbitration are bound by section 7214(a)(8) and must report information concerning violations of any revenue law to the Secretary.

13. **RECORD.** Neither the Taxpayer nor the Service shall make a stenographic record of the Arbitration Session, except that a transcript of the Arbitration Session may be provided to the Arbitrator, if requested. The Parties agree that any stenographic record or other recording of the Arbitration Session shall remain confidential and will be destroyed once the Arbitrator reaches a decision.

14. **TERMINATIONS AND POSTPONEMENT.** Due to the particular nature and scope of the Contingent Liability Transactions and the procedures outlined in Rev. Proc. 2002-67, the Taxpayer agrees to full participation in this Arbitration Process. Termination by the Service for any reason other than final settlement with the Service will subject the Taxpayer to the full range of Service audit and deficiency procedures. In addition, the Contingent Liability Transaction issue will not be considered under the settlement, mediation or arbitration procedures under Notice 2001–67 (LMSB/Appeals Fast Track Dispute Resolution Program), 2001–2 C.B. 544; Announcement 2002-60 (Extension of Test of Arbitration Procedure for Appeals), 2002–26 I.R.B. 28; and Rev. Proc. 2002–44 (Mediation Procedure for Appeals), 2002–26 I.R.B. 10.

If the Parties reach a settlement by agreement at any time prior to the date set for the arbitration hearing, or if no hearing is ordered, prior to the decision of the Arbitrator, the Parties may withdraw from the Arbitration Process. Any such settlement negotiations will be conducted by Appeals subject to the concurrence of Counsel. If settlement is reached, Appeals will effectuate the settlement of agreed issues using established issue or case closing procedures.

15. **DECISION BY ARBITRATOR.** Within 30 days after the hearing, the Arbitrator will select one of the Final Offers proposed by the Parties. After the Arbitrator renders a decision and advises the Administrator and the Parties of the decision, the case or issues will be closed using established procedures for case closing, including preparation of a Form 906, Specific Matters Closing Agreement. The closing agreement will include provisions reflecting the requirements of Section 7 of Rev. Proc. 2002–67.

16. **ARBITRATOR'S DECISION IS FINAL.** The Parties agree to be bound by the Arbitrator's decision. Neither Party may appeal the decision of the Arbitrator nor contest the decision in any judicial proceeding, including but not limited to the Tax Court, the Court of Federal Claims, or a federal district or federal appellate court. Each Party enters into this agreement in reliance on the other Party's agreement to be bound by the decision of the Arbitrator.

17. **PRECEDENTIAL USE.** The decision by the Arbitrator will not be binding on, or otherwise control, the Parties for Contingent Liability Transactions not covered by the Arbitration. Except as provided in this Agreement, the Arbitrator's decision may not be used as precedent by any Party.

The Commissioner is not precluded or impeded under section 7605(b) or any administrative provisions adopted by the Commissioner from conducting a later examination or inspection of records with respect to any taxable year of a participating Taxpayer by inspecting information, documents and materials supplied in connection with the Arbitration Session.

18. **JOINT COMMITTEE ON TAXATION**. If applicable, a settlement entered into as a result of this Arbitration Proceeding will be reported to the Joint Committee on Taxation in accordance with section 6405.

INTERNAL REVENUE SERVICE

By:

Date:

[*Taxpayer*]

By:

Date:

Exhibit 3

Information Request

A. Fast Track Dispute Resolution Procedure — Contingent Liability Cases.

During the ninety (90) day period following its election to participate in the Fast Track Dispute Resolution Procedure — Contingent Liability Cases, the taxpayer will submit to the LMSB examination team assigned to its case the following information and documents related to the purported Section 351 exchange(s), the liability company ("LC"), persons involved in the transactions, and the sale of the LC stock. The taxpayer may submit any additional information or documents it wishes the Internal Revenue Service to consider.

1. Basic Transaction and Organizational Structure:

1.1. Identify the transferor(s) and the transferee corporation(s) that participated in the purported Section 351 transaction or transactions that resulted in the transfer of liabilities by the taxpayer to the LC ("LC transaction").

1.2. Describe the stock that was issued to each transferor, including its class, characteristics, rights, preferences, restrictions, and obligations of its holders.

1.3. Describe each step of the LC transaction in detail in the order of occurrence providing flowcharts or structural diagrams, if available (creation of such documents would facilitate an earlier understanding of the issue).

1.4. Describe the organizational structure of the LC before and after the transaction, providing supporting documentation including but not limited to:

1.4.1. Articles of Incorporation and Amended or Restated Articles.

1.4.2. Recapitalization documents.

1.4.3. All minutes or resolutions of the Board of Directors, Audit or Finance committees, or other approval committees pertaining to the planning, approval or implementation of the recapitalization and LC transaction, including all documents presented to the Board or committees.

1.4.4. Shareholders or Buy-Sell agreements, including amendments.

1.5. If the LC was in existence prior to the transaction, describe its business operations and identify its significant assets and shareholders.

1.5.1. Was the LC a member of the taxpayer's consolidated group before the transaction?

1.5.2. Was the LC a member of the taxpayer's consolidated group after the transaction?

1.6. State the purported business purpose of the LC transaction(s).

1.7. Describe the transactions for which the taxpayer reported a capital loss for the sale of the LC stock.

1.7.1. Identify the purchaser(s) and seller(s) of the stock.

1.7.2. Describe any prior or subsequent relationships of the purchaser(s) and the seller(s) or the taxpayer.

1.7.3. Identify the LC stock that was sold to the purchaser(s).

1.7.4. Identify the capital loss reported on the sale of the LC stock and the taxable years in which the loss is claimed, including amounts carried back and carried forward.

1.7.5. Describe how the taxpayer computed the basis of the LC stock sold.

1.8. State the business purpose for the sale of the LC stock by the taxpayer.

1.9. Copy of the General Ledger accounts of the taxpayer affected by any part of the contingent liability transaction.

1.9.1. Trace all identified items and amounts as line items on the taxpayer's tax returns.

1.10. The names and job titles of officers and other employees of the taxpayer familiar with the LC transactions and subsequent events.

1.10.1. Identify the officers and other employees listed above who are available to meet with the audit team during the audit team's 120-day review period.

2. Planning and Source of the Transaction:

2.1. Identify the source of the idea of an LC transaction and its structure.

2.1.1. Did the idea to engage in a LC transaction originate with an outside tax advisor to the taxpayer?

2.1.2. Did the idea to engage in a LC transaction originate with an outside business/non-tax advisor to the taxpayer?

2.1.3. Did the idea to engage in a LC transaction originate with the tax department of the taxpayer?

2.1.4. Did the idea to engage in a LC transaction originate in a business unit of the taxpayer?

2.1.5. Identify the principal persons within the taxpayer's organization or outside the company who are the source of the idea.

2.1.6. Identify the principal persons who participated in planning the LC transaction and its structure, including their affiliation and role in the planning process.

2.2. Copies of any communications, brochures, memoranda or other materials received from or sent to the sources (internal or external to the taxpayer's organization) of the idea of a LC transaction.

2.3. Describe any studies, analyses, forecasts, projections or other due diligence performed or prepared in connection with planning the LC transaction by any entity involved.

2.3.1. Copy of any reports or documents identified in 2.3.

2.4. Did the taxpayer receive any tax opinion(s) regarding the transaction?

2.4.1. Identify the author(s) of tax opinion(s).

2.4.2. Identify the source of the tax opinion(s).

2.4.3. Identify when the tax opinion(s) were received.

2.4.4. Who paid the author(s) of the tax opinion(s).

2.4.5. Copy of any engagement letter(s) pertaining to tax opinion(s) received.

2.4.6. Copy of the tax opinion(s).

2.5. Did the taxpayer receive outside legal, actuarial or other professional opinions or studies regarding non-tax aspects of the LC transaction?

2.5.1. Copies of such opinions or studies.

2.5.2. Copies of engagement agreements pertaining to the scope of the services performed and compensation arrangements.

2.6. Was the taxpayer subject to confidentiality agreement(s) with its outside tax advisor(s) within the meaning of section 6111(d)?

2.6.1. Copies of such agreement(s).

2.7. Identify the capital gains that were netted with the stock capital loss.

2.7.1. When were the capital gains transactions completed and gain amount known?

3. Third-Party Shareholders of the LC:

3.1. How were the third-party shareholders identified or selected to participate in the LC transaction?

3.1.1. Copies of communications with the third party and other materials pertaining to the LC transaction provided to the third party.

3.1.2. Were any third-parties owned directly or indirectly by any person or entity involved in the source or planning of the LC transaction? Identify that ownership relationship.

3.2. Was a third-party shareholder organized for the purpose of the LC transaction?

3.2.1. If so, identify the shareholder and who organized it?

3.3. Describe the business activities of the third-party shareholders prior to becoming a shareholder of the LC.

3.4. Did a third-party shareholder, or any affiliate of a third-party shareholder, have any prior relationship with the taxpayer?
- 3.4.1. Describe the nature of that relationship?
- 3.4.2. Copy of any agreements pertaining to that relationship.

3.5. Did the taxpayer solicit other persons or entities to be shareholders of the LC that did not become shareholders?
- 3.5.1. Identify the other persons or entities.
- 3.5.2. Provide a copy of any correspondence or other solicitation materials.

3.6. Copy of agreements with a third-party shareholder, including but not limited to:
- 3.6.1. Subscription agreement or other purchase commitment.
- 3.6.2. Other documents evidencing the purchase of the LC shares, such as buy-sell, purchase or sale agreements.
- 3.6.3. Other formal or informal arrangements between taxpayer or LC and third party that might offset, in whole or in part, any risks or rights to profits that the third party had in the LC.

3.7. Did the taxpayer and third-party shareholders negotiate over the terms of the stock or the purchase price of the shares issued to them?
- 3.7.1. Identify the persons who engaged in such negotiations.
- 3.7.2. Did any third-party shareholder perform a due diligence study or investigation in connection with its purchase? Identify any such shareholders and describe the due diligence performed.
- 3.7.3. Copies of documents provided to the third party in connection with its due diligence efforts.

3.8. Why did the third party become a shareholder of the LC?
- 3.8.1. From the taxpayer's perspective, what value did the third-party shareholder add to the LC?

3.9. Did any third-party shareholder have a nonshareholder relationship with the taxpayer or the LC after the transaction?
- 3.9.1. Describe the nature of that relationship.
- 3.9.2. Copy of agreements pertaining to that relationship.

3.10. Provide the name, current position, address and telephone number of a primary contact person for each third-party shareholder who has personal knowledge about the third party's participation in the LC transactions or stock sale, and if such person is not currently an employee or representative of the third party, the name of a person who has access to third-party records.

3.11. Are there any restrictions on the ability of the third-party shareholder to sell the stock?

3.12. Did any agreement provide the third-party shareholder with a means of disposing of its stock? If so, provide such agreement or agreements.

3.13. If the price for resale of the stock was subject to some future contingency or valuation, provide any documents showing expectations at, or in advance of, the time of the LC transaction showing the projected sales price.

3.14. Who currently owns the LC stock? If it has been sold or transferred, supply the details of such sale or transfer.

4. Assets Transferred:

4.1. Identify all the assets transferred to the LC by the transferors in the purported Section 351 exchange, including its basis in the hands of the transferor and its fair market value at the time of the transfer.

4.2. If the assets transferred consisted of intercompany account or note receivables:
- 4.2.1. Did the receivable exist prior to planning the LC transaction? If so, describe when and how it originated.
- 4.2.2. If not, did the taxpayer have a business purpose for the creation of the intercompany receivable? Describe the business purpose and provide documentation supporting that business purpose.
- 4.2.3. Were any payments made on the receivable to the LC after the LC transaction?
- 4.2.4. Identify the amounts paid, by whom and when.
- 4.2.5. Identify how the payments were made, e.g., cash or journal entries.

4.2.6. Supply documentation demonstrating that the obligor was financially capable of making the payments due on any debt instrument contributed to the capital of the LC.

4.2.7. Were any assets transferred to the obligor on any debt instrument contributed to the capital of the LC within 60 days before or after the date on which the obligation was created?

4.3. If the assets transferred consisted of cash, describe how the LC utilized the cash.

4.3.1. Were there any side agreements associated with the transfer of cash?

4.3.2. If so, provide copies of any lending agreements, loans, notes, letters of credit or other documents between the LC, taxpayer, or other members of the taxpayer's group.

4.4. Copy of documents evidencing the asset, such as

4.4.1. Promissory notes for receivables.

4.4.2. Purchase agreements for other assets owned by a transferor.

4.5. Copy of transfer documents, such as

4.5.1. Assignments.

4.5.2. Wire transfers for cash.

4.6. Document the basis of all assets transferred that affect the basis of the stock sold.

5. Nature of Liabilities Transferred:

5.1. Specifically identify the liabilities transferred.

5.2. How were the liabilities identified?

5.2.1. Who identified the type of liabilities to be transferred?

5.2.2. Who identified the specific liabilities transferred?

5.2.3. What criteria was used to select the liabilities transferred?

5.2.4. Were all liabilities of the taxpayer of the same nature or type transferred to the LC (*e.g.*, were all environmental liability risks transferred or only selected ones)?

5.2.5. How was the amount of the liabilities to be transferred determined and computed?

5.3. Did the taxpayer perform an in-house valuation of the liabilities?

5.3.1. Who performed the valuation?

5.3.2. Describe the person(s) qualifications to value the liabilities.

5.3.3. Copy of the valuation report, including assumptions, conclusions and worksheets or compilation of the results.

5.4. Did the taxpayer receive third-party valuation(s) of the liabilities to be transferred?

5.4.1. Who performed the valuation?

5.4.2. Describe the person(s) qualifications to value the liabilities.

5.4.3. Copy of the valuation report, including assumptions, conclusions and worksheets or compilation of the results.

5.5. Was the taxpayer studying ways to manage or reduce the liabilities transferred to the LC before considering whether to engage in the LC transaction?

5.5.1. Who was conducting the study?

5.5.2. Documentary evidence that such study was being performed and when.

5.6. Did the transferred liabilities relate directly to a core business activity of the taxpayer?

5.6.1. Identify the core business activity and the liabilities' relationship to it.

5.6.2. How were the liabilities reported by the transferor for financial reporting purposes prior to the LC transaction?

5.7. Did the taxpayer make subsequent transfers of similar liabilities to the LC?
5.7.1. Describe the subsequent transfers.

5.8. Was the taxpayer required to give notice to and/or obtain approval of a relevant Federal or State regulatory agency with respect to the transfer of the liability?
5.8.1. If so, was such notice given/approval obtained?
5.8.2. Provide copies of the notice(s) and approval(s).

5.9. Was the taxpayer required to give notice to and/or obtain approval of other third parties (*e.g.*, employees, banks, lenders or other creditors, particularly the creditors of the specific liability transferred) with respect to the transfer of the liability?
5.9.1. If so, was such notice given/approval obtained?
5.9.2. Provide copies of the notice(s) and approval(s).

6. Management of Liabilities Transferred:

6.1. Describe how the liabilities were managed or administered before the LC transaction, including the name and position of the person responsible for overseeing the daily management or administration activities.

6.2. Describe how the management or administration of the liabilities changed after the LC transaction, including the name and position of the person responsible for overseeing the daily management or administration activities.

6.3. Did any of the third-party shareholders play an active and ongoing role in the management and/or administration of the liabilities before or after the LC transaction?
6.3.1. Describe the role played.
6.3.2. Copy of any agreements with third-party shareholders related to the management and/or administration of the liabilities.

6.4. Did the LC engage the services of outside consultants or other professionals in connection with the management or administration of the liabilities?
6.4.1. Identify the consultants or professionals.
6.4.2. Describe the consultants' experience or other qualifications in managing or administering the types of liabilities transferred to the LC.
6.4.3. Describe the services performed.
6.4.4. Copy of any agreements with such consultants or professionals.

6.5. If any liabilities have been paid since the LC transaction, identify the entity that made the actual payments to the creditor?
6.5.1. If any liabilities were actually paid by someone other than the LC, how did the LC record the payments?

7. Liability Company

7.1. Did the LC have any employees or officers?
7.1.1. How many and what services did they perform?
7.1.2. Who paid their compensation, including bonuses?
7.1.3. Were any of these individuals also employees or officers of the taxpayer's affiliated group?
7.1.4. Identify the CEOs or CFOs of the LC since the LC transaction to current.

7.2. Did the LC have business operations that were separate from the management and/or administration of the liabilities transferred in the LC transaction?
7.2.1. Describe those operations.

7.3. Did the LC manage or administer liabilities of parties unrelated to the taxpayer?
7.3.1. Describe.

7.4. Describe any specific activities of the LC that were intended to reduce or improve management of the liabilities.

7.5. Did the LC achieve cost savings with respect to the liabilities it assumed?
7.5.1. Identify those savings and provide a computation evidencing the savings.

7.6. Did the LC transaction confer any non-tax economic, accounting or financial statement benefits for the taxpayer? Describe.

7.7. Have any of the liabilities been paid, satisfied, written-off or eliminated since transferred to the LC?
7.7.1. Identify the liabilities and amounts, including the taxable year.
7.7.2. Describe how the liability was paid or otherwise satisfied.
7.7.3. If the liability has been written-off by a creditor or eliminated by the taxpayer or LC, explain the circumstances.

7.8. Did the LC claim deductions or capitalize the payment of any of the liabilities?
7.8.1. Identify the amounts claimed, including the taxable years reported and whether deducted or capitalized.

7.9. Provide the following documents:
7.9.1. Separate financial statements of the LC since the LC transaction (if such statements are not available, year-end trial balances of the LC).
7.9.2. If the LC was not a member of the taxpayer's consolidated group for federal income tax purposes at any time since the LC transaction, a copy of the LC's separate Forms 1120 for that period.
7.9.3. Copies of minutes of meetings of shareholders and/or board of directors of the LC since the LC transaction.
7.9.4. Copy of General Ledger accounts affected by the contingent liability transaction, payments of liabilities and collections on receivables transferred.

B. **Disclaimer.** In cases not governed by this settlement initiative, the IRS and the Department of Justice will not be limited to seeking the information set forth, described or requested in this Information Request.

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, §§ 103, 702, 704, 706, 707, 761, 1.441–2T, 1.706–1, 1.761–2, 301.7701–4.)

Rev. Proc. 2002–68

SECTION 1. PURPOSE

This revenue procedure modifies and supersedes Rev. Proc. 2002–16, 2002–9 I.R.B. 572.

SECTION 2. BACKGROUND

Rev. Proc. 2002–16 provides procedures for certain partners to take into account on a monthly basis their distributive shares of partnership items if the partnership satisfies the definition of an eligible partnership and makes an election under the revenue procedure (Monthly Closing Election).

A partnership is generally eligible to make a Monthly Closing Election under Rev. Proc. 2002–16 if 95 percent of the partnership's income for the taxable year is income that is exempt from tax under § 103 of the Internal Revenue Code and the partnership's allocations of income, gain, loss, deduction, and credit are made in accordance with § 704(b). Only money market fund partners are eligible to consent to the Monthly Closing Election provided by Rev. Proc. 2002–16.

Since the issuance of Rev. Proc. 2002–16, the Department of the Treasury and the Internal Revenue Service have received a number of comments. Commentators noted that medium- and long-term bond funds often own interests in eligible partnerships, that these funds are subject to the same partnership timing difficulties as money market fund partners, and that it is costly and unnecessary to require separate reporting for non-fund partners in situations where substantially all of the partnership's income is exempt from taxation. Treasury and the Service agree that, in the interest of sound and efficient administration of the tax laws, all partners in eligible partnerships should be able to consent to the Monthly Closing Election.

Certain commentators noted that, to the extent that many otherwise eligible partnerships elected under § 761 to be excluded from subchapter K, these partnerships might not be able to elect into the procedures provided in Rev. Proc. 2002–16 without first seeking and receiving permission from the Service to revoke their § 761 elections.

Two of the requirements for eligibility to elect to be excluded from all or a portion of subchapter K are that the partners must own the partnership property as co-owners and the partners must be able to compute their income without the necessity of computing partnership taxable income. See § 1.761–2(a)(1) and (2) of the Income Tax Regulations. If a business entity (classified as a partnership) owns a tax-exempt bond and issues membership interests that apportion the benefits and burdens of that property to its members in a manner that differs significantly from direct investment in the bond (such as the preferred and residual interests in eligible partnerships that are described in Rev. Proc. 2002–16), the holders of those interests do not satisfy the requirement that they own the partnership property as co-owners. *Cf.* § 301.7701–4(c) of the Procedure and Administration Regulations. Moreover, if (as in the case of partnerships described in Rev. Proc. 2002–16) one class of partners has a right to partnership income that is superior to the right of another class of partners, then the net partnership income or loss allocated to the partners with inferior rights to partnership income can be determined only by computing the net income or loss of the partnership and then by reducing that net income by income allocable to partners with superior rights to partnership income. These partnerships do not meet the requirement of § 1.761–2(a)(1) that the members of the organization be able to compute their incomes without the necessity of computing partnership income.

If a partnership does not satisfy the requirements for making a § 761(a) election, any purported election under § 761(a) by that partnership is not effective and, therefore, need not be revoked. However, because there was some confusion as to whether the partnerships described in Rev. Proc. 2002–16 qualified to make an election under § 761(a) to be excluded from subchapter K, section 9 of this revenue procedure provides transition relief for many of these taxpayers.

Commentators have requested that consideration be given to simplified reporting procedures for some or all of the partnerships described in Rev. Proc. 2002–16. This revenue procedure eliminates the monthly statements that were required under Rev. Proc. 2002–16 but does not eliminate the requirements that a partnership file Form 1065, *U.S. Return of Partnership Income*, and provide a Schedule K–1 (Form 1065) to each partner. Electing partnerships and consenting partners must keep adequate books and records of income, gain, loss, deduction, and credit relating to partnership items to enable the Service to determine each partner's share of the partnership's monthly income and expenses. Treasury and the Service request comments on additional simplified reporting procedures that may be appropriate. Finally, section 9 of this revenue procedure extends the transition period provided in Rev. Proc. 2002–16.

SECTION 3. SCOPE

This revenue procedure applies to eligible partnerships (described in section 3.01 of this revenue procedure) that elect the Monthly Closing Election and to partners that consent (described in section 6 of this revenue procedure) to take into account their distributive shares of partnership income on a monthly basis. In addition, section 9 of this revenue procedure applies to all eligible partnerships, whether or not they make the monthly closing election.

.01 *Eligible Partnership.*

(1) *Generally.* An entity is an eligible partnership if all of the following conditions are met as of the test date:

(a) The entity is a partnership for federal tax purposes;

(b) All allocations of income, gain, loss, deduction, and credit of the partnership are made in accordance with § 704(b); and

(c) At least 95 percent of the partnership's income for the test period was (or is reasonably expected to be) interest on tax-exempt obligations within the meaning of § 103 and substantially all of the partnership's expenses and deductions are properly allocable to producing or collecting that income or to managing, conserving, or maintaining property held for the production of that income.

(i) If, on the test date, the partnership has been in existence for at least 6 full calendar months, then the test period is the 6 full calendar months preceding the test date; and

(ii) If, on the test date, the partnership has not been in existence for at least

6 full calendar months, then the test period is the first 6 full calendar months of the partnership's existence.

(2) *Test Date*. The test date is the first day of the first month for which the Monthly Closing Election is effective.

SECTION 4. EFFECT OF MONTHLY CLOSING ELECTION AND CONSENT

If, at the end of any calendar month, an eligible partnership has a Monthly Closing Election in effect and one or more partners of the partnership has a Monthly Closing Consent in effect, then, with respect to each consenting partner, the partnership must close its books as described in § 1.706–1(c)(2) as if the partner had sold its entire interest in the partnership on the last day of that month. The consenting partner must include in its taxable income for that month the partner's distributive share of items described in § 702(a) earned by the partnership since the last closing of the books with respect to the partner and any guaranteed payments under § 707(c) to the partner that are deductible by the partnership since the last closing of the books with respect to the partner. If the partner is on a 52–53 week taxable year, then the provisions of § 1.441–2T(e) of the temporary Income Tax Regulations apply as if the last day of the month were the last day of the partnership's taxable year.

SECTION 5. MONTHLY CLOSING ELECTION

.01 *Manner of Partnership Making the Election.* An eligible partnership may make a Monthly Closing Election by filing a statement with the appropriate service center. The statement must be titled "ELECTION UNDER REVENUE PROCEDURE 2002–68," and must include:

(1) Identification of the partnership by name, address, and EIN, and the name and phone number of a contact person for the partnership;

(2) A statement that the partnership elects a monthly closing of the books for all present and future consenting partners;

(3) The signature of a person with authority to sign the partnership's Form 1065, *U.S. Return of Partnership Income*; and

(4) The effective month of the election. The election is effective for the calendar month in which the election is filed, unless the partnership requests the election to be effective for either of the two immediately preceding calendar months. For example, if a calendar year partnership states that the monthly closing election is to begin for June, the partnership will close its books June 30. In computing taxable income for any year ending on or after June 30, a consenting partner must include the partner's share of partnership items and guaranteed payments for the period from the partnership's last closing of the books (generally December 31 of the prior year) through June 30. There will be a closing of the books and a monthly inclusion of the partner's share of these items and guaranteed payments at the end of each future month.

.02 *Time for Making the Election*. The partnership's Monthly Closing Election may be made at any time. See, however, section 6.02 of this revenue procedure for limitations on the time for a partner to effect a Monthly Closing Consent.

SECTION 6. MONTHLY CLOSING CONSENT

.01 *Manner of Partner Effecting the Consent*.

(1) A partner effects a Monthly Closing Consent by providing a statement of consent to the custodian or manager of the partnership. A copy of the statement of consent should also be attached to the partner's income tax return for the first taxable year in which the consent is effective (for example, if the partner is a Regulated Investment Company, the statement must be attached to its Form 1120 RIC, *U.S. Income Tax Return for Regulated Investment Companies*). Failure to attach a copy of the partner's statement of consent to the partner's income tax return does not invalidate the partner's consent.

(2) The statement of consent must be titled "STATEMENT OF CONSENT TO ELECTION UNDER REVENUE PROCEDURE 2002–68" and must include:

(a) Identification of both the consenting partner and the partnership by name, address, and TIN, and the name and phone number of a contact person for each;

(b) A statement that the partner consents to the partnership's election to a monthly closing of the books and that the partner will include in its taxable income its distributive share of partnership items described in § 702(a) and any guaranteed payments under § 707(c) in a manner that is consistent with the election;

(c) The signature of the partner; and

(d) The effective month of the consent. The consent is effective for the calendar month in which the partner acquires the partnership interest, unless the partner requests that the consent be effective for either of the two immediately following calendar months.

.02 *Additional Requirements for Making a Valid Monthly Closing Consent*. A partner does not qualify for the treatment described in section 4 of this revenue procedure unless:

(1) The partner provides the statement of consent described in section 6.01 of this revenue procedure to the custodian or manager of the partnership no later than the last day of the second calendar month after the calendar month in which the partner acquires the partnership interest; and

(2) The partnership's Monthly Closing Election is effective no later than the second calendar month after the calendar month in which the partner acquires the partnership interest.

.03 *Special Transitional Rule*. For purposes of satisfying the requirements of section 6.02, if an eligible partnership makes an election under this revenue procedure effective on or before December 31, 2003, partners with an interest in the partnership as of the first day of the month the partnership's election becomes effective will be treated as having acquired the interest in the partnership on the first day of that month.

SECTION 7. TERMINATION OF MONTHLY CLOSING ELECTION OR MONTHLY CLOSING CONSENT

.01 A Monthly Closing Election or a Monthly Closing Consent may be revoked only with the consent of the Commissioner.

.02 Each month after the third month after a partnership's Monthly Closing Election becomes effective, the definition of eligible partnership in section 3.01 of this revenue procedure is reapplied to the partnership, using the last day of the month as the test date and that month and the preceding 2 months as the test period. If for any month the partnership fails to satisfy the test mandated by the preceding sentence, then the partnership's Monthly Clos-

ing Election is terminated as of first day of the month. If the partnership subsequently qualifies as an eligible partnership, it may make another Monthly Closing Election only after obtaining the Commissioner's consent.

.03 If a consenting partner transfers its entire interest in a partnership with a Monthly Closing Election in effect and the consenting partner later acquires another interest in that partnership, then the partner's Monthly Closing Consent continues to be effective if the partnership continues to have its Monthly Closing Election in effect.

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective on October 7, 2002. Partners and partnerships that consented and made elections under Rev. Proc. 2002–16 may continue reporting as authorized in that revenue procedure; however, the partnerships are no longer required to provide monthly statements.

SECTION 9. TRANSITION RULE

For any taxable year beginning before January 1, 2004, the Service will not challenge a partnership's or a partner's tax treatment that is consistent with an election to be excluded from the provisions of subchapter K under § 761(a), provided the partnership would be an eligible partnership as defined in this revenue procedure and the partners' inclusion of income, gain, loss, deduction, and credits is consistent with that permitted under this revenue procedure.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002–16, 2002–9 I.R.B. 572, is modified and superseded.

SECTION 11. REQUEST FOR COMMENTS

Comments are requested regarding this revenue procedure. In particular, comments are requested concerning the establishment of modified income tax reporting procedures for eligible partnerships and consenting partners. All comments will be available for public inspection and copying. Comments should be sent to CC:ITA:RU (Rev. Proc. 2002–68), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Comments may also be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (Rev. Proc. 2002–68), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. In the alternative, e-mail your comments to *Notice.Comments@irscounsel.treas.gov.* Please submit comments by December 6, 2002.

SECTION 12. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1768. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information is in sections 5 and 6 of this revenue procedure. This information is required to inform the Service which partners and partnerships are making the designated election and to report income appropriately. The collection of information is required to obtain a benefit. The likely respondents are businesses.

The estimated total annual reporting and recordkeeping burden is 1,000 hours.

The estimated annual burden per respondent/recordkeeper is 1 hour. The estimated number of respondents and recordkeepers is 1000.

The estimated annual frequency of responses (used for reporting requirements only) is once.

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

SECTION 13. DRAFTING INFORMATION

The principal author of this revenue procedure is David A. Shulman of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact David A. Shulman at 202–622–3080 (not a toll-free call).

Part IV. Items of General Interest

Termination of Appeals Settlement Initiative for Corporate Owned Life Insurance (COLI) Cases

Announcement 2002–96

The Internal Revenue Service announces that the Appeals settlement initiative with respect to broad-based leveraged COLI plans purchased after June 20, 1986, will be terminated, and that the Internal Revenue Service and the Department of Justice will vigorously defend or prosecute all future COLI litigation.

APPEALS SETTLEMENT INITIATIVE FOR COLI CASES

In August 2001, Appeals implemented a coordinated settlement initiative for broad-based COLI cases that generally permitted taxpayers to settle if they agreed to concede 80% of the interest deductions claimed with respect to their COLI plans.

To date, the Service has successfully litigated three cases involving broad-based COLI transactions. *See Winn-Dixie Stores, Inc. v. Commissioner*, 113 T.C. 254 (1999), *aff'd*, 254 F.3d 1313 (11th Cir. 2001), *cert. denied*, __ U.S. __, 122 S.Ct. 1537 (2002); *IRS v. CM Holdings, Inc.*, 254 B.R. 578 (D. Del. 2000), *aff'd*, 301 F.3d 96 (3d Cir. 2002), *petition for reh'g en banc filed*, Sept. 27, 2002; and *American Electric Power v. United States*, 136 F. Supp. 2d 762 (S.D. Ohio 2001), *appeal filed*, No. 01–3495 (6th Cir. Apr. 20, 2001). In all three cases, the courts denied the claimed interest deductions on the ground that the COLI plans lacked economic substance. In *CM Holdings*, the appellate court also sustained the application of accuracy-related penalties for the understatement of income resulting from the claimed interest deductions.

As a consequence, the Service has determined that the Appeals COLI settlement initiative will be terminated, subject to a 45-day window within which taxpayers will be permitted to enter into the current settlement arrangement.

PROCEDURES FOR TERMINATION OF APPEALS SETTLEMENT INITIATIVE

Formal notification of the Service's termination of the settlement initiative has been made by letter to taxpayers identified with COLI Plans by the Large and Mid-Size Business (LMSB) Operating Division or by the Appeals Office having jurisdiction over the taxpayer's case. In order for taxpayers to qualify for the settlement initiative, a written offer to settle must be mailed or delivered to the Service within 45 days after the date of the letter. The written offer to settle must include the following:

1. Taxpayer's offer to concede 80% of the claimed COLI interest deductions; and

2. Taxpayer's offer to sign a closing agreement providing that no amount disallowed as an interest deduction shall be allowable as a deduction under any other provision of the Internal Revenue Code, nor allowed as an adjustment to the taxpayer's investment in the contract (basis) under section 72, nor allowed as an adjustment to the taxpayer's basis in any other asset, in any year.

Detailed instructions for opting into the settlement initiative are set forth in the Service's letter to each affected taxpayer.

Qualifying taxpayers who do not receive such a letter by October 18, 2002, and who want to make an offer to settle under this announcement should notify the Appeals ACI Coordinator for COLI in writing at the address listed below on or before November 18, 2002.

Under the procedures outlined above, Appeals will continue to accommodate taxpayers who wish to surrender their COLI policies by entering into closing agreements that finalize the tax consequences of such surrender transactions.

PAPERWORK REDUCTION ACT

The collection of information contained in this announcement has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1802. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB number.

The collection of information in this announcement is in the section titled PROCEDURES FOR TERMINATION OF APPEALS SETTLEMENT INITIATIVE. This information is required to inform the Internal Revenue Service of a respondent's desire to participate in the settlement initiative. The likely respondents are businesses or other for-profit institutions, small businesses or organizations, and individuals.

The estimated total annual reporting burden is 200 hours.

The estimated annual burden per respondent varies from 3 hours to 7 hours, depending on individual circumstances, with an estimated average of 5 hours. The estimated number of respondents is 40.

The estimated frequency of responses is one time per respondent.

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

MISCELLANEOUS

In the event that a taxpayer fails to comply with the offer procedures set forth above or the detailed instructions contained in the Service's notification letter, Appeals will not entertain further settlement discussions with that taxpayer relative to its COLI interest deductions. Furthermore, the Service and the Department of Justice will vigorously defend or prosecute all future COLI litigation that may be initiated.

For further information regarding this notice, you may contact Neil Regberg, Appeals ACI Coordinator for COLI at (513) 263–4823 (not a toll-free call). Mr. Regberg may also be reached by fax at (513) 263–4800 and by mail at the following address: 312 Elm Street, Suite 2330, P.O. Box 2026, Cincinnati, OH 45202–2763.

Settlement Initiative for Section 302/318 Basis-Shifting Transactions

Announcement 2002–97

The Internal Revenue Service announces an initiative to resolve cases involving basis-shifting transactions that are the same as or substantially similar to those described in Notice 2001–45, 2001–2 C.B. 129. Under the terms of this announcement, taxpayers who have engaged in basis-shifting transactions will be given the opportunity to resolve this issue on the terms set forth below with minimal further examination or other administrative proceedings. If taxpayers elect to resolve their cases in accordance with this announcement, they must notify the Service on or before December 3, 2002, as set forth below. Appeals is expected to issue settlement guidelines on the tax effect of basis-shifting transactions soon that will be the same as, or less favorable than, the terms set forth below.

ELIGIBILITY REQUIREMENTS

Taxpayers are eligible to participate in this settlement initiative if:

1) The underpayment of tax attributable to the basis-shifting transaction is not due to fraud;

2) The basis-shifting transaction is not in litigation, *i.e.*, the issue is not docketed in and under the jurisdiction of any court, for any year, on the date the taxpayer elects to participate;

3) The basis-shifting transaction has not been designated for litigation, and, if not designated for litigation, the taxpayer has not been notified that the basis-shifting transaction issue is under consideration for designation for litigation;

4) Within 60 days from the mailing date of written notification from the Service of the decision not to designate, or to remove the designation of, the basis-shifting transaction issue, the taxpayer notifies the Service that it wishes to participate in this settlement initiative;

5) Upon request, the taxpayer provides to the Service the transactional documents to support the basis-shifting transaction, and the transaction conforms to the taxpayer's documents; and

6) The statute of limitations has not expired for any year in which the taxpayer claimed tax benefits relating to the basis-shifting transaction.

TERMS OF THE RESOLUTION

This settlement initiative focuses on three aspects of a basis-shifting transaction: (i) the purchase and sale of shares in a corporation and options on shares in that corporation (hereinafter the "foreign bank"); (ii) the loss attributable to the amount of the claimed basis shift; and (iii) associated transaction costs. For purposes of this settlement initiative, the transaction costs will be deemed to be 8% of the sum of the amount of the basis shift and the cost of an option or warrant in a tax indifferent entity (hereinafter the "foreign corporation"), that was a party to the basis-shifting transaction.

1. The gain or loss on the taxpayer's purchase and sale of shares in a foreign bank and options on shares in the foreign bank will be reported in accordance with the terms of the purchase and sale transactions, but without regard to the claimed basis shift and excluding all transaction costs. Thus, if the taxpayer paid 100x dollars for 100x shares of the foreign bank on day one of the transaction, and sold 95x shares on day 100 of the transaction for 97x dollars, the taxpayer would report a gain of 2x dollars as either long or short term gain, either ordinary or capital, as would be otherwise appropriate.

2. The taxpayer will concede 80% of the claimed basis shift.

3. The taxpayer will concede the deduction of all transaction costs (other than deemed transaction costs, as described above) relating to the basis-shifting transaction. The taxpayer will concede 80% of the deemed transaction costs and treat 20% of the deemed transaction costs as a capital loss. The cost of the option or the warrant in the foreign corporation shall not be given any other effect.

APPLICATION OF PENALTIES

The application of accuracy-related penalties to this transaction will be considered in each case. The following terms will be applied under this settlement initiative:

1. Transactions that were disclosed pursuant to the Disclosure Initiative, set forth in Announcement 2002–2, 2002–2 I.R.B. 304, will not be subject to accuracy-related penalties.

2. Transactions that were not disclosed pursuant to the Disclosure Initiative may be subject to penalties based on the merits of the case, including whether the transaction was otherwise voluntarily disclosed.

3. Participation in this settlement initiative does not preclude taxpayers from contesting the application of penalties through normal audit and deficiency procedures.

PROCEDURE FOR RESOLVING CASES

A decision by a taxpayer to resolve a case under the terms of this announcement must be mailed or delivered to the appropriate Service function, as set out below, on or before December 3, 2002.

If a taxpayer is under examination for the year(s) in which benefits from the basis-shifting transaction were claimed, the taxpayer must notify the examining agent in writing that the taxpayer wishes to participate in the settlement initiative. The examining agent will make the appropriate adjustments and prepare any necessary closing documents.

If a taxpayer is not under examination for any year in which benefits from the basis-shifting transaction were claimed, the taxpayer must notify the Office of Tax Shelter Analysis that it wishes to participate in the settlement initiative by sending a letter to the Office of Tax Shelter Analysis with the following information:

1. The taxpayer's name and address;

2. The taxpayer's Taxpayer Identification Number (either Social Security Number or Employer Identification Number);

3. The type of return filed;

4. The taxable periods for which the benefits of the basis-shifting transaction were claimed;

5. The amount attributable to the claimed basis-shifting transaction;

6. The cost of the option or warrant in the foreign corporation; and

7. A statement that the taxpayer is electing to resolve the case under the terms of this announcement.

The address of the Office of Tax Shelter Analysis is LM:PFTG:OTSA, 1111 Constitution Ave., N.W., Washington, D.C. 20224 and the fax number is (202) 283–8406.

Taxpayers must provide to the Service within ten (10) days of their request the information required by Announcement 2002–2 and certify under penalties of perjury that the person signing the disclosure has examined the disclosure and that to the best of that person's knowledge and belief, the information provided contains all relevant facts and is true, correct and complete.

If applicable, a settlement entered into as a result of this settlement initiative will be reported to the Joint Committee on Taxation in accordance with section 6405.

Denial of a taxpayer's request to participate in this shelter initiative is not subject to judicial review.

PAPERWORK REDUCTION ACT

The collection of information contained in this announcement has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545–1803. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB number.

The collection of information in this announcement is in the sections titled APPLICATION OF PENALTIES and PROCEDURE FOR RESOLVING CASES. This information is required to apply the terms of the settlement set forth in this announcement and determine the appropriate amount of penalties due, if any. The information will be used to determine whether the taxpayer has reported the disclosed item properly for income tax purposes. The collection of information is required to obtain the benefit described in this announcement. The likely respondents are businesses or other for-profit institutions, small businesses or organizations, and individuals.

The estimated total annual reporting burden is 2000 hours.

The estimated annual burden per respondent varies from 3 hours to 7 hours, depending on individual circumstances, with an estimated average of 5 hours. The estimated number of respondents is 400.

The estimated frequency of responses is one time per respondent.

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

CONTACT INFORMATION

For information regarding this announcement, call Carol Poindexter, Senior Program Analyst at (630) 493–5937 (not a toll-free call). Ms. Poindexter may also be reached by fax at (630) 493–5910. Alternatively, taxpayers may transmit comments electronically via the following e-mail address: *Carol.Poindexter@IRS.gov.* Please include "Announcement 2002–97" in the subject line of any electronic communication.

Form 1042–S, *Foreign Person's U.S. Source Income Subject to Withholding*

Announcement 2002–98

Publication 1187, *Specifications for Filing Form 1042–S, Foreign Person's U.S. Source Income Subject to Withholding, Magnetically or Electronically,* will **not** be revised and reprinted for Tax Year 2002. Filer's should review the following list of minor changes and incorporate them into their filing for Tax Year 2002.

- The Tax Year for current year filing should be updated to 2002.
- The filing due date for Tax Year 2002 is March 17, 2003.
- The testing period for Tax Year 2002 is January 1, 2003, through February 15, 2003

For all other electronic/magnetic filing requirements, refer to Publication 1187 revised August 2001.

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

Announcement 2002–99

The name of an organization that no longer qualifies as an organization described in section 170(c)(2) of the Internal Revenue Code of 1986 is listed below.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on October 28, 2002, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is $1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Cedar Rapids Boxing Club, Inc.
Marion, IA

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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[1] 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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[1] 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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