

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2006-33, page 1148.

LIFO; price indexes; department stores. The April 2006 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, April 30, 2006.

T.D. 9264, page 1150.

REG-134317-05, page 1184.

Final, temporary, and proposed regulations under section 1502 of the Code and others simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their federal income tax returns.

Notice 2006-52, page 1175.

This notice sets forth a process that allows a taxpayer who owns a commercial building and installs property as part of the commercial building's interior lighting systems, heating, cooling, ventilation, and hot water systems, or building envelope to obtain a certification that the property satisfies the energy efficiency requirements of section 179D(c)(1) and (d) of the Code. The notice also provides for a public list of software programs that may be used in calculating energy and power consumption for purposes of section 179D.

Notice 2006-53, page 1180.

This notice modifies section 4.04 of Notice 2006-26, 2006-11 I.R.B. 622, to make clear that a component that provides structural support or a finished surface, or a component that has as a principal purpose any function unrelated to the reduction of heat loss or gain, is not a component

specifically and primarily designed to reduce heat loss or gain of a dwelling. Notice 2006-26 clarified.

Notice 2006-54, page 1180.

This notice provides procedures that a vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) may use to certify that both a particular make, model, and year of vehicle qualifies as an alternative fuel motor vehicle under sections 30B(a)(4) and (e) of the Code and the amount of the credit allowable with respect to the vehicle. The notice also provides guidance to taxpayers who purchase vehicles regarding the conditions under which they may rely on the vehicle manufacturer's certification.

Announcement 2006-39, page 1186.

The 2005 Form 6765, *Credit for Increasing Research Activities*, is revised to show that only 20% of the energy research consortia expense is included in the alternative incremental credits.

ESTATE TAX

Rev. Rul. 2006-32, page 1170.

Special use value; farms; interest rates. The 2006 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

(Continued on the next page)

Actions Relating to Court Decisions is on the page following the Introduction.
Announcement of Declaratory Judgment Proceedings Under Section 7428 begins on page 1187.
Finding Lists begin on page ii.
Index for January through June begins on page vi.



Rev. Rul. 2006–34, page 1171.

Real property interests; closely held business. This ruling updates the guidance provided by Rev. Ruls. 75–365, 75–366, and 75–367, and provides certain safe harbors and a non-exclusive list of factors that are likely to be relevant in determining whether a deceased owner’s activities with regard to certain real property were sufficiently active to support a finding that the real property interest constitutes a closely held business interest for purposes of section 6166 of the Code. Rev. Rul. 75–365 revoked and Rev. Rul. 75–367 revoked in part.

ADMINISTRATIVE

Rev. Rul. 2006–34, page 1171.

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The IRS Mission

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

applying the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

Actions Relating to Decisions of the Tax Court

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

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

Prior to 1991, the Service published acquiescence or nonacquiescence only in

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

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. “Nonacquiescence” signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally,

will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a “nonacquiescence” indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

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

The Commissioner does NOT ACQUIESCE in the following decision:

Pacific Gas and Electric Company v. United States,¹

417 F.3d 1375 (Fed. Cir. 2005),
rev’g 55 Fed. Cl. 271 (2003)

¹ Nonacquiescence relating to whether the statute of limitations barred the Service from recovering erroneously paid overpayment interest by offsetting against a subsequent refund of tax and interest determined to be due to the taxpayer for the same taxable year.

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

Section 279.—Interest on Indebtedness Incurred by Corporation to Acquire Stock or Assets of Another Corporation

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150.

Section 302.—Distributions in Redemption of Stock

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 331.—Gain or Loss to Shareholders in Corporate Liquidations

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 332.—Complete Liquidations of Subsidiaries

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 338.—Certain Stock Purchases Treated as Asset Acquisitions

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the

electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 351.—Transfer to Corporation Controlled by Transferor

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 355.—Distribution of Stock and Securities of a Controlled Corporation

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 368.—Definitions Relating to Corporate Reorganizations

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 381.—Carryovers in Certain Corporate Acquisitions

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

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

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

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

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

LIFO; price indexes; department stores. The April 2006 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, April 30, 2006.

Rev. Rul. 2006-33

The following Department Store Inventory Price Indexes for April 2006 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with reference to, April 30, 2006.

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

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

Groups	Apr 2005	Apr 2006	Percent Change from Apr 2005 to Apr 2006 ¹
1. Piece Goods	469.8	466.8	-0.6
2. Domestics and Draperies	539.1	494.2	-8.3
3. Women's and Children's Shoes	679.7	718.7	5.7
4. Men's Shoes	876.6	881.7	0.6
5. Infants' Wear	582.7	570.7	-2.1
6. Women's Underwear.....	545.2	562.2	3.1
7. Women's Hosiery	342.9	354.8	3.5
8. Women's and Girls' Accessories	599.6	578.2	-3.6
9. Women's Outerwear and Girls' Wear	376.2	372.6	-1.0
10. Men's Clothing	565.6	548.8	-3.0
11. Men's Furnishings.....	586.6	582.1	-0.8
12. Boys' Clothing and Furnishings	440.4	414.3	-5.9
13. Jewelry.....	879.9	866.7	-1.5
14. Notions	779.0	788.2	1.2
15. Toilet Articles and Drugs	994.4	1003.5	0.9
16. Furniture and Bedding	604.2	607.8	0.6
17. Floor Coverings	601.0	615.0	2.3
18. Housewares.....	714.1	695.9	-2.5
19. Major Appliances.....	202.8	204.4	0.8
20. Radio and Television.....	39.5	36.9	-6.6
21. Recreation and Education ²	78.3	76.9	-1.8
22. Home Improvements ²	136.4	140.0	2.6
23. Automotive Accessories ²	114.4	118.8	3.8
Groups 1-15: Soft Goods	572.4	567.3	-0.9
Groups 16-20: Durable Goods.....	380.8	374.8	-1.6
Groups 21-23: Misc. Goods ²	93.0	93.4	0.4
Store Total ³	503.5	499.1	-0.9

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

²Indexes on a January 1986 = 100 base.

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

DRAFTING INFORMATION

The principal author of this revenue ruling is Michael Burkom of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Burkom at (202) 622-7924 (not a toll-free call).

Section 1081.—Nonrecognition of Gain or Loss on Exchanges or Distributions in Obedience to Orders of S.E.C.

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 1221.—Capital Asset Defined

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 1502.—Regulations

26 CFR 1.1502–13: Intercompany transactions.

T.D. 9264

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Parts 1 and 602

Guidance Necessary to Facilitate Business Electronic Filing and Burden Reduction

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Final and temporary regulations.

SUMMARY: These regulations affect taxpayers that file Federal income tax returns. They simplify, clarify, or eliminate reporting burdens and also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. The text of the temporary regulations also serves as the text of the proposed regulations (REG–134317–05) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: *Effective Date:* These regulations are effective on May 30, 2006.

Applicability Date: For dates of applicability, see §§1.302–2T(d), 1.302–4T(h), 1.331–1T(f), 1.332–6T(e), 1.338–10T(c), 1.351–3T(f), 1.355–5T(e), 1.368–3T(e), 1.381(b)–1T(e), 1.382–8T(j)(4), 1.382–11T(b), 1.1081–11T(f), 1.1221–2T(j), 1.1502–13T(m), 1.1502–31T(j), 1.1502–32T(j), 1.1502–33T(k), 1.1502–35T(k), 1.1502–76T(d), 1.1502–95T(g), 1.1563–1T(e), 1.1563–3T(e) and 1.6012–2T(k). The applicability of these regulations will expire on May 26, 2009.

FOR FURTHER INFORMATION CONTACT: Grid Glycer, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public pro-

cedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–2019. Responses to this collection of information are mandatory.

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 control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the Bulletin.

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

Background

This Treasury Decision amends Treasury regulations under sections 279, 302, 331, 332, 338, 351, 355, 368, 381, 382, 1081, 1221, 1502, 1563, and 6012 of the Internal Revenue Code (Code) that require taxpayers to include a statement on or with their Federal income tax returns. In some cases, these statements are the method by which taxpayers elect (or elect out of) a particular income tax treatment. In other cases, these statements are the method by which taxpayers report that they undertook a particular type of transaction. In both cases, these regulations often require taxpayers to include detailed amounts of information in these statements, or do not clearly specify the required information.

In addition, many of these regulations present impediments that prevent corporate taxpayers from submitting these statements as part of an electronically filed Federal income tax return (e-filing). Some of these regulations, for example, impede e-filing by requiring taxpayers to sign a statement and include it on or with the tax-

payer's income tax return. Others require a taxpayer to include third-party signatures on such statements or require taxpayers to attach documents, or information supplied by a third party.

Explanation of Provisions

1. Reporting Requirements That Were Simplified, Clarified, or Eliminated

A. Regulations for which the reporting requirements were simplified or clarified

Some regulations require a taxpayer to include a statement on or with its return if it undertakes certain types of transactions. In some cases, these regulations require the taxpayer to submit detailed information about the particular transaction with its return. In other cases, the scope of the reporting requirement was unclear. The IRS and Treasury Department believe that it is not useful to require taxpayers to attach all of this information to their returns. Accordingly, these regulations simplify and clarify the reporting requirements under several provisions.

B. Regulations for which the reporting requirements were eliminated

Some regulations require that all shareholders and security holders that receive stock or securities in certain distributions or exchanges file statements providing information about that distribution or exchange. See, e.g., §§1.355–5(b) and 1.368–3(b). The IRS and Treasury Department have determined that for most shareholders and security holders these statements are no longer necessary. Accordingly, these temporary regulations only require that a “significant holder” file such statement. In the case of stock, a significant holder is a holder of stock of a corporation if at the time of the distribution or exchange such holder owns at least: (1) 5% (by vote or value) of the total outstanding stock of such corporation if the stock owned by such holder is publicly traded, or (2) 1% (by vote or value) of the total outstanding stock of such corporation if the stock owned by such holder is not publicly traded. See, e.g., §§1.355–5T(b) and 1.368–3T(b). These regulations use the definition of publicly traded stock found elsewhere in the regulations. See,

e.g., §§1.1092(d)-1(b), 1.1273-2(f) and 54.4975-7(b)(1)(iv).

In the case of securities, a significant holder is a holder of securities of a corporation if at the time of the distribution or exchange such holder owns securities with a basis of \$1,000,000 or more.

2. Regulations That Present Impediments to E-filing

As described in this preamble in paragraphs 2.A. and 2.B., certain regulations impose reporting requirements that are impediments to e-filing. The IRS and Treasury Department are issuing these temporary regulations to eliminate such impediments without altering the substantive requirements of the current regulations.

A. Statements required to be signed by the taxpayer

Some regulations require a taxpayer to include a statement on or with its return in order to make an election, or notify the IRS that the taxpayer is undertaking a transaction authorized by that provision. In the case of elections, the current regulations often require the taxpayer to sign such statement. In these circumstances, the requirement that the taxpayer sign the statement is an impediment to e-filing and superfluous. By signing the return, a taxpayer is attesting to the validity of the Form 1120 as well as all of the attachments. Accordingly, for these types of statements, the underlying regulations are amended to eliminate the requirement that such statements be signed.

B. Statements required to be signed by both the taxpayer and a third party

Some regulations require that the taxpayer and another person sign a statement, and that the taxpayer include such jointly signed statement on or with its return. In some cases, the taxpayer is required to provide a copy of this statement, or other information, to the other person and that person is required to include such copy or information on or with its return.

These requirements are impediments to e-filing. However, in such cases, the joint signature requirement cannot simply be eliminated because, in the absence of that requirement, the taxpayer and the other person might take inconsistent positions.

Therefore, these regulations amend the provisions with a joint signature requirement to require the taxpayer and the other person to include a statement on or with its return indicating that it has entered into an agreement with the other party addressing the substantive matters covered by the statement required under the current regulations. These agreements will contain the same information as the jointly signed statements required by the current regulations. Each party will be required to retain either the original or a copy of this agreement as part of its records. See §1.6001-1(e).

C. Section 1561

Section 1561(a) provides that the component members of a controlled group of corporations are limited to using the amounts of the tax benefit items described therein in the same manner as if they were one corporation. Section 1561(a) generally provides that such amounts shall be divided equally among such members. However, section 1561(a) also provides that if such members adopt an apportionment plan, they are then permitted to allocate such amounts among themselves unequally. Section 1.1561-3(b) provides the mechanism by which such members may consent to an apportionment plan.

Section 1.1561-3(b) presents impediments to e-filing. However, the IRS and Treasury Department have determined that these impediments cannot be eliminated without also addressing certain substantive issues present in these regulations. Addressing these issues is beyond the scope of this project. Therefore, these issues will be addressed in separate guidance that the IRS and Treasury Department expect to publish later this year.

3. Requirement That Taxpayers Provide the Fair Market Value and Basis of Assets or Stock

Certain of these regulations require taxpayers to provide in their reporting statement the fair market value and basis of assets or stock distributed or exchanged in a transaction. The IRS and Treasury Department recognize that, in some cases, a taxpayer may not conveniently be able to provide a precise valuation of property exchanged or distributed in a transaction that is not taxable in the current year. In those

cases, for the purposes of these statements, the IRS and Treasury Department will accept a taxpayer's good faith estimate of such fair market value.

Similarly, the IRS and Treasury Department recognize that there are occasionally situations where a taxpayer may not be able to precisely determine its basis in a taxable year in which that basis would not be relevant to determining the taxpayer's taxable income. As in the case of fair market value, for purposes of these statements, the IRS and Treasury Department will in these situations accept a taxpayer's good faith estimate of such basis.

4. Election to Restore Value Under §1.382-8

In the case of a controlled group of corporations, §1.382-8 provides that, for purposes of determining the section 382 limitation, the value of the stock of each component member of the controlled group of which the loss corporation is a component member on the change date must be reduced by the value of the stock of any other component member that such component member directly owns immediately after an ownership change. However, the component member's value may be increased by the amount of value that such other component member elects to restore.

The IRS and Treasury Department are aware that taxpayers generally elect to restore value from component members that are foreign corporations. The IRS and Treasury Department are also aware that taxpayers occasionally fail to make the election timely and must file a request for relief under §301.9100-1. Therefore, to reduce unnecessary elections and section 9100 requests, §1.382-8T(h)(2) will deem foreign component members to elect to restore full value to other component members under §1.382-8. Nevertheless, should such members not wish to restore the full amount of such value, they may elect not to restore all or part of such value. Further, a foreign component member that has items treated as connected with the conduct of a trade or business in the United States that it takes into account in determining its value under section 382(e)(3) is not subject to this deemed election.

The IRS and Treasury Department request comments regarding the scope and

application of this deemed election to restore value.

5. Recordkeeping Requirement

The IRS and Treasury Department emphasize that although the amount of information that a taxpayer is required to include on or with its return has, in most cases, decreased, the taxpayer's recordkeeping requirement remains unchanged. Certain of these regulations illustrate the type of information taxpayers are recommended to keep in order to substantiate their reporting position.

6. Rev. Proc. 2006-21

Contemporaneously with the issuance of these temporary regulations, the IRS and Treasury Department are releasing Rev. Proc. 2006-21, 2006-24 I.R.B. 1050, to remove e-filing impediments and reduce reporting requirements currently found in Rev. Proc. 89-56, 1989-2 C.B. 643, Rev. Proc. 90-39, 1990-2 C.B. 365, and Rev. Proc. 2002-32, 2002-1 C.B. 959. Each revenue procedure provides a method for consolidated taxpayers to request a specified consent or waiver from the Commissioner without submitting a request for a private letter ruling. In particular, Rev. Proc. 89-56 permits taxpayers to request a consent to use a 52-53 week tax year, Rev. Proc. 90-39 permits taxpayers to request a consent to change the method for allocating tax liability to members for earnings and profits purposes, and Rev. Proc. 2002-32 permits taxpayers to request a waiver of the 60-month limitation on reconsolidation.

7. §1.1502-35

These regulations also include a revision to §1.1502-35 that is not related to electronic filing or reporting requirements. The revision corrects an error in the determination of the time period during which suspended losses are reduced under that section. Specifically, these regulations provide that this time period ends on the day before the first date on which the subsidiary (and any successor) is not a member of the group.

Special Analysis

It has been determined that this Treasury Decision is not a significant regula-

tory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in this issue of the Bulletin. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Grid Glycer, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.338-10T also issued under 26 U.S.C. 338. * * *

Section 1.1221-2T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-13T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-31T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-32T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-33T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-35T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-76T also issued under 26 U.S.C. 1502. * * *

Section 1.1502-95T also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.279-5 is amended by removing paragraph (h).

Par. 3. Section 1.302-2 is amended by:

1. Redesignating paragraph (b) as paragraph (b)(1).

2. Revising newly designated paragraph (b)(1).

3. Adding paragraphs (b)(2) and (d).

The additions and revisions read as follows:

§1.302-2 Redemptions not taxable as dividends.

* * * * *

(b)(1) The question whether a distribution in redemption of stock of a shareholder is not essentially equivalent to a dividend under section 302(b)(1) depends upon the facts and circumstances of each case. One of the facts to be considered in making this determination is the constructive stock ownership of such shareholder under section 318(a). All distributions in *pro rata* redemptions of a part of the stock of a corporation generally will be treated as distributions under section 301 if the corporation has only one class of stock outstanding. However, for distributions in partial liquidation, see section 302(e). The redemption of all of one class of stock (except section 306 stock) either at one time or in a series of redemptions generally will be considered as a distribution under section 301 if all classes of stock outstanding at the time of the redemption are held in the same proportion. Distributions in redemption of stock may be treated as distributions under section 301 regardless of the provisions of the stock certificate and regardless of whether all stock being redeemed was acquired by the stockholders from whom the stock was redeemed by purchase or otherwise.

(2) [Reserved]. For further guidance, see §1.302-2T(b)(2).

* * * * *

(d) [Reserved]. For further guidance, see §1.302-2T(d)(1).

Par. 4. Section 1.302-2T is added to read as follows:

§1.302-2T Redemptions not taxable as dividends (temporary).

(a) through (b)(1) [Reserved]. For further guidance, see §1.302-2(a) through (b)(1).

(2) Unless paragraph (d) of §1.331-1T applies, every significant holder that transfers stock to the issuing corporation in exchange for property from such corporation must include on or with such

holder's return for the taxable year of such exchange a statement entitled, "STATEMENT PURSUANT TO §1.302-2T(b)(2) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER OF THE STOCK OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ISSUING CORPORATION]." If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The fair market value and basis of the stock transferred by the significant holder to the issuing corporation; and

(ii) A description of the property received by the significant holder from the issuing corporation.

(3) *Definitions.* For purposes of this section:

(i) *Significant holder* means any person that, immediately before the exchange—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is not publicly traded.

(ii) *Publicly traded stock* means stock that is listed on—

(A) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(B) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(iii) *Issuing corporation* means the corporation that issued the shares of stock, some or all of which were transferred by a significant holder to such corporation in the exchange described in paragraph (b)(2) of this section.

(4) *Cross reference.* See section 6043 of the Code for requirements relating to a return by a liquidating corporation.

(c) [Reserved]. For further guidance, see §1.302-2(c).

(d) *Effective date*—(1) *Applicability date.* This section applies to any original

Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 5. Section 1.302-4 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§1.302-4 Termination of shareholder's interest.

(a) [Reserved]. For further guidance, see §1.302-4T(a).

* * * * *

(h) [Reserved]. For further guidance, see §1.302-4T(h)(1).

Par. 6. Section 1.302-4T is added to read as follows:

§1.302-4T Termination of shareholder's interest (temporary).

(a) The agreement specified in section 302(c)(2)(A)(iii) shall be in the form of a statement entitled, "STATEMENT PURSUANT TO SECTION 302(c)(2)(A)(iii) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER OR RELATED PERSON, AS THE CASE MAY BE], A DISTRIBUTEE (OR RELATED PERSON) OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF DISTRIBUTING CORPORATION]." The distributee must include such statement on or with the distributee's first return for the taxable year in which the distribution described in section 302(b)(3) occurs. If the distributee is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The distributee must represent in the statement—

(1) THE DISTRIBUTEE (OR RELATED PERSON) HAS NOT ACQUIRED, OTHER THAN BY BEQUEST OR INHERITANCE, ANY INTEREST IN THE CORPORATION (AS DESCRIBED IN SECTION 302(c)(2)(A)(i)) SINCE THE DISTRIBUTION; and

(2) THE DISTRIBUTEE (OR RELATED PERSON) WILL NOTIFY THE

INTERNAL REVENUE SERVICE OF ANY ACQUISITION, OTHER THAN BY BEQUEST OR INHERITANCE, OF SUCH AN INTEREST IN THE CORPORATION WITHIN 30 DAYS AFTER THE ACQUISITION, IF THE ACQUISITION OCCURS WITHIN 10 YEARS FROM THE DATE OF THE DISTRIBUTION.

(b) through (g) [Reserved]. For further guidance, see §1.302-4(b) through (g).

(h) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 7. Section 1.331-1 is amended by revising paragraph (d) and adding paragraph (f) to read as follows:

§1.331-1 Corporate liquidations.

* * * * *

(d) [Reserved]. For further guidance, see §1.331-1T(d).

* * * * *

(f) [Reserved]. For further guidance, see §1.331-1T(f)(1).

Par. 8. Section 1.331-1T is added to read as follows:

§1.331-1T Corporate liquidations (temporary).

(a) through (c) [Reserved]. For further guidance, see §1.331-1(a) through (c).

(d) *Reporting requirement*—(1) *General rule.* Every significant holder that transfers stock to the issuing corporation in exchange for property from such corporation must include on or with such holder's return for the year of such exchange the statement described in paragraph (d)(2) of this section unless—

(i) The property is part of a distribution made pursuant to a corporate resolution reciting that the distribution is made in complete liquidation of the corporation; and

(ii) The issuing corporation is completely liquidated and dissolved within one year after the distribution.

(2) *Statement.* If required by paragraph (d)(1) of this section, a signif-

ificant holder must include on or with such holder's return a statement entitled, "STATEMENT PURSUANT TO §1.331-1T(d) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER OF THE STOCK OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ISSUING CORPORATION]." If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The fair market value and basis of the stock transferred by the significant holder to the issuing corporation; and

(ii) A description of the property received by the significant holder from the issuing corporation.

(3) *Definitions.* For purposes of this section:

(i) *Significant holder* means any person that, immediately before the exchange—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the issuing corporation if the stock owned by such person is not publicly traded.

(ii) *Publicly traded stock* means stock that is listed on—

(A) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(B) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(iii) *Issuing corporation* means the corporation that issued the shares of stock, some or all of which were transferred by a significant holder to such corporation in the exchange described in paragraph (d)(1) of this section.

(4) *Cross reference.* See section 6043 of the Code for requirements relating to a return by a liquidating corporation.

(e) [Reserved]. For further guidance, see §1.331-1(e).

(f) *Effective date*—(1) *Applicability date.* This section applies to any original

Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.332-6 [Removed]

Par. 9. Section 1.332-6 is removed.

Par. 10. Section 1.332-6T is added to read as follows:

§1.332-6T Records to be kept and information to be filed with return (temporary).

(a) *Statement filed by recipient corporation.* If any recipient corporation received a liquidating distribution from the liquidating corporation pursuant to a plan (whether or not that recipient corporation has received or will receive other such distributions from the liquidating corporation in other tax years as part of the same plan) during the current tax year, such recipient corporation must include a statement entitled, "STATEMENT PURSUANT TO SECTION 332 BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A CORPORATION RECEIVING A LIQUIDATING DISTRIBUTION," on or with its return for such year. If any recipient corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the liquidating corporation;

(2) The date(s) of all distribution(s) (whether or not pursuant to the plan) by the liquidating corporation during the current tax year;

(3) The aggregate fair market value and basis, determined immediately before the liquidation, of all of the assets of the liquidating corporation that have been or will be transferred to any recipient corporation;

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the liquidation;

(5) The following representation: THE PLAN OF COMPLETE LIQUIDATION WAS ADOPTED ON [INSERT DATE (mm/dd/yyyy)]; and

(6) A representation by such recipient corporation either that—

(i) THE LIQUIDATION WAS COMPLETED ON [INSERT DATE (mm/dd/yyyy)]; or

(ii) THE LIQUIDATION IS NOT COMPLETE AND THE TAXPAYER HAS TIMELY FILED [INSERT EITHER FORM 952, "Consent To Extend the Time to Assess Tax Under Section 332(b)," OR NUMBER AND NAME OF THE SUCCESSOR FORM].

(b) *Filings by the liquidating corporation.* The liquidating corporation must timely file Form 966, "Corporate Dissolution or Liquidation," (or its successor form) and its final Federal corporate income tax return. See also section 6043 of the Code.

(c) *Definitions.* For purposes of this section:

(1) *Plan* means the plan of complete liquidation within the meaning of section 332.

(2) *Recipient corporation* means the corporation described in section 332(b)(1).

(3) *Liquidating corporation* means the corporation that makes a distribution of property to a recipient corporation pursuant to the plan.

(4) *Liquidating distribution* means a distribution of property made by the liquidating corporation to a recipient corporation pursuant to the plan.

(d) *Substantiation information.* Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with a liquidation described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all distributed property, and relevant facts regarding any liabilities assumed or extinguished as part of such liquidation.

(e) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 11. Section 1.338-0 is amended by revising the entry for §1.338-10(a)(4)(iii) and adding entries for §1.338-10(c) and §1.338-10T to read as follows:

§1.338-0 Outline of topics.

* * * * *

§1.338-10 Filing of returns.

- (a) * * *
- (4) * * *
- (iii) [Reserved]

* * * * *

- (c) [Reserved]

§1.338-10T Filing of returns (temporary).

- (a)(1) through (a)(4)(ii) [Reserved]
- (iii) Procedure for filing a combined return.

- (a)(4)(iv) through (b) [Reserved]
- (c) Effective date.
 - (1) Applicability date.
 - (2) Expiration date.

* * * * *

Par. 12. Section 1.338-10 is amended by revising paragraph (a)(4)(iii) and adding paragraph (c) to read as follows:

§1.338-10 Filing of returns.

- (a) * * *
- (4) * * *
- (iii) [Reserved]. For further guidance, see §1.338-10T(a)(4)(iii).

* * * * *

- (c) [Reserved]. For further guidance, see §1.338-10T(c)(1).

Par. 13. Section 1.338-10T is added to read as follows:

§1.338-10T Filing of returns (temporary).

- (a)(1) through (a)(4)(ii) [Reserved]. For further guidance, see §1.338-10(a)(1) through (a)(4)(ii).

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed asset sales of all targets required to be included in the

combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in §1.1502-75(j) apply for purposes of preparing the combined return. The combined return must include a statement entitled, "ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15)." The statement must include—

(A) The name, address, and employer identification number of each target required to be included in the combined return; and

(B) The following declaration: EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN.

(a)(4)(iv) through (b) [Reserved]. For further guidance, see §1.338-10(a)(4)(iv) through (b).

(c) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.351-3 [Removed]

Par. 14. Section 1.351-3 is removed.

Par. 15. Section 1.351-3T is added to read as follows:

§1.351-3T Records to be kept and information to be filed (temporary).

(a) *Significant transferor.* Every significant transferor must include a statement entitled, "STATEMENT PURSUANT TO §1.351-3T(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT TRANSFEROR," on or with such transferor's income tax return for the taxable year of the section 351 exchange. If a significant transferor is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of

section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the transferee corporation;

(2) The date(s) of the transfer(s) of assets;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of the property transferred by such transferor in the exchange; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

(b) *Transferee corporation.* Except as provided in paragraph (c) of this section, every transferee corporation must include a statement entitled, "STATEMENT PURSUANT TO §1.351-3T(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A TRANSFEREE CORPORATION," on or with its income tax return for the taxable year of the exchange. If the transferee corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and taxpayer identification number (if any) of every significant transferor;

(2) The date(s) of the transfer(s) of assets;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of all of the property received in the exchange; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the section 351 exchange.

(c) *Exception for certain transferee corporations.* The transferee corporation is not required to file a statement under paragraph (b) of this section if all of the information that would be included in the statement described in paragraph (b) of this section is included in any statement(s) described in paragraph (a) of this section that is attached to the same return for the same section 351 exchange.

(d) *Definitions.* For purposes of this section:

(1) *Significant transferor* means a person that transferred property to a corporation and received stock of the transferee corporation in an exchange described in section 351 if, immediately after the exchange, such person—

(i) Owned at least five percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is publicly traded, or

(ii) Owned at least one percent (by vote or value) of the total outstanding stock of the transferee corporation if the stock owned by such person is not publicly traded.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(e) *Substantiation information.* Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such exchange.

(f) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 16. Section 1.355-0 is amended by removing the entry for §1.355-5 and adding an entry for §1.355-5T.

The revision and addition read as follows:

§1.355-0 *Outline of sections.*

* * * * *

§1.355-5T *Records to be kept and information to be filed (temporary).*

* * * * *

§1.355-5 [Removed]

Par. 17. Section 1.355-5 is removed.

Par. 18. Section 1.355-5T is added to read as follows:

§1.355-5T *Records to be kept and information to be filed (temporary).*

(a) *Distributing corporation*—(1) *In general.* Every corporation that makes a distribution (the distributing corporation) of stock or securities of a controlled corporation, as described in section 355 (or so much of section 356 as relates to section 355), must include a statement entitled, “STATEMENT PURSUANT TO §1.355-5T(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A DISTRIBUTING CORPORATION,” on or with its return for the year of the distribution. If the distributing corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(i) The name and employer identification number (if any) of the controlled corporation;

(ii) The name and taxpayer identification number (if any) of every significant distributee;

(iii) The date of the distribution of the stock or securities of the controlled corporation;

(iv) The aggregate fair market value and basis, determined immediately before the distribution or exchange, of the stock, securities, or other property (including money) distributed by the distributing corporation in the transaction; and

(v) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with the transaction.

(2) *Special rule when an asset transfer precedes a stock distribution.* If the distributing corporation transferred property to the controlled corporation in a transaction described in section 351 or 368, as part of a plan to then distribute the stock or

securities of the controlled corporation in a transaction described in section 355 (or so much of section 356 as relates to section 355), then, unless paragraph (a)(1)(v) of this section applies, the distributing corporation must also include on or with its return for the year of the distribution the statement required by §1.351-3T(a) or 1.368-3T(a). If the distributing corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include the statement required by §1.351-3T(a) or 1.368-3T(a) on or with its return.

(b) *Significant distributee.* Every significant distributee must include a statement entitled, “STATEMENT PURSUANT TO §1.355-5T(b) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT DISTRIBUTE,” on or with such distributee’s return for the year in which such distribution is received. If a significant distributee is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The names and employer identification numbers (if any) of the distributing and controlled corporations;

(2) The date of the distribution of the stock or securities of the controlled corporation; and

(3) The aggregate basis, determined immediately before the exchange, of any stock or securities transferred by the significant distributee in the exchange, and the aggregate fair market value, determined immediately before the distribution or exchange, of the stock, securities or other property (including money) received by the significant distributee in the distribution or exchange.

(c) *Definitions.* For purposes of this section:

(1) *Significant distributee* means—

(i) A holder of stock of a distributing corporation that receives, in a transaction described in section 355 (or so much of section 356 as relates to section 355), stock of a corporation controlled by the distributing corporation if, immediately before the distribution or exchange, such holder—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such holder is publicly traded; or

(B) Owned at least one percent (by vote or value) of the stock of the distributing corporation if the stock owned by such holder is not publicly traded; or

(ii) A holder of securities of a distributing corporation that receives, in a transaction described in section 355 (or so much of section 356 as relates to section 355), stock or securities of a corporation controlled by the distributing corporation if, immediately before the distribution or exchange, such holder owned securities in such distributing corporation with a basis of \$1,000,000 or more.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(d) *Substantiation information.* Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the distribution or exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all property distributed or exchanged, and relevant facts regarding any liabilities assumed or extinguished as part of such distribution or exchange.

(e) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.368-3 [Removed]

Par. 19. Section 1.368-3 is removed.

Par. 20. Section 1.368-3T is added to read as follows:

§1.368-3T *Records to be kept and information to be filed with returns (temporary).*

(a) *Parties to the reorganization.* The plan of reorganization must be adopted by each of the corporations that are parties thereto. Each such corporation must include a statement entitled, “STATEMENT PURSUANT TO §1.368-3T(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A CORPORATION A PARTY TO A REORGANIZATION,” on or with its return for the taxable year of the exchange. If any such corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. However, it is not necessary for any taxpayer to include more than one such statement on or with the same return for the same reorganization. The statement must include—

(1) The names and employer identification numbers (if any) of all such parties;

(2) The date of the reorganization;

(3) The aggregate fair market value and basis, determined immediately before the exchange, of the assets, stock or securities of the target corporation transferred in the transaction; and

(4) The date and control number of any private letter ruling(s) issued by the Internal Revenue Service in connection with this reorganization.

(b) *Significant holders.* Every significant holder, other than a corporation a party to the reorganization, must include a statement entitled, “STATEMENT PURSUANT TO §1.368-3T(b) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER,” on or with such holder’s return for the taxable year of the exchange. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The names and employer identification numbers (if any) of all of the parties to the reorganization;

(2) The date of the reorganization; and

(3) The fair market value, determined immediately before the exchange, of all the stock or securities of the target corporation held by the significant holder that is transferred in the transaction and such holder’s basis, determined immediately before the exchange, in the stock or securities of such target corporation.

(c) *Definitions.* For purposes of this section:

(1) *Significant holder* means—

(i) A holder of stock of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is publicly traded; or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the target corporation if the stock owned by such holder is not publicly traded; or

(ii) A holder of securities of the target corporation that receives stock or securities in an exchange described in section 354 (or so much of section 356 as relates to section 354) if, immediately before the exchange, such holder owned securities in such target corporation with a basis of \$1,000,000 or more.

(2) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(d) *Substantiation information.* Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the reorganization described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all transferred property, and relevant facts regarding any liabilities assumed or extinguished as part of such reorganization.

(e) *Effective date*—(1) *Applicability date*. This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date*. The applicability of this section will expire on May 26, 2009.

Par. 21. Section 1.381(b)–1 is amended by revising paragraph (b)(3) and adding paragraph (e) to read as follows:

§1.381(b)–1 Operating rules applicable to carryovers in certain corporate acquisitions.

* * * * *

(b) * * *

(3) [Reserved]. For further guidance, see §1.381(b)–1T(b)(3).

* * * * *

(e) [Reserved]. For further guidance, see §1.381(b)–1T(e)(1).

Par. 22. Section 1.381(b)–1T is added to read as follows:

§1.381(b)–1T Operating rules applicable to carryovers in certain corporate acquisitions (temporary).

(a) through (b)(2) [Reserved]. For further guidance, see §1.381(b)–1(a) through (b)(2).

(3) *Election*—(i) *Content of statements*. The statements referred to in paragraph (b)(2) of §1.381(b)–1 must be entitled, “ELECTION OF DATE OF DISTRIBUTION OR TRANSFER PURSUANT TO §1.381(b)–1(b)(2),” and must include: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF DISTRIBUTOR OR TRANSFEROR CORPORATION] AND [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ACQUIRING CORPORATION] ELECT TO DETERMINE THE DATE OF DISTRIBUTION OR TRANSFER UNDER §1.381(b)–1(b)(2). SUCH DATE IS [INSERT DATE (mm/dd/yyyy)].

(ii) *Filing of statements*. One statement must be included on or with the timely filed Federal income tax return of the distributor or transferor corporation for its taxable year ending with the date of distribution or transfer. An identical statement must be included on or with the timely

filed Federal income tax return of the acquiring corporation for its first taxable year ending after that date. If the distributor or transferor corporation, or the acquiring corporation, is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return.

(b)(4) through (d) [Reserved]. For further guidance, see §1.381(b)–1(b)(4) through (d).

(e) *Effective date*—(1) *Applicability date*. This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date*. The applicability of this section will expire on May 26, 2009.

Par. 23. Section 1.382–1 is amended by:

1. Revising the entry for §1.382–2T(a)(2)(ii).

2. Revising the entry for §1.382–8(c)(2).

3. Redesignating the entry for §1.382–8(e)(4) as the entry for §1.382–8(e)(5).

4. Adding entries for paragraphs (e)(4) and (j)(4) of §1.382–8.

5. Revising the entry for paragraph (h), and removing the entries for paragraphs (h)(1), (h)(2) and (h)(3), of §1.382–8.

6. Adding entries for §1.382–8T.

7. Removing the entry for §1.382–11.

8. Adding entries for §1.382–11T.

The additions and revisions read as follows:

§1.382–1 Table of contents.

* * * * *

§1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(a) * * *

(2) * * *

(ii) [Reserved]

* * * * *

§1.382–8 Controlled groups.

* * * * *

(c) * * *

(2) [Reserved]

* * * * *

(e) * * *

(4) [Reserved]

(5) Predecessor and successor corporation.

* * * * *

(h) [Reserved]

* * * * *

(j) * * *

(4) [Reserved]

§1.382–8T Controlled groups (temporary).

(a) through (c)(1) [Reserved]

(c)(2) Restoration of value.

(c)(3) through (e)(3) [Reserved]

(e)(4) Foreign component member.

(i) In general.

(ii) Exception.

(e)(5) through (g) [Reserved]

(h) Time and manner of filing election to restore.

(1) Statements required.

(i) Filing by loss corporation.

(ii) Filing by electing member.

(iii) Agreement.

(2) Special rule for foreign component members.

(i) Deemed election to restore full value.

(ii) Election not to restore full value.

(iii) Agreement.

(3) Revocation of election.

(i) through (j)(3) [Reserved]

(j)(4) Effective date.

(i) Applicability date.

(ii) Expiration date.

* * * * *

§1.382–11T Reporting requirements (temporary).

(a) Information statement required.

(b) Effective date.

(1) Applicability date.

(2) Expiration date.

Par. 24. Section 1.382–2T is amended by removing and reserving paragraph (a)(2)(ii) to read as follows:

§1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(a) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see §1.382-11T(a).

* * * * *

Par. 25. Section 1.382-8 is amended as follows:

1. Revising paragraphs (c)(2) and (h).

2. Redesignating paragraph (e)(4) as paragraph (e)(5).

3. Adding new paragraphs (e)(4) and (j)(4).

The additions and revisions read as follows:

§1.382-8 Controlled groups.

* * * * *

(c) * * *

(2) [Reserved]. For further guidance, see §1.382-8T(c)(2).

* * * * *

(e) * * *

(4) [Reserved]. For further guidance, see §1.382-8T(e)(4).

(5) Predecessor and successor corporation. * * *

* * * * *

(h) [Reserved]. For further guidance, see §1.382-8T(h).

* * * * *

(j) * * *

(4) [Reserved]. For further guidance, see §1.382-8T(j)(4)(i).

Par. 26. Section 1.382-8T is added to read as follows:

§1.382-8T Controlled groups (temporary).

(a) through (c)(1) [Reserved]. For further guidance, see §1.382-8(a) through (c)(1).

(2) *Restoration of value.* After the value of the stock of each component member is reduced pursuant to paragraph (c)(1) of §1.382-8, the value of the stock of each component member is increased by the amount of value, if any, restored to the component member by another component member (the electing member) pursuant to this paragraph (c)(2). The electing member may elect (or may be deemed to elect under paragraph (h)(2)(i) of this section in the case of a foreign component member) to restore value to another component

member in an amount that does not exceed the lesser of—

(i) The sum of—

(A) The value, determined immediately before the ownership change, of the electing member's stock (after adjustment under paragraph (c)(1) of §1.382-8 and before any restoration of value under this paragraph (c)(2)); plus

(B) Any amount of value restored to the electing member by another component member under this paragraph (c)(2); or

(ii) The value, determined immediately before any ownership change, of the electing member's stock (without regard to any adjustment under this section) that is directly owned by the other component member immediately after the ownership change.

(c)(3) through (e)(3) [Reserved]. For further guidance, see §1.382-8(c)(3) through (e)(3).

(4) *Foreign component member*—(i) In general. Except as provided in paragraph (e)(4)(ii) of this section, foreign component member means a component member that is a foreign corporation.

(ii) *Exception.* A foreign component member shall not include a foreign corporation that has items treated as connected with the conduct of a trade or business in the United States that it takes into account in determining its value pursuant to section 382(e)(3).

(e)(5) through (g) [Reserved]. For further guidance, see §1.382-8(e)(5) through (g).

(h) *Time and manner of filing election to restore*—(1) *Statements required*—

(i) *Filing by loss corporation.* The election to restore value described in paragraph (c)(2) of this section must be in the form set forth in this paragraph (h)(1)(i). It must be filed by the loss corporation by including a statement on or with its income tax return for the taxable year in which the ownership change occurs (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs). The common parent of a consolidated group must make the election on behalf of the group. The election is made in the form of a statement entitled, "STATEMENT PURSUANT TO §1.382-8T(h)(1) TO ELECT

TO RESTORE ALL OR PART OF THE VALUE OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE ELECTING MEMBER] TO [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE CORPORATION TO WHICH VALUE IS RESTORED]." The statement must include the amount of the value being restored and must also indicate that an agreement signed and dated by both parties, as described in paragraph (h)(1)(iii) of this section, has been entered into. Each such party must retain either the original or a copy of this agreement as part of its records. See §1.6001-1(e).

(ii) *Filing by electing member.* An electing member must include a statement identical to the one described in paragraph (h)(1)(i) of this section on or with its income tax return (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs) (if any) for the taxable year which includes the change date in connection with which the election described in paragraph (c)(2) of this section is made. If the electing member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. It is not necessary for the electing member (or the United States shareholder, as the case may be) to include this statement on or with its return if the loss corporation includes an identical statement on or with the same return for the same election.

(iii) *Agreement.* Both the electing member and the corporation to which value is restored must sign and date an agreement. The agreement must—

(A) Identify the change date for the loss corporation in connection with which the election is made;

(B) State the value of the electing member's stock (without regard to any adjustment under paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of §1.382-8 and paragraph (c)(2) of this section) immediately before the ownership change;

(C) State the amount of any reduction required under paragraph (c)(1) of §1.382-8 with respect to stock of the electing member that is owned directly

or indirectly by the corporation to which value is restored;

(D) State the amount of value that the electing member elects to restore to the corporation; and

(E) State whether the value of either component member's stock was adjusted pursuant to paragraph (c)(4) of §1.382-8.

(2) *Special rule for foreign component members*—(i) *Deemed election to restore full value.* Unless the election described in paragraph (h)(2)(ii) of this section is made for a foreign component member, each foreign component member of the controlled group is deemed to have elected to restore to each other component member the maximum value allowable under paragraph (c)(2) of this section, taking into account the limitations of §1.382-8.

(ii) *Election not to restore full value.* (A) A loss corporation may elect to reduce the amount of value restored from a foreign component member (the electing foreign component member) to another component member under paragraph (h)(2)(i) of this section in the form set forth in this paragraph (h)(2)(ii). It must be filed by the loss corporation by including a statement on or with its income tax return for the taxable year in which the ownership change occurs (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs). The common parent of a consolidated group must make the election on behalf of the group. The election is made in the form of a statement entitled, "STATEMENT PURSUANT TO §1.382-8T(h)(2)(ii) TO ELECT NOT TO RESTORE FULL VALUE OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF ELECTING FOREIGN COMPONENT MEMBER] TO [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF THE CORPORATION TO WHICH SUCH VALUE IS NOT TO BE RESTORED]." The statement must include the amount of the value not being restored and must also indicate that an agreement signed and dated by both parties, as described in paragraph (h)(2)(iii) of this section, has been entered into. Each such party must retain either the original or a copy of the agreement as part of its records. See §1.6001-1(e).

(B) An electing foreign component member must include a statement identical to the one described in paragraph (h)(2)(ii)(A) of this section on or with its income tax return (or with an amended return for that year filed on or before the due date (including extensions) of the income tax return of any component member with respect to the taxable year in which the ownership change occurs) (if any) for the taxable year which includes the change date in connection with which the election described in paragraph (h)(2)(ii)(A) of this section is made. If the electing foreign component member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. It is not necessary for the electing foreign component member (or United States shareholder, as the case may be) to include this statement on or with its return if the loss corporation includes an identical statement on or with the same return for the same election.

(iii) *Agreement.* Both the electing foreign component member and the corporation to which full value is not restored must sign and date an agreement. The agreement must—

(A) Identify the change date for the loss corporation in connection with which the election is made;

(B) State the value of the electing foreign component member's stock (without regard to any adjustment under paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of §1.382-8 and paragraph (c)(2) of this section) immediately before the ownership change;

(C) State the amount of any reduction required under paragraph (c)(1) of §1.382-8 with respect to stock of the electing foreign component member that is owned directly or indirectly by the corporation to which value is not restored;

(D) State the amount of value that the electing foreign component member elects not to restore to the corporation; and

(E) State whether the value of either component member's stock was adjusted pursuant to paragraph (c)(4) of §1.382-8.

(3) *Revocation of election.* An election (other than the deemed election described in paragraph (h)(2)(i) of this section) made under this section is revocable only with the consent of the Commissioner.

(i) through (j)(3) [Reserved]. For further guidance, see §1.382-8(i) through (j)(3).

(4) *Effective date*—(i) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.382-11 [Removed]

Par. 27. Section 1.382-11 is removed.

Par. 28. Section 1.382-11T is added to read as follows:

§1.382-11T Reporting requirements (temporary).

(a) *Information statement required.* A loss corporation must include a statement entitled, "STATEMENT PURSUANT TO §1.382-11T(a) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF TAXPAYER], A LOSS CORPORATION," on or with its income tax return for each taxable year that it is a loss corporation in which an owner shift, equity structure shift or other transaction described in paragraph (a)(2)(i) of §1.382-2T occurs. The statement must include the date(s) of any owner shifts, equity structure shifts, or other transactions described in paragraph (a)(2)(i) of §1.382-2T, the date(s) on which any ownership change(s) occurred, and the amount of any attributes described in paragraph (a)(1)(i) of §1.382-2 that caused the corporation to be a loss corporation. A loss corporation may also be required to include certain elections on this statement, including—

(1) An election made under §1.382-2T(h)(4)(vi)(B) to disregard the deemed exercise of an option if the actual exercise of that option occurred within 120 days of the ownership change; and

(2) An election made under §1.382-6(b)(2) to close the books of the loss corporation for purposes of allocating income and loss to periods before and after the change date for purposes of section 382.

(b) *Effective date*—(1) *Applicability date.* This section applies to any original

Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

§1.1081-11 [Removed]

Par. 29. Section 1.1081-11 is removed.

Par. 30. Section 1.1081-11T is added to read as follows:

§1.1081-11T Records to be kept and information to be filed with returns (temporary).

(a) *Distributions and exchanges; significant holders of stock or securities.* Every significant holder must include a statement entitled, "STATEMENT PURSUANT TO §1.1081-11T(a) BY [INSERT NAME AND TAXPAYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SIGNIFICANT HOLDER," on or with such holder's income tax return for the taxable year in which the distribution or exchange occurs. If a significant holder is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The name and employer identification number (if any) of the corporation from which the stock, securities, or other property (including money) was received by such significant holder;

(2) The aggregate basis, determined immediately before the exchange, of any stock or securities transferred by the significant holder in the exchange, and the aggregate fair market value, determined immediately before the distribution or exchange, of the stock, securities or other property (including money) received by the significant holder in the distribution or exchange; and

(3) The date of the distribution or exchange.

(b) *Distributions and exchanges; corporations subject to Commission orders.* Each corporation which is a party to a distribution or exchange made pursuant to an order of the Commission must include on or with its income tax return for its taxable year in which the distribution or exchange

takes place a statement entitled, "STATEMENT PURSUANT TO §1.1081-11T(b) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A DISTRIBUTING OR EXCHANGING CORPORATION." If the distributing or exchanging corporation is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The date and control number of the Commission order, pursuant to which the distribution or exchange was made;

(2) The names and taxpayer identification numbers (if any) of the significant holders;

(3) The aggregate fair market value and basis, determined immediately before the distribution or exchange, of the stock, securities, or other property (including money) transferred in the distribution or exchange; and

(4) The date of the distribution or exchange.

(c) *Sales by members of system groups.* Each system group member must include a statement entitled, "STATEMENT PURSUANT TO §1.1081-11T(c) BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER (IF ANY) OF TAXPAYER], A SYSTEM GROUP MEMBER," on or with its income tax return for the taxable year in which the sale is made. If any system group member is a controlled foreign corporation (within the meaning of section 957), each United States shareholder (within the meaning of section 951(b)) with respect thereto must include this statement on or with its return. The statement must include—

(1) The dates and control numbers of all relevant Commission orders;

(2) The aggregate fair market value and basis, determined immediately before the sale, of all stock or securities sold; and

(3) The date of the sale.

(d) *Definitions.* (1) For purposes of this section, *Commission* means the Securities and Exchange Commission.

(2) For purposes of this section, *significant holder* means a person that receives stock or securities from a corporation (the distributing corporation) pursuant to an order of the Commission, if, immediately before the transaction, such person—

(i) In the case of stock—

(A) Owned at least five percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such person is publicly traded, or

(B) Owned at least one percent (by vote or value) of the total outstanding stock of the distributing corporation if the stock owned by such person is not publicly traded; or

(ii) In the case of securities, owned securities of the distributing corporation with a basis of \$1,000,000 or more.

(3) *Publicly traded stock* means stock that is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o-3).

(4) For purposes of paragraph (b) of this section, *exchange* means exchange, expenditure, or investment.

(5) For purposes of paragraph (c) of this section, *system group member* means each corporation which is a member of a system group and which, pursuant to an order of the Commission, sells stock or securities received upon an exchange (pursuant to an order of the Commission) and applies the proceeds derived therefrom in retirement or cancellation of its own stock or securities.

(e) *Substantiation information.* Under §1.6001-1(e), taxpayers are required to retain their permanent records and make such records available to any authorized Internal Revenue Service officers and employees. In connection with the distribution or exchange described in this section, these records should specifically include information regarding the amount, basis, and fair market value of all property distributed or exchanged, and relevant facts regarding any liabilities assumed or extinguished as part of such distribution or exchange.

(f) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 31. Section 1.1221-2 is amended by revising paragraph (e)(2)(iv) and adding paragraphs (i) through (j) to read as follows:

§1.1221-2 Hedging transactions.

(e) ***

(2) ***

(iv) [Reserved]. For further guidance, see §1.1221-2T(e)(2)(iv).

(i) through (j) [Reserved]. For further guidance, see §1.1221-2T(i) through (j)(1).

Par. 32. Section 1.1221-2T is added to read as follows:

§1.1221-2T Hedging transactions (temporary).

(a) through (e)(2)(iii) [Reserved]. For further guidance, see §1.1221-2(a) through (e)(2)(iii).

(iv) *Making and revoking the election.* Unless the Commissioner otherwise prescribes, the election described in paragraph (e)(2) of §1.1221-2 must be made in a separate statement that provides, “[INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF COMMON PARENT] HEREBY ELECTS THE APPLICATION OF §1.1221-2(e)(2) (THE SEPARATE-ENTITY APPROACH).” The statement must also indicate the date as of which the election is to be effective. The election must be filed by including the statement on or with the consolidated group’s income tax return for the taxable year that includes the first date for which the election is to apply. The election applies to all transactions entered into on or after the date so indicated. The election may only be revoked with the consent of the Commissioner.

(e)(3) through (h) [Reserved]. For further guidance, see §1.1221-2(e)(3) through (h).

(i) [Reserved]

(j) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may

apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 33. Section 1.1502-13 is amended by revising paragraphs (f)(5)(ii)(E) and (f)(6)(i)(C)(2) and adding paragraph (m) to read as follows:

§1.1502-13 Intercompany transactions.

(f) ***

(5) ***

(ii) ***

(E) [Reserved]. For further guidance, see §1.1502-13T(f)(5)(ii)(E).

(6) ***

(i) ***

(C) ***

(2) [Reserved]. For further guidance, see §1.1502-13T(f)(6)(i)(C)(2).

(m) [Reserved]. For further guidance, see §1.1502-13T(m)(1).

Par. 34. Section 1.1502-13T is added to read as follows:

§1.1502-13T Intercompany transactions (temporary).

(a) through (f)(5)(ii)(D) [Reserved]. For further guidance, see §1.1502-13(a) through (f)(5)(ii)(D).

(E) *Election.* An election to apply paragraph (f)(5)(ii) of §1.1502-13 is made in a separate statement entitled, “[INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF COMMON PARENT] HEREBY ELECTS THE APPLICATION OF §1.1502-13(f)(5)(ii) FOR AN INTERCOMPANY TRANSACTION INVOLVING [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF S] AND [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF T].” A separate election must be made for each such application. The election must be filed by including the statement on or with the consolidated group’s income tax return for the year of T’s liquidation (or other transaction). The Commissioner may impose reasonable terms and conditions to the application

of paragraph (f)(5)(ii) of §1.1502-13 that are consistent with the purposes of such section. The statement must—

(1) Identify S’s intercompany transaction and T’s liquidation (or other transaction); and

(2) Specify which provision of §1.1502-13(f)(5)(ii) applies and how it alters the otherwise applicable results under this section (including, for example, the amount of S’s intercompany items and the amount deferred or offset as a result of §1.1502-13(f)(5)(ii)).

(f)(6) through (f)(6)(i)(C)(1) [Reserved]. For further guidance, see §1.1502-13(f)(6) through (f)(6)(i)(C)(1).

(2) *Election.* The election described in paragraph (f)(6)(i)(C)(1) of §1.1502-13 must be made in a separate statement entitled, “ELECTION TO REDUCE BASIS OF P STOCK UNDER §1.1502-13(f)(6) HELD BY [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF MEMBER WHOSE BASIS IN P STOCK IS REDUCED].” The election must be filed by including the statement on or with the consolidated group’s income tax return for the year in which the nonmember becomes a member. The statement must identify the member’s basis in the P stock (taking into account the effect of this election) and the number of shares of P stock held by the member.

(f)(6)(ii) through (l) [Reserved]. For further guidance, see §1.1502-13(f)(6)(ii) through (l).

(m) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 35. Section 1.1502-31 is amended by revising paragraph (e)(2) and adding paragraphs (i) through (j) to read as follows:

§1.1502-31 Stock basis after a group structure change.

(e) * * *
(2) [Reserved]. For further guidance, see §1.1502-31T(e)(2).

* * * * *
(i) through (j) [Reserved]. For further guidance, see §1.1502-31T(i) through (j)(1).

Par. 36. Section 1.1502-31T is added to read as follows:

§1.1502-31T Stock basis after a group structure change (temporary).

(a) through (e)(1) [Reserved]. For further guidance, see §1.1502-31(a) through (e)(1).

(2) *Election.* The election described in paragraph (e)(1) of §1.1502-31 must be made in a separate statement entitled, "ELECTION TO TREAT LOSS CARRYOVER AS EXPIRING UNDER §1.1502-31(e)." The election must be filed by including the statement on or with the consolidated group's income tax return for the year that includes the group structure change. The statement must identify the amount of each loss carryover deemed to expire (or the amount of each loss carryover deemed not to expire, with any balance of any loss carryovers being deemed to expire).

(f) through (h) [Reserved]. For further guidance, see §1.1502-31(f) through (h).

(i) [Reserved]

(j) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 37. Section 1.1502-32 is amended by revising paragraph (b)(4)(iv) and adding paragraphs (i) through (j) to read as follows:

§1.1502-32 Investment adjustments.

* * * * *
(b) * * *
(4) * * *

(iv) [Reserved]. For further guidance, see §1.1502-32T(b)(4)(iv).

* * * * *
(i) through (j) [Reserved]. For further guidance, see §1.1502-32T(i) through (j)(1).

Par. 38. Section 1.1502-32T is added to read as follows:

§1.1502-32T Investment adjustments (temporary).

(a) through (b)(4)(iii) [Reserved]. For further guidance, see §1.1502-32(a) through (b)(4)(iii).

(iv) *Election.* The election described in paragraph (b)(4) of §1.1502-32 must be made in a separate statement entitled, "ELECTION TO TREAT LOSS CARRYOVER OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF S] AS EXPIRING UNDER §1.1502-32(b)(4)." The election must be filed by including a statement on or with the consolidated group's income tax return for the year S becomes a member. A separate statement must be made for each member whose loss carryover is deemed to expire. The statement must identify the amount of each loss carryover deemed to expire (or the amount of each loss carryover deemed not to expire, with any balance of any loss carryovers being deemed to expire) and the basis of any stock reduced as a result of the deemed expiration.

(b)(4)(v) through (h) [Reserved]. For further guidance, see §1.1502-32(b)(4)(v) through (h).

(i) [Reserved]

(j) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 39. Section 1.1502-33 is amended by revising paragraph (d)(5)(i)(D) and adding paragraph (k) to read as follows:

§1.1502-33 Earnings and profits.

* * * * *
(d) * * *
(5) * * *
(i) * * *

(D) [Reserved]. For further guidance, see §1.1502-33T(d)(5)(i)(D).

* * * * *

(k) [Reserved]. For further guidance, see §1.1502-33T(k)(1).

Par. 40. Section 1.1502-33T is added to read as follows:

§1.1502-33T Earnings and profits (temporary).

(a) through (d)(5)(i)(C) [Reserved]. For further guidance, see §1.1502-33(a) through (d)(5)(i)(C).

(D) If a method is permitted under paragraph (d)(4) of §1.1502-33, provide the date and control number of the private letter ruling issued by the Internal Revenue Service approving such method.

(d)(5)(ii) through (j) [Reserved]. For further guidance, see §1.1502-33(d)(5)(ii) through (j).

(k) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 41. Section 1.1502-35 is amended by revising paragraph (c)(4)(i) and adding paragraph (k) to read as follows:

§1.1502-35 Transfers of subsidiary stock and deconsolidations of subsidiaries.

* * * * *
(c) * * *
(4) * * *

(i) [Reserved]. For further guidance, see § 1.1502-35T(c)(4)(i).

* * * * *

(k) [Reserved]. For further guidance, see §1.1502-35T(k)(1).

Par. 42. Section 1.1502-35T is added to read as follows:

§1.1502-35T Transfers of subsidiary stock and deconsolidations of subsidiaries (temporary).

(a) through (c)(3) [Reserved]. For further guidance, see § 1.1502-35(a) through (c)(3).

(4) *Reduction of suspended loss*—(i) *General rule.* The amount of any loss suspended pursuant to paragraphs (c)(1) and (c)(2) of §1.1502-35 shall be reduced, but not below zero, by the subsidiary's (and any successor's) items of deduction and loss, and the subsidiary's (and any successor's) allocable share of items of deduction and loss of all lower-tier subsidiaries, that are allocable to the period beginning on the date of the disposition that gave rise to the suspended loss and ending on the day before the first date on which the subsidiary (and any successor) is not a member of the group of which it was a member immediately prior to the disposition (or any successor group), and that are taken into account in determining consolidated taxable income (or loss) of such group for any taxable year that includes any date on or after the date of the disposition and before the first date on which the subsidiary (and any successor) is not a member of such group; provided, however, that such reduction shall not exceed the excess of the amount of such items over the amount of such items that are taken into account in determining the basis adjustments made under §1.1502-32 to stock of the subsidiary (or any successor) owned by members of the group. The preceding sentence shall not apply to items of deduction and loss to the extent that the group can establish that all or a portion of such items was not reflected in the computation of the duplicated loss with respect to the subsidiary on the date of the disposition of stock that gave rise to the suspended loss.

(c)(4)(ii) through (j) [Reserved]. For further guidance, see §1.1502-35(c)(4)(ii) through (j).

(k) *Effective date*—(1) *Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 43. Section 1.1502-76 is amended by revising paragraph (b)(2)(ii)(D) and adding paragraph (d) to read as follows:

§1.1502-76 Taxable year of members of group.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(D) [Reserved]. For further guidance, see §1.1502-76T(b)(2)(ii)(D).

* * * * *

(d) [Reserved]. For further guidance, see §1.1502-76T(d)(1).

Par. 44. Section 1.1502-76T is added to read as follows:

§1.1502-76T Taxable year of members of group (temporary).

(a) through (b)(2)(ii)(C) [Reserved]. For further guidance, see §1.1502-76(a) through (b)(2)(ii)(C).

(D) *Election*—(1) *Statement.* The election to ratably allocate items under paragraph (b)(2)(ii) of §1.1502-76 must be made in a separate statement entitled, “THIS IS AN ELECTION UNDER §1.1502-76(b)(2)(ii) TO RATABLY ALLOCATE THE YEAR’S ITEMS OF [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF THE MEMBER].” The election must be filed by including a statement on or with the returns including the items for the years ending and beginning with S’s change in status. If two or more members of the same consolidated group, as a consequence of the same plan or arrangement, cease to be members of that group and remain affiliated as members of another consolidated group, an election under this paragraph (b)(2)(ii)(D)(1) may be made only if it is made by each such member. Each statement must also indicate that an agreement, as described in paragraph (b)(2)(ii)(D)(2) of this section, has been entered into. Each party signing the agreement must retain either the original or a copy of the agreement as part of its records. See §1.6001-1(e).

(2) *Agreement.* For each election under paragraph (b)(2)(ii) of §1.1502-76, the member and the common parent of each affected group must sign and date an agreement. The agreement must—

(i) Identify the extraordinary items, their amounts, and the separate or consolidated returns in which they are included;

(ii) Identify the aggregate amount to be ratably allocated, and the portion of the amount included in the separate and consolidated returns; and

(iii) Include the name and employer identification number of the common parent (if any) of each group that must take the items into account.

(b)(2)(iii) through (c) [Reserved]. For further guidance, see §1.1502-76(b)(2)(iii) through (c).

(d) *Effective date*—(1) *Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 45. Section 1.1502-95 is amended by revising paragraphs (e)(8) and (f) and adding paragraph (g) to read as follows:

§1.1502-95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

* * * * *

(e) * * *

(8) [Reserved]. For further guidance, see §1.1502-95T(e)(8).

(f) through (g) [Reserved]. For further guidance, see §1.1502-95T(f) through (g)(1).

Par. 46. Section 1.1502-95T is added to read as follows:

§1.1502-95T Rules on ceasing to be a member of a consolidated group (or loss subgroup) (temporary).

(a) through (e)(7) [Reserved]. For further guidance, see §1.1502-95(a) through (e)(7).

(8) *Reporting requirements*—(i) *Common Parent.* Except as provided in paragraph (e)(8)(iii) of this section, if a net unrealized built-in loss is allocated under paragraph (e) of §1.1502-95, the common parent must include a statement entitled,

“STATEMENT OF NET UNREALIZED BUILT-IN LOSS ALLOCATION PURSUANT TO §1.1502-95(e),” on or with its income tax return for the taxable year in which the former member(s) (or a new loss subgroup that includes that member) ceases to be a member. The statement must include—

(A) The name and employer identification number of the departing member;

(B) The amount of the remaining NUBIL balance for the taxable year in which the member departs;

(C) The amount of the net unrealized built-in loss allocated to the departing member; and

(D) A representation that the common parent has delivered a copy of the statement to the former member (or the common parent of the group of which the former member is a member) on or before the day the group files its income tax return for the consolidated return year that the former member ceases to be a member.

(ii) *Former Member.* Except as provided in paragraph (e)(8)(iii) of this section, the former member must include a statement on or with its first income tax return (or the first return in which the former member joins) that is filed after the close of the consolidated return year of the group of which the former member (or a new loss subgroup that includes that member) ceases to be a member. The statement will be identical to the statement filed by the common parent under paragraph (e)(8)(i) of this section except that instead of including the information described in paragraph (e)(8)(i)(A) of this section the former member must provide the name, employer identification number and tax year of the former common parent, and instead of the representation described in paragraph (e)(8)(i)(D) of this section the former member must represent that it has received and retained the copy of the statement delivered by the common parent as part of its records. See §1.6001-1(e).

(iii) *Exception.* This paragraph (e)(8) does not apply if the required information (other than the amount of the remaining NUBIL balance) is included in a statement of election under paragraph (f) of this section (relating to apportioning a section 382 limitation).

(f) *Filing the election to apportion the section 382 limitation and net unrealized built-in gain—*(1) *Form of the election*

to apportion—(i) *Statement.* An election under paragraph (c) of §1.1502-95 must be made in the form set forth in this paragraph (f)(1)(i). The election must be made by the common parent and the party described in paragraph (f)(2) of this section. It must be filed in accordance with paragraph (f)(3) of this section and be entitled, “THIS IS AN ELECTION UNDER §1.1502-95 TO APPORTION ALL OR PART OF THE [INSERT THE CONSOLIDATED SECTION 382 LIMITATION, THE SUBGROUP SECTION 382 LIMITATION, THE LOSS GROUP’S NET UNREALIZED BUILT-IN GAIN, OR THE LOSS SUBGROUP’S NET UNREALIZED BUILT-IN GAIN, AS APPROPRIATE] IN THE AMOUNT OF [INSERT THE AMOUNT OF THE LOSS LIMITATION OR NET UNREALIZED BUILT-IN GAIN] TO [INSERT NAME(S) AND EMPLOYER IDENTIFICATION NUMBER(S) OF THE CORPORATION (OR THE CORPORATIONS THAT COMPOSE A NEW LOSS SUBGROUP) TO WHICH ALLOCATION IS MADE].” The statement must also indicate that an agreement, as described in paragraph (f)(1)(ii) of this section, has been entered into.

(ii) *Agreement.* Both the common parent and the party described in paragraph (f)(2) of this section must sign and date the agreement. The agreement must include, as appropriate—

(A) The date of the ownership change that resulted in the consolidated section 382 limitation (or subgroup section 382 limitation) or the loss group’s (or loss subgroup’s) net unrealized built-in gain;

(B) The amount of the departing member’s (or loss subgroup’s) pre-change net operating loss carryovers and the taxable years in which they arose that will be subject to the limitation that is being apportioned to that member (or loss subgroup);

(C) The amount of any net unrealized built-in loss allocated to the departing member (or loss subgroup) under paragraph (e) of §1.1502-95, which, if recognized, can be a pre-change attribute subject to the limitation that is being apportioned;

(D) If a consolidated section 382 limitation (or subgroup section 382 limitation) is being apportioned, the amount of the consolidated section 382 limitation (or subgroup section 382 limitation) for the tax-

able year during which the former member (or new loss subgroup) ceases to be a member of the consolidated group (determined without regard to any apportionment under this section);

(E) If any net unrealized built-in gain is being apportioned, the amount of the loss group’s (or loss subgroup’s) net unrealized built-in gain (as determined under paragraph (c)(2)(ii) of §1.1502-95) that may be apportioned to members that ceased to be members during the consolidated return year;

(F) The amount of the value element and adjustment element of the consolidated section 382 limitation (or subgroup section 382 limitation) that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of §1.1502-95;

(G) The amount of the loss group’s (or loss subgroup’s) net unrealized built-in gain that is apportioned to the former member (or new loss subgroup) pursuant to paragraph (c) of §1.1502-95;

(H) If the former member is allocated any net unrealized built-in loss under paragraph (e) of §1.1502-95, the amount of any adjustment element apportioned to the former member that is attributable to recognized built-in gains (determined in a manner that will enable both the group and the former member to apply the principles of §1.1502-93(c)); and

(I) The name and employer identification number of the common parent making the apportionment.

(2) *Signing the agreement.* The agreement must be signed by both the common parent and the former member (or, in the case of a loss subgroup, the common parent and the loss subgroup parent) by persons authorized to sign their respective income tax returns. If the allocation is made to a loss subgroup for which an election under §1.1502-91(d)(4) is made, and not separately to its members, the agreement under this paragraph (f) must be signed by the common parent and any member of the new loss subgroup by persons authorized to sign their respective income tax returns. Each party signing the agreement must retain either the original or a copy of the agreement as part of its records. See §1.6001-1(e).

(3) *Filing of the election—*(i) *Filing by the common parent.* The election must be filed by the common parent of the group

that is apportioning the consolidated section 382 limitation (or the subgroup section 382 limitation) or the loss group's net unrealized built-in gain (or loss subgroup's net unrealized built-in gain) by including the statement on or with its income tax return for the taxable year in which the former member (or new loss subgroup) ceases to be a member.

(ii) *Filing by the former member.* An identical statement must be included on or with the first return of the former member (or the first return in which the former member, or the members of a new loss subgroup, join) that is filed after the close of the consolidated return year of the group of which the former member (or the members of a new loss subgroup) ceases to be a member.

(4) *Revocation of election.* An election statement made under paragraph (c) of §1.1502-95 is revocable only with the consent of the Commissioner.

(g) *Effective date—(1) Applicability date.* This section applies to any original consolidated Federal income tax return due (without extensions) after May 30, 2006. However, a consolidated group may apply this section to any original consolidated Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 47. Section 1.1563-1 is amended by revising paragraph (c)(2) and adding paragraph (e) to read as follows:

§1.1563-1 Definition of controlled group of corporations and component members.

* * * * *

(c) * * *

(2)(i) through (iii) [Reserved]. For further guidance, see §1.1563-1T(c)(2)(i) through (iii).

* * * * *

(e) [Reserved]. For further guidance, see §1.1563-1T(e)(1).

* * * * *

Par. 48. Section 1.1563-1T is added to read as follows:

§1.1563-1T Definition of controlled group of corporations and component members (temporary).

(a) through (c)(1) [Reserved]. For further guidance, see §1.1563-1(a) through (c)(1).

(2) *Brother-sister controlled groups—*

(i) *One corporation.* If on a December 31, a corporation would, without the application of this paragraph (c)(2), be a component member of more than one brother-sister controlled group on such date, the corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return for the taxable year that includes such date a statement entitled, "STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO §1.1563-1T(c)(2)." This statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(ii) *Multiple corporations.* If more than one corporation would, without the application of this paragraph (c)(2), be a component member of more than one controlled group, those corporations electing to be component members of the same group must file a single statement. The statement must contain the information described in paragraph (c)(2)(i) of this section, plus the names and employer identification numbers of all other corporations designating the same group. The original statement must be included on or with the original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such return) of the corporation that, among those corporations which would (without the application of this paragraph (c)(2)) belong to more than one group, has the taxable year including such December 31 which

ends on the earliest date. That corporation must provide a copy of the statement to each other corporation included in the statement and represent in its statement that it has done so. Either the original or a copy of the statement must be retained by each corporation as part of its records. See §1.6001-1(e).

(iii) *Election—(A) Election filed.* An election filed under this paragraph (c)(2) is irrevocable and effective until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) *Election not filed.* In the event no election is filed in accordance with the provisions of this paragraph (c)(2), then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(c)(2)(iv) through (d) [Reserved]. For further guidance, see §1.1563-1(c)(2)(iv) through (d).

(e) *Effective date—(1) Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 49. Section 1.1563-3 is amended by revising paragraph (d)(2)(iv) and adding paragraph (e) to read as follows:

§1.1563-3 Rules for determining stock ownership.

* * * * *

(d) * * *

(2) * * *

(iv) [Reserved]. For further guidance, see §1.1563-3T(d)(2)(iv).

* * * * *

(e) [Reserved]. For further guidance, see §1.1563-3T(e)(1).

Par. 50. Section 1.1563-3T is added to read as follows:

§1.1563-3T Rules for determining stock ownership (temporary).

(a) through (d)(2)(iii) [Reserved]. For further guidance, see §1.1563-3(a) through (d)(2)(iii).

(iv) *Statement.* If the application of paragraph (d)(2)(ii) or (iii) of §1.1563-3 does not result in a corporation being treated as a component member of only one controlled group of corporations on a December 31, then such corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return a statement entitled, "STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO §1.1563-3T(d)(2)(iv)." The statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(v) *Election*—(A) *Election filed.* An election filed under paragraph (d)(2)(iv) of this section is irrevocable and effective until paragraph (d)(2)(ii) or (iii) of §1.1563-3 applies or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) *Election not filed.* In the event no election is filed in accordance with the provisions of paragraph (d)(2)(iv) of this section, then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(d)(3) [Reserved]. For further guidance, see §1.1563-3(d)(3).

(e) *Effective date*—(1) *Applicability date.* This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006.

(2) *Expiration date.* The applicability of this section will expire on May 26, 2009.

Par. 51. Section 1.6012-2 is amended by revising paragraph (c) and adding paragraph (k) to read as follows:

§1.6012-2 Corporations required to make returns of income.

* * * * *

(c) [Reserved]. For further guidance, see §1.6012-2T(c).

* * * * *

(k) [Reserved]. For further guidance, see §1.6012-2T(k)(1).

Par. 52. Section 1.6012-2T is added to read as follows:

§1.6012-2T Corporations required to make returns of income (temporary).

(a) through (b) [Reserved]. For further guidance, see §1.6012-2(a) through (b).

(c) *Insurance companies*—(1) *Domestic life insurance companies*—(i) *In general.* A life insurance company subject to tax under section 801 shall make a return on Form 1120L. Except as provided in paragraph (c)(4) of this section, such company shall file with its return—

(A) A copy of its annual statement which shows the reserves used by the company in computing the taxable income reported on its return; and

(B) A copy of Schedule A (real estate) and of Schedule D (bonds and stocks), or any successor thereto, of such annual statement.

(ii) *Mutual savings banks.* Mutual savings banks conducting life insurance business and meeting the requirements of section 594 are subject to partial tax computed on Form 1120 and partial tax computed on Form 1120L. The Form 1120L is attached as a schedule to Form 1120, together with the annual statement and schedules required to be filed with Form 1120L.

(2) *Domestic nonlife insurance companies.* Every domestic insurance company other than a life insurance company shall make a return on Form 1120PC. This includes organizations described in section 501(m)(1) that provide commercial-type insurance and organizations described in section 833. Except as provided in paragraph (c)(4) of this section, such company shall file with its return a copy of its annual statement (or a *pro forma* annual statement), including the underwriting and investment exhibit for the year covered by such return.

(3) *Foreign insurance companies.* The provisions of paragraphs (c)(1) and (c)(2) of this section concerning the returns and statements of insurance companies subject to tax under section 801 or section 831 also apply to foreign insurance companies subject to tax under those sections, except that the copy of the annual statement required to be submitted with the return shall, in the case of a foreign insurance company that is not required to file an annual statement, be a copy of the *pro forma* annual statement relating to the United States business of such company.

(4) *Exception for insurance companies filing their Federal income tax returns electronically.* If an insurance company described in paragraph (c)(1), (c)(2), or (c)(3) of this section files its Federal income tax return electronically, it should not include on or with such return its annual statement (or *pro forma* annual statement), or any portion thereof. Such statement must be available at all times for inspection by authorized Internal Revenue Service officers or employees and retained for so long as such statements may be material in the administration of any internal revenue law. See §1.6001-1(e).

(5) *Definition.* For purposes of this section, the term *annual statement* means the annual statement, the form of which is approved by the National Association of Insurance Commissioners (NAIC), which is filed by an insurance company for the year with the insurance departments of States, Territories, and the District of Columbia. The term annual statement also includes a *pro forma* annual statement if the insurance company is not required to file the NAIC annual statement.

(d) through (j) [Reserved]. For further guidance, see §1.6012-2(d) through (j).

(k) *Effective date*—(1) *Applicability date*. This section applies to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such origi-

nal return) timely filed on or after May 30, 2006.

(2) *Expiration date*. The applicability of this section will expire on May 26, 2009.

Par. 53. For each entry in the “Location” column of the following table, remove the language in the “Remove” column and add the language in the “Add” column in its place:

Location	Remove	Add
The last sentence of the introductory text to §1.302-4	The following rules shall be applicable in determining whether the specific requirements of section 302(c)(2) are met:	The rules described in paragraph (a) of §1.302-4T and in paragraphs (b) through (g) of this section apply in determining whether the specific requirements of section 302(c)(2) are met.
§1.338(h)(10)-1(f)	§1.331-1(d), and §1.332-6	§1.331-1T(d) and §1.332-6T
The last sentence of §1.382-2T(h)(4)(vi)(B)	paragraph (a)(2)(ii) of this section	paragraph (a) of §1.382-11T
The first sentence of §1.382-6(b)(2)(i)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The second sentence of §1.382-8(a)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of this section and paragraph (c)(2) of §1.382-8T
The third sentence of §1.382-8(a)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4) and (c)(5) of this section and paragraph (c)(2) of §1.382-8T
§1.382-8(c)(3)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
The first sentence of §1.382-8(c)(4)	paragraphs (c)(1), (2), and (3) of this section	paragraphs (c)(1) and (c)(3) of this section and paragraph (c)(2) of §1.382-8T
§1.382-8(c)(5)	this paragraph (c)	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382-8T
The fifth sentence of §1.382-8(f)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382-8T
§1.382-8(g), <i>Example</i> (1)(b)(2)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382-8T
The second sentence of §1.382-8(g), <i>Example</i> (1)(c)	paragraph (c) of this section	paragraphs (c)(1), (c)(3), (c)(4), and (c)(5) of this section, and paragraph (c)(2) of §1.382-8T
§1.382-8(g), <i>Example</i> (2)(c)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
The first sentence of §1.382-8(g), <i>Example</i> (2)(e)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
§1.382-8(g), <i>Example</i> (3)(b)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
§1.382-8(g), <i>Example</i> (3)(c)(1)(B)	paragraphs (c)(1) and (2) of this section	paragraph (c)(1) of this section and paragraph (c)(2) of §1.382-8T
The second sentence of §1.382-8(g), <i>Example</i> (4)(c)	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T

Location	Remove	Add
The second sentence of §1.382-8(g), <i>Example (5)(c)</i>	paragraph (c)(2) of this section	paragraph (c)(2) of §1.382-8T
The first sentence of §1.1502-32(b)(4)(v)(A)	paragraph (b)(4)(iv) of this section	paragraph (b)(4)(iv) of §1.1502-32T
The first sentence of §1.1502-32(b)(4)(v)(B)	paragraph (b)(4)(iv) of this section	paragraph (b)(4)(iv) of §1.1502-32T
§1.1502-35(c)(4)(ii)(B)	§1.1502-76(b)(2)(ii)(D)	§1.1502-76T(b)(2)(ii)(D)
§1.1502-76(b)(2)(ii)(A)(2)	paragraph (b)(2)(ii)(D) of this section	paragraph (b)(2)(ii)(D) of §1.1502-76T
§1.1502-92(e)(1)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The first sentence of §1.1502-92(e)(2)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The first sentence of §1.1502-94(d)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The second sentence of §1.1502-94(d)	§1.382-2T(a)(2)(ii)	§1.382-11T(a)
The last sentence of §1.1502-95(b)(3)	paragraph (f) of this section	paragraph (f) of §1.1502-95T
The last sentence of §1.1563-1(c)(2)(iv), <i>Example (1)</i>	subdivision (ii) of this subparagraph	paragraph (c)(2)(i) of §1.1563-1T
The last sentence of §1.1563-1(c)(2)(iv), <i>Example (1)</i>	the district director with audit jurisdiction of N's return	the Internal Revenue Service
The third sentence of §1.1563-1(c)(2)(iv), <i>Example (2)</i>	subdivision (iii) of this subparagraph	paragraph (c)(2)(ii) of §1.1563-1T
The third sentence of §1.1563-1(c)(2)(iv), <i>Example (2)</i>	the district director with audit jurisdiction of the return of the corporation whose taxable year ends on the earliest date	the Internal Revenue Service
The last sentence of §1.1563-1(c)(2)(iv), <i>Example (2)</i>	district director	Internal Revenue Service
The second sentence of §1.1563-3(d)(2)(i)	subdivisions (ii), (iii), and (iv) of this subparagraph	paragraphs (d)(2)(ii) and (iii) of this section, and paragraph (d)(2)(iv) of §1.1563-3T
The first sentence of §1.6043-2(a)	§1.332-6(b), 1.368-3(a), or 1.1081-11	§1.332-6T(a), §1.368-3T(a), or §1.1081-11T
The first sentence of §301.6011-5T(a) (twice)	§1.6012-2	paragraphs (a), (b) and (d) through (j) of §1.6012-2, and paragraph (c) of §1.6012-2T

PART 602—OMB CONTROL
NUMBERS UNDER THE PAPERWORK
REDUCTION ACT

Par. 54. The authority citation for part
602 continues to read as follows:

Authority: 26 U.S.C. 7805.
Par. 55. In §602.101, paragraph (b) is
amended to read as follows:
1. The following entries to the table are
removed:

§602.101 OMB Control numbers.

* * * * *
(b) * * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.332-6	1545-2019
1.382-11	1545-2019
1.351-3	1545-2019
1.355-5	1545-2019

CFR part or section where identified or described	Current OMB control No.
1.368-3	1545-2019
1.1081-11	1545-2019
* * * * *	

2. The following entries are added in numerical order to the table: §602.101 OMB Control numbers. (b) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.302-2T	1545-2019
1.302-4T	1545-2019
1.331-1T	1545-2019
1.332-6T	1545-2019
1.338-10T	1545-2019
1.351-3T	1545-2019
1.355-5T	1545-2019
1.368-3T	1545-2019
1.381(b)-1T	1545-2019
1.382-8T	1545-2019
1.382-11T	1545-2019
1.1081-11T	1545-2019
1.1221-2T	1545-2019
1.1502-13T	1545-2019
1.1502-31T	1545-2019
1.1502-32T	1545-2019
1.1502-33T	1545-2019
1.1502-35T	1545-2019
1.1502-76T	1545-2019
1.1502-95T	1545-2019
1.1563-1T	1545-2019
1.1563-3T	1545-2019
1.6012-2T	1545-2019
* * * * *	

Mark E. Matthews,
Deputy Commissioner for
Services and Enforcement.

Approved May 19, 2006.

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

(Filed by the Office of the Federal Register on May 26, 2006, 8:45 a.m., and published in the issue of the Federal Register for May 30, 2006, 71 F.R. 30591)

Section 1563.—Definitions and Special Rules

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens.

They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 2032A.—Valuation of Certain Farm, etc., Real Property

26 CFR 20.2032A-4: Method of valuing farm real property.

Special use value; farms; interest rates. The 2006 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

Rev. Rul. 2006-32

This revenue ruling contains a list of the average annual effective interest rates on new loans under the Farm Credit System. This revenue ruling also contains a list of the states within each Farm Credit System Bank Chartered Territory.

Under § 2032A(e)(7)(A)(ii) of the Internal Revenue Code, rates on new Farm Credit System Bank loans are used in computing the special use value of real property used as a farm for which an election is made under § 2032A. The rates in this revenue ruling may be used by estates that value farmland under § 2032A as of a date in 2006.

Average annual effective interest rates, calculated in accordance with

§ 2032A(e)(7)(A) and § 20.2032A-4(e) of the Estate Tax Regulations, to be used under § 2032A(e)(7)(A)(ii), are set forth in the accompanying Table of Interest Rates (Table 1). The states within each Farm Credit System Bank Chartered Territory are set forth in the accompanying Table of Farm Credit System Bank Chartered Territories (Table 2).

Rev. Rul. 81-170, 1981-1 C.B. 454, contains an illustrative computation of an average annual effective interest rate. The rates applicable for valuation in 2005 are in Rev. Rul. 2005-41, 2005-28 I.R.B. 69. For rate information for years prior to 2005, see Rev. Rul. 2004-63, 2004-2 C.B. 6, and other revenue rulings that are referenced therein.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lane Damazo of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Lane Damazo at (202) 622-3090 (not a toll-free call).

REV. RUL. 2006-32 TABLE 1

TABLE OF INTEREST RATES

(Year of Valuation 2006)

Farm Credit System Bank Servicing State in Which Property is Located	Rate
AgFirst, FCB	7.13
AgriBank, FCB	6.02
CoBank, ACB	5.19
Texas, FCB	5.76
U.S. AgBank, FCB	5.73

REV. RUL. 2006-32 TABLE 2

TABLE OF FARM CREDIT SYSTEM BANK CHARTERED TERRITORIES

Farm Credit System Bank	Location of Property
AgFirst, FCB	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia.
AgriBank, FCB	Arkansas, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, Wisconsin, Wyoming.
CoBank, ACB	Alaska, Connecticut, Idaho, Maine, Massachusetts, Montana, New Hampshire, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington.
Texas, FCB	Alabama, Louisiana, Mississippi, Texas.
U.S. Agbank, FCB.....	Arizona, California, Colorado, Hawaii, Kansas, New Mexico, Nevada, Oklahoma, Utah.

Section 6012.—Persons Required to Make Returns of Income

Temporary and proposed regulations simplify, clarify, or eliminate taxpayer reporting burdens. They also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal in-

come tax returns. See T.D. 9264, page 1150. See REG-134317-05, page 1184.

Section 6166.—Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest in Closely Held Business

26 CFR 20.6166-2: Definition of an interest in a closely held business.

Real property interests; closely held business. This ruling updates the guidance provided by Rev. Ruls. 75-365, 75-366,

and 75-367, and provides certain safe harbors and a non-exclusive list of factors that are likely to be relevant in determining whether a deceased owner's activities with regard to certain real property were sufficiently active to support a finding that the real property interest constitutes a closely held business interest for purposes of section 6166 of the Code. Rev. Rul. 75-365 revoked and Rev. Rul. 75-367 revoked in part.

Rev. Rul. 2006-34

ISSUE

Whether the real property interests described in the situations below constitute interests in a closely held business for purposes of section 6166 of the Internal Revenue Code.

FACTS

In each situation, the real property interests are included in the decedent's gross estate and aggregate in value more than 35 percent of the decedent's adjusted gross estate within the meaning of section 6166(b)(6). Further, in each situation the only assets that might be part of a closely held business are the interests described. In each situation, the eligibility requirements of section 6166(b) regarding the number of partners, members, or shareholders or the percentage of capital interest in the partnership or LLC or voting stock in the corporation are satisfied.

Situation 1. A died on January 1, 2005. At the time of death, A owned a ten store strip mall titled in A's name. A personally handled the day-to-day operation, management and maintenance of the strip mall. A also personally handled most repairs. When A was unable to personally perform a repair, A hired a third party independent contractor. A selected the contractor and reviewed and approved the work performed.

Situation 2. B died on February 1, 2005. At the time of death, B owned a small office park titled in B's name. The office park consisted of five separate two-story buildings, each of which had multiple tenants. B hired DEF Management Corporation (DEF), a property management company in which B had no ownership interest, to lease, manage, and maintain the office park, and B relied entirely on DEF

to provide all necessary services. The primary duties of DEF's employees consisted of advertising to attract new tenants, showing the property to prospective tenants, negotiating and administering leases, collecting the monthly rent, and arranging for independent contractors to provide all necessary services to maintain the buildings and grounds of the office park, including snow removal, security, and janitorial services. DEF provided a monthly accounting statement to B, along with a check for the rental income, net of expenses and fees.

Situation 3. Same as Situation 2 except that B owned 20 percent in value of the stock of DEF.

Situation 4. C died on April 1, 2005. At the time of death, C's assets included the one percent general partner interest and a 20 percent limited partnership interest in a limited partnership. The limited partnership owned three strip malls that, collectively, constituted 85 percent of the value of the limited partnership's assets. The partnership agreement required C, as the general partner, to provide the limited partnership with all services necessary to operate the limited partnership's business, including daily maintenance to and repairs of the strip malls. From 1992 until death, C received an annual salary from the limited partnership for C's services as general partner. In performance of C's obligations under the limited partnership agreement, C (either personally or with the assistance of employees or agents) performed substantial management functions, including collecting rental payments and negotiating leases, performing daily maintenance and repairs (or hiring, reviewing and approving the work of third party independent contractors for such work), and making decisions regarding periodic renovations of the three strip malls.

Situation 5. D died on May 1, 2005. At the time of death, D owned 100 percent of the stock in MNO Corporation (MNO), a dealership in the business of selling automobiles, automotive parts and related supplies, and repair services. D made all decisions regarding MNO, including the approval of all advertising and marketing promotions, management and acquisition of inventory, and matters relating to dealership personnel. D also supervised all employees of MNO. In addition to the stock of MNO, D directly owned Real Property P. Real Property P was constructed for

MNO and contained unique features tailored to an automobile dealership, including a showroom and office space and areas for servicing automobiles and storing inventory. D leased Real Property P to MNO under a net lease, and MNO's employees performed all maintenance of and repairs to Real Property P.

LAW

Section 6166(a)(1) of the Code permits an executor to elect to pay part or all of the estate tax imposed by section 2001 in two or more (but not exceeding ten) equal installments if a decedent was a citizen or resident of the United States on the date of death, and if the value of an interest in a closely held business (the "closely held business amount" as defined in section 6166(b)(5)) which is included in the decedent's gross estate exceeds 35 percent of the adjusted gross estate.

Section 6166(b)(1) defines the term "interest in a closely held business" to mean:

- A. an interest as a proprietor in a trade or business carried on as a proprietorship;
- B. an interest as a partner in a partnership carrying on a trade or business, if— (i) 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or (ii) such partnership had 45 or fewer partners; or
- C. stock in a corporation carrying on a trade or business if— (i) 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or (ii) such corporation had 45 or fewer shareholders.

I.R.C. § 6166(b)(1). The determination as to whether an interest qualifies as an interest in a closely held business under section 6166(b)(1) shall be made as of the time immediately before the decedent's death. I.R.C. § 6166(b)(2)(A). Thus, a decedent must own an interest in a closely held business immediately before death to be eligible for an extension of time for payment under section 6166.

Under section 6166(b)(9)(A), for purposes of section 6166(a)(1) and determining the closely held business amount, the value of an interest in a business does not include the value of that portion of the interest that is attributable to passive assets

held by the business. The term “passive asset” is defined in section 6166(b)(9)(B)(i) as any asset other than an asset used in carrying on a trade or business.

Revenue Ruling 75-366, 1975-2 C.B. 472, involved a decedent whose gross estate included farm real estate operated by tenant farmers. The decedent paid 40 percent of the expenses, received 40 percent of the crops, and actively participated in important management decisions of the tenant farms. The decedent made almost daily visits to inspect and discuss farm operations, and occasionally delivered supplies to the tenants. The ruling held that farming under these circumstances was a productive enterprise like a manufacturing enterprise and was distinguishable from the mere management of investment assets. Therefore, the decedent’s farm assets constituted an interest in a closely held business for purposes of section 6166.

Revenue Ruling 75-365, 1975-2 C.B. 471, also involved a decedent’s interest in real estate. In that ruling, the Service considered a situation in which the decedent individually maintained a fully equipped business office to collect rental payments on commercial and farm rental properties, receive payments on notes receivable, negotiate leases, make occasional loans, and direct by contract the maintenance of the properties. The ruling held that the decedent was merely an owner managing investment assets to obtain the income ordinarily expected from them, and was not conducting a trade or business. Therefore, the commercial and farm rental properties and notes receivable included in the decedent’s gross estate did not constitute an interest in a closely held business for purposes of section 6166.

Revenue Ruling 75-367, 1975-2 C.B. 472, held that a decedent’s ownership of 100 percent of the stock of an electing small business corporation that built homes on land owned and developed by the decedent, together with a business office and warehouse used both by the corporation and by the decedent in the land development activities constituted an interest in a closely held business. The ruling held, however, that the eight homes that were owned by the decedent and rented to tenants and for which the decedent collected rents, made the mortgage payments, and performed necessary

repairs and maintenance, did not constitute an interest in a closely held business because the decedent’s interest in those homes merely represented an investment.

ANALYSIS

In order for an interest in a business to qualify as an interest in a closely held business under section 6166, a decedent must conduct an active trade or business, or must hold an interest in a partnership, LLC, or corporation that itself carries on an active trade or business. Based on the definition of a passive asset in section 6166(b)(9)(B)(i), section 6166 applies only with regard to an active trade or business, as distinguished from the mere management of investment assets.

In determining whether the activities of the decedent, partnership, LLC or corporation constitute an active trade or business, the activities of agents and employees of the decedent, the partnership, LLC or corporation are also taken into consideration. The fact that some of the activities are conducted by third parties such as independent contractors who are neither agents nor employees of the decedent, partnership, LLC or corporation, will not prevent the business from qualifying as an active trade or business so long as these third-party activities are not of such a nature that the activities of the decedent, partnership, LLC or corporation (and their respective agents and employees) are reduced to the level of merely holding investment property.

Often, day-to-day real estate operations and activities are performed by independent contractors, such as property management companies. If a decedent, partnership, LLC, or corporation uses an unrelated property management company to perform most of the activities associated with the real estate interests, that fact suggests that an active trade or business does not exist.

To determine whether a decedent’s interest in real property is an interest in an asset used in an active trade or business, the Service will consider all the facts and circumstances, including the activities of agents and employees, the activities of management companies or other third parties, and the decedent’s ownership interest in any management company or other third party. The Service will consider the following nonexclusive list of factors:

- The amount of time the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) devoted to the trade or business;
- Whether an office was maintained from which the activities of the decedent, partnership, LLC, or corporation were conducted or coordinated, and whether the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) maintained regular business hours for that purpose;
- The extent to which the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) was actively involved in finding new tenants and negotiating and executing leases;
- The extent to which the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) provided landscaping, grounds care, or other services beyond the mere furnishing of leased premises;
- The extent to which the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) personally made, arranged for, performed, or supervised repairs and maintenance to the property (whether or not performed by independent contractors), including without limitation painting, carpentry, and plumbing; and
- The extent to which the decedent (or agents and employees of the decedent, partnership, LLC, or corporation) handled tenant repair requests and complaints.

No single factor is dispositive of whether a decedent’s activities with respect to the real property (or the activities of a partnership, LLC, or corporation through which decedent owns the real property) constitute an interest in a closely held business for purposes of section 6166.

HOLDINGS

(1) In *Situation 1*, A provided significant services to the strip mall tenants. A personally handled the day-to-day operation, management and maintenance of

the strip mall. A's activities went beyond those of a mere investor collecting profits from a passive asset. Moreover, even in situations in which A hired independent contractors to perform repairs that A could not perform personally, A was involved in the selection of the contractors and reviewed and approved the work performed. Under these circumstances, the use of independent contractors on occasions when A could not personally perform the work does not prevent A's activities from rising to the level of the conduct of an active trade or business. Thus, A's ownership of the strip mall qualifies as an interest in a closely held business for purposes of section 6166. (The result would be the same if the strip mall had instead been held in a single-member LLC owned by A, and the LLC were disregarded as an entity that is separate from its owner under §§301.7701-1 through 3 of the Procedure and Administration Regulations.)

(2) In *Situation 2*, in determining whether B was a proprietor carrying on an active trade or business with respect to B's interest in the office park, the activities of DEF Management Corporation (DEF) and its relationship with B are taken into account. DEF and its employees provided all necessary services for B's office park. B had no ownership interest in DEF. B's reliance on DEF to perform all necessary services, B's lack of any significant participation in the management or oversight of the property, and B's lack of any ownership interest in DEF are all factors that weigh heavily against a finding that the office park was used by B in an active trade or business. Thus, B was not a proprietor in an active trade or business and B's interest in the office park does not qualify as an interest in a closely held business for purposes of section 6166.

(3) In *Situation 3*, DEF provided all necessary services with regard to the man-

agement and maintenance of the office park, including advertising to attract new tenants, showing the property to prospective tenants, negotiating and administering leases, collecting the monthly rent, and arranging for third party independent contractors to provide all necessary services to maintain the buildings and grounds of the office park, including snow removal, security, and janitorial services. These activities are sufficient to conclude that DEF was actively managing the office park. Because B owned a significant interest in DEF, the activities of DEF with regard to the office park allow B's interest in the office park to qualify as an interest in a closely held business for purposes of section 6166.

(4) In *Situation 4*, the determination of whether the limited partnership was carrying on a trade or business for purposes of section 6166 is made with reference to the partnership's activities. Because the limited partnership, rather than C, owned the interest in the strip malls, the nature and level of the activities of the limited partnership must be evaluated. The limited partnership, acting through its general partner C, handled the day-to-day operations and management of the strip malls. The activities of C on behalf of the limited partnership included (either personally or with the assistance of employees or agents) performing daily maintenance of and repairs to the strip malls (or hiring, reviewing and approving the work of third party independent contractors for such work), collecting rental payments, negotiating leases, and making decisions regarding periodic renovations of the strip malls. Thus, the limited partnership carried on an active trade or business. Because the strip malls were used in carrying on the partnership's active trade or business, they are not passive assets under section 6166(b)(9) and their value is not excluded from the value

of C's interest in the partnership for purposes of section 6166. C's interest in the limited partnership qualifies as an interest in a closely held business for purposes of section 6166. (Because C owned at least 20 percent of the partnership, the conclusion would be the same even if C's activities were instead performed by another employee, partner or agent of the partnership).

(5) In *Situation 5*, MNO was engaged in an automobile dealership business. Thus, MNO was conducting an active trade or business at the time of D's death. Consequently, D's 100 percent stock interest in MNO qualifies as an interest in a closely held business. In addition, Real Property P was used exclusively in the business of MNO under a net lease from D. As in *Situation 3*, because D owned a significant interest in MNO, whose activities with regard to Real Property P constituted active management, D's interest in Real Property P also qualifies as an interest in a closely held business.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 75-365, 1975-2 C.B. 471, is revoked, and the portion of Rev. Rul. 75-367, 1975-2 C.B. 472, relating to the eight rental homes is revoked.

DRAFTING INFORMATION

The principal author of this revenue ruling is Tracey B. Leibowitz of the Office of the Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division). For further information regarding this revenue ruling, contact Laura R. Urich at (202) 622-4940 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

Deduction for Energy Efficient Commercial Buildings

Notice 2006-52

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the deduction for energy efficient commercial buildings under § 179D of the Internal Revenue Code. Specifically, this notice sets forth a process that allows a taxpayer who owns, or is a lessee of, a commercial building and installs property as part of the commercial building's interior lighting systems, heating, cooling, ventilation, and hot water systems, or building envelope to obtain a certification that the property satisfies the energy efficiency requirements of § 179D(c)(1) and (d). This notice also provides for a public list of software programs that must be used in calculating energy and power consumption for purposes of § 179D. The Internal Revenue Service and the Treasury Department expect that the rules set forth in this notice will be incorporated in regulations.

SECTION 2. BACKGROUND

.01 *In General.* Section 1331 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005), enacted § 179D of the Code, which provides a deduction with respect to energy efficient commercial buildings. Section 179D(a) allows a deduction to a taxpayer for part or all of the cost of energy efficient commercial building property that the taxpayer places in service after December 31, 2005, and before January 1, 2008. (See section 2.02 of this notice.) Sections 179D(d)(1) and 179D(f) allow a deduction to a taxpayer for part or all of the cost of certain partially qualifying commercial building property that the taxpayer places in service after December 31, 2005, and before January 1, 2008. (See sections 2.03, 2.04, and 2.05 of this notice.) For purposes of this notice partially qualifying commercial building property is property that would be energy efficient commercial building property but for the failure to achieve the 50-percent reduction in energy and power

costs required under section 2.02(1)(c) of this notice.

.02 *Energy Efficient Commercial Building Property.*

(1) *In General.* Energy efficient commercial building property is depreciable property that satisfies each of the following conditions:

(a) The property is installed on or in any building that is located in the United States and is within the scope of Standard 90.1-2001. (See section 5.02 of this notice for the description of buildings within the scope of Standard 90.1-2001 and section 5.06 of this notice for the complete description of Standard 90.1-2001.)

(b) The property is installed as part of—

- (i) the interior lighting systems,
- (ii) the heating, cooling, ventilation, and hot water systems, or
- (iii) the building envelope.

(c) It is certified that the interior lighting systems, heating, cooling, ventilation, and hot water systems, and building envelope that have been incorporated into the building, or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 50 percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001. The required 50-percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, hot water, and interior lighting systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the 50-percent reduction is achieved.

(2) *Maximum Amount of Deduction.*

(a) *In General.* The deduction for the cost of energy efficient commercial building property installed on or in a building shall not exceed the excess (if any) of—

- (i) the product of \$1.80 and the square footage of the building, over
- (ii) the aggregate amount of the § 179D deductions allowed with respect to the building for all prior taxable years.

(b) *Application to Multiple Taxpayers.*

If two or more taxpayers install energy efficient commercial building property on or in the same building, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.02(2)(a) of this notice.

.03 *Partially Qualifying Property: Energy Efficient Lighting Property.*

(1) *In General.* Energy efficient lighting property is partially qualifying property, within the meaning of section 2.01 of this notice, that is subject to either the permanent rule in section 2.03(1)(a) of this notice or the interim rule in section 2.03(1)(b) of this notice.

(a) *Permanent Rule.* Partially qualifying property is subject to the permanent rule if it is installed as part of the interior lighting systems of a building and it is certified that the interior lighting systems that have been incorporated into the building, or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 16²/₃ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001. The required 16²/₃-percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, hot water, and interior lighting systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the 16²/₃-percent reduction is achieved.

(b) *Interim Rule.* Partially qualifying property, within the meaning of section 2.01 of this notice, is subject to the interim rule if it is not subject to the permanent rule in section 2.03(1)(a) of this notice, if it is installed as part of the interior lighting systems of a building before the date on which final regulations under section 179D are published in the Federal Register, and it is certified that the interior lighting systems that have been incorporated into the build-

ing, or that the taxpayer plans to incorporate into the building,—

(i) Achieve a reduction in lighting power density of at least 25 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 (not including additional interior lighting power allowances) of Standard 90.1–2001;

(ii) Have controls and circuiting that comply fully with the mandatory and prescriptive requirements of Standard 90.1–2001;

(iii) Include provision for bi-level switching in all occupancies except hotel and motel guest rooms, store rooms, restrooms, and public lobbies; and

(iv) Meet the minimum requirements for calculated lighting levels as set forth in the IESNA Lighting Handbook, Performance and Application, Ninth Edition, 2000.

(2) *Maximum Amount of Deduction.*

(a) *Property subject to the permanent rule.*

(i) *In General.* If the energy efficient lighting property installed on or in a building is subject to the permanent rule in section 2.03(1)(a) of this notice, the deduction for the cost of the property shall not exceed the excess (if any) of—

(A) the product of \$0.60 and the square footage of the building, over

(B) the aggregate amount of the § 179D deductions allowed with respect to energy efficient lighting property installed on or in the building for all prior taxable years.

(ii) *Application to Multiple Taxpayers.* If two or more taxpayers install energy efficient lighting property on or in the same building and the property is subject to the permanent rule in section 2.03(1)(a) of this notice, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.03(2)(a)(i) of this notice.

(b) *Property subject to the interim rule.*

(i) *In General.* If the energy efficient lighting property installed on or in a building is subject to the interim rule in section 2.03(1)(b) of this notice, the deduction for the cost of the property is equal to the applicable percentage of the deduction that would be allowed if the property were subject to the permanent rule. In addition, the deduction for the cost of the property shall not exceed the excess (if any) of—

(A) the applicable percentage of the product of \$0.60 and the square footage of the building, over

(B) the aggregate amount of the § 179D deductions allowed with respect to energy efficient lighting property installed on or in the building for all prior taxable years.

(ii) *Applicable percentage.* If the interior lighting systems of the building achieve a reduction in lighting power density of at least 40 percent, the applicable percentage for the building is 100 percent. If the interior lighting systems of the building achieve a reduction in lighting power density of less than 40 percent, the applicable percentage for the building is 100 percent reduced at a rate of $3\frac{1}{3}$ percentage points per percentage point by which 40 percent exceeds the percentage reduction in lighting power density. For example, if the interior lighting systems achieve a reduction in lighting power density of 32.5 percent, the applicable percentage is 75 percent ($100 - (3\frac{1}{3} \times (40 - 32.5))$).

(iii) *Application to Multiple Taxpayers.* If two or more taxpayers install energy efficient lighting property on or in the same building and the property is subject to the interim rule in section 2.03(1)(b) of this notice, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.03(2)(b)(i) of this notice.

.04 *Partially Qualifying Property: Energy Efficient Heating, Cooling, Ventilation, and Hot Water Property.*

(1) *In General.* Energy efficient heating, cooling, ventilation, and hot water property is partially qualifying property, within the meaning of section 2.01 of this notice, that satisfies both of the following conditions:

(a) The property is installed as part of the heating, cooling, ventilation, and hot water systems of a building; and

(b) It is certified that the heating, cooling, ventilation, and hot water systems that have been incorporated into the building, or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by $16\frac{2}{3}$ percent or more as compared to a Reference Building that meets the mini-

imum requirements of Standard 90.1–2001. The required $16\frac{2}{3}$ -percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, and hot water systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the $16\frac{2}{3}$ -percent reduction is achieved.

(2) *Maximum Amount of Deduction.*

(a) *In General.* The deduction for the cost of energy efficient heating, cooling, ventilation, and hot water property installed on or in a building shall not exceed the excess (if any) of—

(i) the product of \$0.60 and the square footage of the building, over

(ii) the aggregate amount of the § 179D deductions allowed with respect to energy efficient heating, cooling, ventilation, and hot water property installed on or in the building for all prior taxable years.

(b) *Application to Multiple Taxpayers.* If two or more taxpayers install energy efficient heating, cooling, ventilation, and hot water property on or in the same building, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.04(2)(a) of this notice.

.05 *Partially Qualifying Property: Energy Efficient Building Envelope Property.*

(1) *In General.* Energy efficient building envelope property is partially qualifying property, within the meaning of section 2.01 of this notice, that satisfies both of the following conditions:

(a) The property is installed as part of the building envelope of a building; and

(b) It is certified that the building envelope that has been incorporated into the building, or that the taxpayer plans to incorporate into the building subsequent to the installation of such property, will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by $16\frac{2}{3}$ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1–2001. The required $16\frac{2}{3}$ -percent reduction must be accomplished solely through energy and power cost reductions for the heating, cooling, ventilation, hot

water, and interior lighting systems. Reductions in any other energy uses, such as receptacles, process loads, refrigeration, cooking, and elevators, are not taken into account in determining whether the 16²/₃-percent reduction is achieved.

(2) *Maximum Amount of Deduction.*

(a) *In General.* The deduction for the cost of energy efficient building envelope property installed on or in a building shall not exceed the excess (if any) of—

(i) the product of \$0.60 and the square footage of the building, over

(ii) the aggregate amount of the § 179D deductions allowed with respect to energy efficient building envelope property installed on or in the building for all prior taxable years.

(b) *Application to Multiple Taxpayers.* If two or more taxpayers install energy efficient building envelope property on or in the same building, the aggregate amount of the § 179D deductions allowed to all such taxpayers with respect to the building shall not exceed the amount determined under section 2.05(2)(a) of this notice.

SECTION 3. METHOD OF COMPUTATION

.01 *In General.* The Performance Rating Method (PRM) must be used to compute the percentage reduction in the total annual energy and power costs with respect to combined usage of a building's heating, cooling, ventilation, hot water, and interior lighting systems as compared to a Reference Building that meets the minimum requirements of Standard 90.1–2001.

.02 *Performance Rating Method (PRM).* For purposes of this notice, the PRM includes the following computations:

(1) Reference Building Energy and Power Costs equal the sum of the energy and power costs for the following components of the Reference Building:

- (a) Interior Lighting,
- (b) Heating,
- (c) Cooling,
- (d) Ventilation, and
- (e) Hot Water.

(2) Proposed Building Energy and Power Costs equal the sum of the energy and power costs for the same components of the Proposed Building.

(3) Percentage Reduction in Energy and Power Costs is determined by—

(a) Subtracting Proposed Building Energy and Power Costs from Reference Building Energy and Power Costs; and

(b) Expressing the difference as a percentage of Reference Building Energy and Power Costs.

.03 *Reference Building.* For purposes of this notice, the Reference Building is a building that is located in the same climate zone as the taxpayer's building and is otherwise comparable to the taxpayer's building except that its interior lighting systems, heating, cooling, ventilation, and hot water systems, and building envelope meet the minimum requirements of Standard 90.1–2001. The energy performance of the Reference Building shall be determined by following the methods for baseline building performance in the PRM in Appendix G of Standard 90.1–2004. In calculating baseline building performance, the Reference Building shall use the following additional requirements from the 2005 California Title 24 Nonresidential Alternative Calculation Method (ACM) Approval Manual:

(1) Number of occupants, occupant sensible and latent heat loads, receptacle loads, and hot water loads from ACM Tables N2–2 for whole building values and Table N2–3 for building area values appropriate for mixed use buildings;

(2) Occupancy, HVAC, fans, infiltration, hot water, lighting, and equipment schedules from ACM Tables N2–4 through N2–9;

(3) Infiltration modeled following ACM Section 2.4.1.6;

(4) Luminaire power for interior lighting systems from the 2005 California Title 24 Nonresidential ACM Appendix NB or from manufacturers data.

.04 *Proposed Building.*

(1) *Energy Efficient Commercial Building Property.* In computing energy and power cost savings for purposes of section 2.02 (relating to energy efficient commercial building property), the Proposed Building is a building that contains the interior lighting systems, heating, cooling, ventilation, and hot water systems, and building envelope that have been incorporated, or that the taxpayer plans to incorporate, into the taxpayer's building but that is otherwise identical to the Reference Building.

(2) *Energy Efficient Lighting Property.*

In computing energy and power cost savings for purposes of section 2.03 (relating to energy efficient lighting property), the Proposed Building is a building that contains the interior lighting systems that have been incorporated (or that the taxpayer plans to incorporate) into the taxpayer's building but that is otherwise identical to the Reference Building.

(3) *Energy Efficient Heating, Cooling, Ventilation, and Hot Water Property.* In computing energy and power cost savings for purposes of section 2.04 (relating to energy efficient heating, cooling, ventilation, and hot water property), the Proposed Building is a building that contains the heating, cooling, ventilation, and hot water systems that have been incorporated, or that the taxpayer plans to incorporate, into the taxpayer's building but that is otherwise identical to the Reference Building.

(4) *Energy Efficient Building Envelope Property.* In computing energy and power cost savings for purposes of section 2.05 (relating to energy efficient building envelope property), the Proposed Building is a building that contains the building envelope that has been incorporated, or that the taxpayer plans to incorporate, into the taxpayer's building but that is otherwise identical to the Reference Building.

SECTION 4. CERTIFICATION

Before a taxpayer may claim the § 179D deduction with respect to property installed on or in a commercial building, the taxpayer must obtain a certification with respect to the property. The certification must be provided by a qualified individual and satisfy the requirements of § 179D(c)(1). A taxpayer is not required to attach the certification to the return on which the deduction is taken. However, § 1.6001–1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any deduction claimed by the taxpayer. Accordingly, a taxpayer claiming a deduction under § 179D should retain the certification as part of the taxpayer's records for purposes of § 1.6001–1(a) of the Income Tax Regulations. A certification will be treated as satisfying the requirements of § 179D(c)(1) if the certification contains all of the following:

.01 The name, address, and telephone number of the qualified individual.

.02 The address of the building to which the certification applies.

.03 One of the following statements by the qualified individual:

(1) Statement for energy efficient commercial building property: The interior lighting systems, heating, cooling, ventilation and hot water systems, and building envelope that have been, or are planned to be, incorporated into the building will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 50 percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

(2) Statement for energy efficient lighting property that satisfies the requirements of the permanent rule of section 2.03(1)(a) of this notice: The interior lighting systems that have been, or are planned to be, incorporated into the building will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 16²/₃ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

(3) Statement for energy efficient lighting property that satisfies the requirements of the interim rule of section 2.03(1)(b) of this notice: The interior lighting systems that have been, or are planned to be, incorporated into the building satisfy the requirements of the interim rule of section 2.03(1)(b) of Notice 2006-52.

(4) Statement for energy efficient heating, cooling, ventilation, and hot water property: The heating, cooling, ventilation, and hot water systems that have been, or are planned to be incorporated into the building will reduce the total annual energy and power costs with respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 16²/₃ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

(5) Statement for energy efficient building envelope property: The building envelope that has been, or is planned to be, incorporated into the building will reduce the total annual energy and power costs with

respect to combined usage of the building's heating, cooling, ventilation, hot water, and interior lighting systems by 16²/₃ percent or more as compared to a Reference Building that meets the minimum requirements of Standard 90.1-2001.

.04 A statement by the qualified individual that the amount of such reduction has been determined under the rules of Notice 2006-52.

.05 A statement by the qualified individual that field inspections of the building performed by a qualified individual after the property has been placed in service have confirmed that the building has met, or will meet, the energy-saving targets contained in the design plans and specifications, and that the field inspections were performed in accordance with any inspection and testing procedures that (1) have been prescribed by the National Renewable Energy Laboratory (NREL) as Energy Savings Modeling and Inspection Guidelines for Commercial Building Federal Tax Deductions and (2) are in effect at the time the certification is given.

.06 A statement that the building owner has received an explanation of the energy efficiency features of the building and its projected annual energy costs;

.07 A statement that qualified computer software was used to calculate energy and power consumption and costs and identification of the qualified computer software used (see section 6 of this notice).

.08 A list identifying the components of the interior lighting systems, heating, cooling, ventilation, and hot water systems, and building envelope installed on or in the building, the energy efficiency features of the building, and its projected annual energy costs.

.09 A declaration, applicable to the certification and any accompanying documents, signed by the qualified individual, in the following form:

"Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this certification are true, correct, and complete."

SECTION 5. DEFINITIONS

The following definitions apply for purposes of this notice:

.01 *Building Square Footage*. The sum of the floor areas of the conditioned spaces within the building, including basements, mezzanine, and intermediate-floored tiers, and penthouses with headroom height of 7.5 feet or greater. Building square footage is measured from the exterior faces of exterior walls or from the centerline of walls separating buildings, but excludes covered walkways, open roofed-over areas, porches and similar spaces, pipe trenches, exterior terraces or steps, chimneys, roof overhangs, and similar features.

.02 *Building within the Scope of Standard 90.1-2001*. A structure that—

(1) Is wholly or partially enclosed within exterior walls, or within exterior and party walls, and a roof, affording shelter to persons, animals, or property; and

(2) Is not a single-family house, a multi-family structure of three stories or fewer above grade, a manufactured house (mobile home), or a manufactured house (modular).

.03 *Conditioned Space*. Any enclosed space within the building qualifying as cooled space, heated space, or indirectly conditioned space defined as follows:

(1) *Cooled Space*. An enclosed space that is cooled by a cooling system whose sensible output capacity exceeds 5 Btu per hour per square foot of floor area.

(2) *Heated Space*. An enclosed space that is heated by a heating system whose output capacity relative to the floor area exceeds 5 Btu per hour per square foot of floor area.

(3) *Indirectly Conditioned Space*. An enclosed space (other than a heated space or a cooled space) that is heated or cooled indirectly by being connected to adjacent space(s) and that satisfies either of the following conditions:

(a) The space's surface area that is adjacent to heated or cooled space multiplied by the weighted average U-factor of such adjacent surface area exceeds the space's surface area adjoining the outdoors, unconditioned spaces, and semi-heated spaces (e.g., corridors) multiplied by the weighted average U-factor of such adjoining surface area; or

(b) The air from heated or cooled spaces is intentionally transferred (naturally or mechanically) into the space at a rate exceeding 3 air changes per hour (ACH).

.04 *Qualified Computer Software*. Software that meets the following requirements:

(1) The software is included (at the time the certification is given) on the Department of Energy's published list of qualified software as described in section 6 of this notice.

(2) The software provides any information that regulations or other guidance require the taxpayer to file in connection with energy efficiency of property and the deduction allowed under § 179D.

(3) The software provides information that allows the user to document the energy efficiency features of the building and its projected annual energy costs.

.05 *Qualified Individual*. An individual that—

(1) Is not related (within the meaning of §45(e)(4)) to the taxpayer claiming the deduction under § 179D;

(2) Is an engineer or contractor that is properly licensed as a professional engineer or contractor in the jurisdiction in which the building is located; and

(3) Has represented in writing to the taxpayer that he or she has the requisite qualifications to provide the certification required under section 4 of this notice (in the case of an individual providing the certification) or to perform the inspection and testing described in section 4.05 of this notice (in the case of an individual performing the inspection).

.06 *Standard 90.1-2001*. ANSI/ASHRAE/IESNA Standard 90.1-2001, Energy Standard for Buildings Except Low-Rise Residential Buildings, developed for the American National Standards Institute by the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America (as in effect on April 2, 2003, including addenda 90.1a-2003, 90.1b-2002, 90.1c-2002, 90.1d-2002, and 90.1k-2002 as in effect on that date).

SECTION 6. LIST OF APPROVED SOFTWARE PROGRAMS

.01 *In General*. The Department of Energy will create and maintain a public list of software that may be used to calculate energy and power consumption and costs for purposes of providing a certification under section 4 of

this notice. This public list will appear at http://www.eere.energy.gov/buildings/info/tax_credit_2006.html. Software will be included on the list if the software developer submits the following information to the Department of Energy:

(1) The name, address, and (if applicable) web site of the software developer;

(2) The name, email address, and telephone number of the person to contact for further information regarding the software;

(3) The name, version, or other identifier of the software as it will appear on the list;

(4) All test results, input files, output files, weather data, modeler reports, and the executable version of the software with which the tests were conducted; and

(5) A declaration by the developer of the software, made under penalties of perjury, that—

(a) The software has been tested according to the American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ANSI/ASHRAE) Standard 140-2004 Standard Method of Test for the Evaluation of Building Energy Analysis Computer Programs;

(b) The software can model explicitly—

(i) 8,760 hours per year;

(ii) Calculation methodologies for the building components being modeled;

(iii) Hourly variations in occupancy, lighting power, miscellaneous equipment power, thermostat setpoints, and HVAC system operation, defined separately for each day of the week and holidays;

(iv) Thermal mass effects;

(v) Ten or more thermal zones;

(vi) Part-load performance curves for mechanical equipment;

(vii) Capacity and efficiency correction curves for mechanical heating and cooling equipment; and

(viii) Air-side and water-side economizers with integrated control; and

(c) The software can—

(i) Either directly determine energy and power costs or produce hourly reports of energy use by energy source suitable for determining energy and power costs separately; and

(ii) Design load calculations to determine required HVAC equipment capacities and air and water flow rates.

.02 *Addresses*. Submissions under this section must be addressed as follows:

Commercial Software List
Department of Energy
Office of Building Technologies,
EE-2J
1000 Independence Ave., SW
Washington, DC 20585-0121

.03 *Original and Updated Lists*. Software will be included on the original list if the software developer's submission is received before July 1, 2006. The list will be updated as necessary to reflect submissions received after June 30, 2006.

.04 *Removal from Published List*. The Department of Energy may, upon examination, determine that software is not sufficiently accurate to justify its use in calculating energy and power consumption and costs for purposes of providing a certification under section 4 of this notice and remove the software from the published list. The Department of Energy may undertake such an examination on its own initiative or in response to a public request supported by appropriate analysis of the software's deficiencies.

.05 *Effect of Removal from Published List*. Software may not be used to calculate energy and power consumption and costs for purposes of providing a certification with respect to property placed in service after the date on which the software is removed from the published list. The removal will not affect the validity of any certification with respect to property placed in service on or before the date on which the software is removed from the published list.

.06 *Public Availability of Information*. The Department of Energy may make all information provided under paragraph .01 of this section available for public review.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have 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 1545-2004.

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 sections 4 and 6. This information is required to be collected and retained in order to ensure that energy efficient commercial building property meets the requirements for the deduction under § 179D. This information will be used to determine whether commercial building property for which certifications are provided is property that qualifies for the deduction.

The collection of information is required to obtain a benefit.

The likely respondents are two groups: qualified individuals providing a certification under § 179D (section 4) and software developers seeking to have software included on the public list created by the Department of Energy (section 6).

For qualified individuals providing a certification under § 179D, the likely respondents are individuals. The likely number of certifications is 20,000. The estimated burden per certification ranges from 15 to 30 minutes with an estimated average burden of 22.5 minutes. The estimated total annual reporting burden is 7,500 hours.

For software developers seeking to have software included on the public list created by the Department of Energy, the likely respondents are individuals, corporations and partnerships. The estimated total annual reporting burden is 75 hours. The estimated annual burden per respondent varies from 1 to 2 hours, depending on individual circumstances, with an estimated average burden of 1½ hours to complete the submission required to have the software added to the public list. The estimated number of respondents is 50. The estimated 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.

SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of Associate Chief Counsel (Passthroughs

& Special Industries). For further information regarding this notice, contact Jennifer C. Bernardini at (202) 622-3120 (not a toll-free call).

Clarification of Notice 2006-26

Notice 2006-53

On February 22, 2006, the Service issued Notice 2006-26, 2006-11 I.R.B. 622. This notice clarifies that section 4.04 of Notice 2006-26 should read as follows:

.04 Specifically and Primarily Designed. A component is not specifically and primarily designed to reduce heat loss or gain of a dwelling unit if it provides structural support or a finished surface, as in the case of drywall or siding. In addition, a component is not specifically and primarily designed to reduce heat loss or gain of a dwelling unit if its principal purpose is to serve any function unrelated to the reduction of heat loss or gain. For purposes of the preceding sentence, the principal purpose of a component serves functions unrelated to the reduction of heat loss or gain if—

(1) Production costs attributable to features other than those that reduce heat loss or gain exceed production costs attributable to features that reduce heat loss or gain; or

(2) The facts and circumstances otherwise establish that the component's principal purpose is to serve a function other than heat loss or gain.

Taxpayers who purchased siding on or before June 26, 2006 may rely on a manufacturer's certification that the siding is an Eligible Building Envelope Component for purposes of the section 25C credit. A manufacturer will not be subject to penalties under § 7206 or § 6701 on account of a certification that siding is an Eligible Building Envelope Component under section 4.02 of Notice 2006-26 unless the manufacturer continues to provide the certification to purchasers of the siding after June 26, 2006.

DRAFTING INFORMATION

The principal author of this notice is Jennifer C. Bernardini of the Office of

Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer C. Bernardini at (202) 622-3120 (not a toll-free call).

Credit for New Qualified Alternative Motor Vehicles

Notice 2006-54

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the new qualified alternative fuel motor vehicle (QAFMV) credit under § 30B(a)(4) and (e) of the Internal Revenue Code (including the reduced credit under § 30B(e)(5) for mixed-fuel vehicles). Specifically, this notice provides procedures that a vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) may use if it chooses to certify:

(1) that a vehicle of a particular make, model, and year meets certain requirements that must be satisfied to claim the new QAFMV credit under § 30B(a)(4) and (e); and

(2) the amount of the credit allowable with respect to that vehicle.

This notice also provides guidance to taxpayers who purchase vehicles regarding the conditions under which they may rely on the vehicle manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) certification in determining whether a QAFMV credit is allowable with respect to the vehicle, and the amount of the credit. In addition, the notice provides guidance with respect to certain issues relating to qualification for and computation of the credit. The Internal Revenue Service and the Treasury Department expect that the regulations will incorporate the rules set forth in this notice.

SECTION 2. BACKGROUND

Section 30B(a)(4) provides for a credit determined under § 30B(e) for certain new QAFMVs. The credit is equal to the applicable percentage of the incremental cost of the new QAFMV. The minimum applicable percentage for QAFMVs is 50 percent, but the applicable percentage is 80 percent

for qualified QAFMVs that meet the emissions standards of § 30B(e)(2)(B)(i) or (ii) (see section 7.03(2) of this notice).

Certain vehicles other than QAFMVs (*i.e.*, mixed-fuel vehicles described in section 5.01 and 5.02 of this notice) may qualify for a reduced credit under § 30B(e)(5). Mixed-fuel vehicles are eligible for a reduced credit equal to either 70 percent or 90 percent of the applicable credit allowable under § 30B(a)(4). For this purpose, the applicable credit allowable under § 30B(a)(4) is the 80-percent credit for mixed-fuel vehicles that satisfy the emissions standards of § 30B(e)(2)(B)(i) or (ii) and the 50-percent credit for other mixed-fuel vehicles. The reduced credit for mixed-fuel vehicles applies only to vehicles that have a gross vehicle weight rating of more than 14,000 pounds and that can operate efficiently on a combination of alternative fuel and a petroleum-based fuel.

SECTION 3. SCOPE OF NOTICE

This notice provides certification procedures for the QAFMV credit under § 30B(a)(4) and (e). In addition, the notice provides guidance with respect to certain issues relating to qualification for and computation of the QAFMV credit. This notice does not address a number of other issues that are common to all motor vehicles that qualify for credits under § 30B. These include: (1) the rules under which lessors may claim the credits allowable under § 30B; (2) the rule preventing the credits from being used to reduce alternative minimum tax liability; and (3) recapture of the credits. The Service and Treasury Department expect to issue separate guidance relating to these issues.

SECTION 4. MEANING OF TERMS

The following definitions apply for purposes of this notice:

.01 In General. Terms used in this notice, but not specifically defined in this section, have the same meaning as when used in § 30B.

.02 Incremental Cost. The incremental cost of a new QAFMV or a mixed-fuel vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for the vehicle over the manufacturer's suggested retail price for a gasoline

or diesel fuel motor vehicle of the same model.

.03 Manufacturer's Suggested Retail Price. If the manufacturer of a QAFMV or a mixed-fuel vehicle is required under 15 U.S.C. § 1232 to provide a manufacturer's suggested retail price for the vehicle, then the manufacturer's suggested retail price for the vehicle is the price provided in accordance with 15 U.S.C. § 1232 for that vehicle. Similarly, if the manufacturer of a QAFMV or a mixed-fuel vehicle is required under 15 U.S.C. § 1232 to provide a manufacturer's suggested retail price for a gasoline or diesel fuel vehicle of the same model, then the manufacturer's suggested retail price for the gasoline or diesel fuel vehicle is the price provided in accordance with 15 U.S.C. § 1232 for that vehicle. In all other cases, the manufacturer's suggested retail price is the amount the manufacturer (or in the case of a foreign vehicle manufacturer, its domestic distributor) specifies as the manufacturer's suggested retail price under section 7.03(1)(g) and (h) of this notice.

.04 Mixed Fuel. A mixed fuel is a combination of an alternative fuel and a petroleum-based fuel.

SECTION 5. MIXED-FUEL VEHICLES

.01 90/10 Mixed-Fuel Vehicles. A mixed-fuel vehicle qualifies for a credit equal to 90 percent of the applicable credit allowable under § 30B(a)(4) only if the vehicle is not able to perform efficiently in normal operation unless its fuel contains at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

.02 75/25 Mixed-Fuel Vehicles. A mixed-fuel vehicle qualifies for a credit equal to 70 percent of the applicable credit allowable under § 30B(a)(4) only if the vehicle is not able to perform efficiently in normal operation unless its fuel contains at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

.03 Mixed-Fuel Percentages. The percentages of alternative fuel and petroleum-based fuel contained in a mixed fuel are determined on the basis of the Btu content of the alternative fuel and the petroleum-based fuel. If the alternative fuel contained in the mixed fuel is a liquid at least 85 percent of the volume of which

consists of methanol, the Btu content of any petroleum-based fuel included in such liquid is treated, for purposes of determining the percentages, as part of the Btu content of the alternative fuel contained in the mixed fuel and not as part of the Btu content of the petroleum-based fuel contained in the mixed fuel.

SECTION 6. CONVERTED VEHICLES

.01 In General. The definitions and rules in this section apply solely with respect to converted vehicles. For this purpose, a converted vehicle is an alternative fuel motor vehicle or a mixed-fuel vehicle that was converted from a new or used gasoline or diesel fuel motor vehicle.

.02 Made by a Manufacturer. A converted vehicle is made by a manufacturer only if a person is required under title II of the Clean Air Act (or as a condition of receiving an exemption from the tampering prohibitions in § 203 of the Clean Air Act) to obtain a certificate of conformity covering the converted vehicle or the engine used in the converted vehicle.

.03 Manufacturer. (1) Except as provided in section 6.03(2) of this notice, the manufacturer of a converted vehicle is the person required under title II of the Clean Air Act (or as a condition of receiving an exemption from the tampering prohibitions in § 203 of the Clean Air Act) to obtain the certificate of conformity covering the converted vehicle or, if no person is so required, the person required under title II of the Clean Air Act (or as a condition of receiving an exemption from the tampering prohibitions in § 203 of the Clean Air Act) to obtain a certificate of conformity covering the engine used in the converted vehicle.

(2) If an importer of a converted vehicle would be treated as the manufacturer of the vehicle under section 6.03(1) of this notice, the manufacturer is the person that manufactured or assembled the vehicle. If an importer of an engine would be treated as the manufacturer of the converted vehicle in which it is used under section 6.03(1) of this notice, the manufacturer of the converted vehicle is the person that manufactured or assembled the engine.

.04 Original Use. The original use of the alternative fuel motor vehicle or mixed-fuel vehicle commences with the

first person to place the vehicle in service after the conversion.

SECTION 7. MANUFACTURER'S CERTIFICATION

.01 *When Certification Permitted.* A vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) may certify to purchasers that a vehicle of a particular make, model, and year meets all requirements (other than those listed in section 7.02 of this notice) that must be satisfied to claim the new QAFMV credit, and the amount of the credit allowable under § 30B(a)(4) and (e) with respect to that vehicle, if the following requirements are met:

(1) The manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) has submitted to the Service, in accordance with section 8 of this notice, a certification with respect to the vehicle and the certification satisfies the requirements of section 7.03 of this notice; and

(2) The manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) has received an acknowledgment of the certification from the Service.

.02 *Purchaser's Reliance.* Except as provided in section 7.05 of this notice, a purchaser of a motor vehicle may rely on the manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) certification concerning the vehicle and the amount of the credit allowable with respect to the vehicle (including in cases in which the certification is received after the purchase of the vehicle). The purchaser may claim a credit in the certified amount with respect to the vehicle if the following requirements are satisfied:

(1) The vehicle is placed in service by the taxpayer after December 31, 2005, and is purchased on or before December 31, 2010;

(2) The original use of the vehicle commences with the taxpayer;

(3) The vehicle is acquired for use or lease by the taxpayer, and not for resale; and

(4) The vehicle is used predominantly in the United States.

.03 *Content of Certification.* The certification must contain the information re-

quired in section 7.03(1) of this notice and any applicable additional information required in section 7.03(2), section 7.03(3), or section 7.03(4) of this notice.

(1) *All Vehicles.* For all vehicles, the certification must contain—

(a) The name, address, and taxpayer identification number of the certifying entity;

(b) The make, model, year, and any other appropriate identifiers of the motor vehicle;

(c) A statement that the vehicle, as configured to operate only on an alternative fuel or a mixed fuel, is made by a manufacturer;

(d) The type of credit for which the vehicle qualifies (*i.e.*, either the credit for alternative fuel motor vehicles or the reduced credit for mixed-fuel vehicles);

(e) The amount of the credit for such vehicle (showing computations);

(f) The gross vehicle weight rating of the vehicle;

(g) The manufacturer's suggested retail price for the vehicle;

(h) The manufacturer's suggested retail price for a gasoline or diesel fuel motor vehicle of the same model;

(i) The alternative fuel used by the vehicle;

(j) A statement that the vehicle complies with the applicable provisions of the Clean Air Act;

(k) A statement that the vehicle complies with the applicable air quality provisions of state law of each state that has adopted such provisions under a waiver under § 209(b) of the Clean Air Act or a list identifying each such state that has adopted applicable air quality provisions with which the vehicle does not comply;

(l) A statement that the vehicle complies with the motor vehicle safety provisions of 49 U.S.C. §§ 30101 through 30169; and

(m) A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the manufacturer (or, in the case of a foreign manufacturer, its domestic distributor) in such matters, in the following form:

"Under penalties of perjury, I declare that I have examined this certification, including accompanying documents, and to the best of my knowledge and belief, the

facts presented in support of this certification are true, correct, and complete."

(2) *80 Percent Credit.* If the manufacturer (or, in the case of a foreign manufacturer, its domestic distributor) is certifying that the vehicle is eligible for the 80-percent credit (or is a mixed-fuel vehicle for which the applicable credit allowable under § 30B(a)(4) is the 80-percent credit), the certification must also contain one of the following:

(a) a copy of the vehicle's certificate of conformity under the Clean Air Act and evidence that the vehicle meets or exceeds the most stringent applicable standard (other than a zero emission standard) available for certification under the Clean Air Act—

(i) as of the date of the certification in the case of a vehicle with a gross vehicle weight rating of not more than 14,000 pounds; and

(ii) as of August 8, 2005, in the case of a vehicle with a gross vehicle weight rating of more than 14,000 pounds; or

(b) a copy of an order certifying the vehicle as meeting the same requirements as vehicles that may be sold or leased in California and evidence that the vehicle meets or exceeds the most stringent applicable standard (other than a zero emission standard) available for certification under California state laws enacted in accordance with a waiver granted under § 209(b) of the Clean Air Act—

(i) as of the date of the certification in the case of a vehicle with a gross vehicle weight rating of not more than 14,000 pounds; and

(ii) as of August 8, 2005, in the case of a vehicle with a gross vehicle weight rating of more than 14,000 pounds;

(3) *Alternative Fuel Motor Vehicles.* A certification relating to an alternative fuel motor vehicle must also contain a statement that the vehicle is only capable of operating on the identified alternative fuel.

(4) *Mixed-Fuel Motor Vehicles.* A certification relating to a mixed-fuel vehicle must also contain—

(a) a statement that the vehicle is able to perform efficiently in normal operation on a mixed fuel;

(b) a statement identifying the alternative fuel contained in the mixed fuel;

(c) a statement specifying either—

(i) that the vehicle is not able to perform efficiently in normal operation unless its

fuel contains at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel; or

(ii) that the vehicle is not able to perform efficiently in normal operation unless its fuel contains at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel; and

(d) one of the following:

(i) a copy of the certificate of conformity under the Clean Air Act; or

(ii) a copy of an order certifying that the vehicle meets the same requirements as vehicles that may be sold or leased in California, and evidence that the vehicle meets or exceeds the applicable low emission vehicle standard under 40 C.F.R. § 88.105–94, for that make and model year.

.04 Acknowledgment. The Service will review the original signed certification and issue an acknowledgment letter to the vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) within 30 days of receipt of the request for certification. This acknowledgment letter will state whether purchasers may rely on the certification.

.05 Effect of Erroneous Certification. The acknowledgment that the Service provides for a certification is not a determination that a vehicle qualifies for the credit, or that the amount of the credit is correct. The Service may, upon examination (and after any appropriate consultation with Department of Transportation or the Environmental Protection Agency), determine that the vehicle is not a new QAFMV or a mixed-fuel vehicle or that the amount of the credit determined by the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to be allowable with respect to the vehicle is incorrect. In either event, the manufacturer's (or, in the case of a foreign vehicle manufacturer, its domestic distributor's) right to provide a certification to future purchasers will be withdrawn, and purchasers who acquire vehicles after the date on which the Service publishes an announcement of the withdrawal may not rely on the certifica-

tion. Purchasers may continue to rely on the certification for vehicles they acquired before the date on which the announcement of the withdrawal is published (including in cases in which the vehicle is not placed in service and the credit is not claimed until after that date), and the Service will not attempt to collect any understatement of tax liability attributable to such reliance. Manufacturers (or, in the case of foreign manufacturers, their domestic distributors) are reminded that an erroneous certification may result in the imposition of penalties—

(a) under § 7206 for fraud and making false statements; and

(b) under § 6701 for aiding and abetting an understatement of tax liability in the amount of \$1,000 (\$10,000 in the case of understatements by corporations) per return on which a credit is claimed in reliance on the certification.

SECTION 8. TIME AND ADDRESS FOR FILING CERTIFICATION

.01 Time for Filing. In order for certifications under section 7 of this notice to be effective for new QAFMVs or mixed-fuel vehicles placed in service during a particular calendar year, the certification must be received by the Service not later than December 31st of that calendar year.

.02 Address for Filing. Certifications under section 7 of this notice must be sent to:

Internal Revenue Service,
Industry Director, Large and Mid-Size
Business, Heavy Manufacturing and
Transportation,
Metro Park Office Complex - LMSB,
111 Wood Avenue, South,
Iselin, New Jersey 08830.

SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this notice 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 1545–1993.

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 7. This information is required to be collected and retained in order to ensure that vehicles meet the requirements for the new QAFMV credit under § 30B(a)(4) and (e). This information will be used to determine whether the vehicle for which the credit is claimed by a taxpayer is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations and partnerships.

The estimated total annual reporting burden is 600 hours.

The estimated annual burden per respondent varies from 16 hours to 25 hours, depending on individual circumstances, with an estimated average burden of 20 hours to complete the certification required under this notice. The estimated number of respondents is 30.

The estimated annual frequency of responses is on occasion.

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 10. DRAFTING INFORMATION

The principal author of this notice is Nicole R. Cimino of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Ms. Cimino at (202) 622–3120 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Guidance Necessary to Facilitate Business Electronic Filing and Burden Reduction

REG-134317-05

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9264) that simplify, clarify, or eliminate reporting burdens. Those regulations also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments, and a request for a public hearing, must be received by August 28, 2006.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-134317-05), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-134317-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS internet site at www.irs.gov/regs or via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-134317-05).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grid Glycer, (202) 622-7930, concerning submissions of comments, Kelly Banks (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, D.C. 20224. Comments on the collection of information should be received by August 28, 2006. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance and purchase of service to provide information.

The collection of information in these proposed regulations is in each of the corresponding temporary regulations.

The proposed regulations simplify, clarify, or eliminate reporting burdens. These regulations also eliminate regulatory impediments to the electronic filing of certain statements that taxpayers are required to include on or with their Federal income tax returns.

The collection of information is mandatory. The likely respondents are large corporations, many of which will be members

of a consolidated group and/or component members of a controlled group.

Estimated total annual reporting burden: 262,500 hours.

Estimated average annual burden hours per respondent: 0.75 hours.

Estimated number of respondents: 350,000.

Estimated frequency of responses: annually.

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

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

Background and Explanation of Provisions

Temporary Regulations in this issue of the Bulletin amend 26 CFR Part 1 to add §§1.302-2T, 1.302-4T, 1.331-1T, 1.332-6T, 1.338-10T, 1.351-3T, 1.355-5T, 1.368-3T, 1.381(b)-1T, 1.382-8T, 1.382-11T, 1.1081-11T, 1.1221-2T, 1.1502-13T, 1.1502-31T, 1.1502-32T, 1.1502-33T, 1.1502-35T, 1.1502-76T, 1.1502-95T, 1.1563-1T, 1.1563-3T, and amend Part 602 to add §1.6012-2T. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the following proposed regulations: §§1.302-2, 1.302-4, 1.331-1, 1.332-6, 1.351-3, 1.355-5, 1.368-3, 1.381(b)-1, 1.1081-11, 1.1563-1, 1.1563-3, and

1.6012-2. With respect to the collections of information in such regulations, and with respect to the following proposed regulations, §§1.338-10, 1.382-8, 1.382-11, 1.1221-2, 1.1502-13, 1.1502-31, 1.1502-32, 1.1502-33, 1.1502-35, 1.1502-76 and 1.1502-95, it is hereby certified that these provisions will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect large corporations (which are members of either controlled or consolidated groups) and in the case of all corporations will substantially reduce or eliminate the existing reporting burden. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Grid Glycer of the Office of Associate Chief Counsel (Corporate). Other personnel from the Treasury Department and the IRS participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.302-2 is amended by:

1. Redesignating paragraph (b) as paragraph (b)(1).

2. Revising newly designated paragraph (b)(1).

3. Adding paragraphs (b)(2) and (d).

The additions and revisions read as follows:

§1.302-2 Redemptions not taxable as dividends.

[The text of the proposed amendment to §1.302-2 is the same as the text for §1.302-2T published elsewhere in this issue of the Bulletin].

Par. 3. Section 1.302-4 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§1.302-4 Termination of shareholder's interest.

[The text of the proposed amendment to §1.302-4 is the same as the text for §1.302-4T published elsewhere in this issue of the Bulletin].

Par. 4. Section 1.331-1 is amended by revising paragraph (d) and adding paragraph (f) to read as follows:

§1.331-1 Corporate liquidations.

[The text of the proposed amendment to §1.331-1 is the same as the text for §1.331-1T published elsewhere in this issue of the Bulletin].

Par. 5. Section 1.332-6 added to read as follows:

§1.332-6 Records to be kept and information to be filed with return.

[The text of the proposed §1.332-6 is the same as the text for §1.332-6T published elsewhere in this issue of the Bulletin].

Par. 6. Section 1.338-10 is amended by revising paragraph (a)(4)(iii) and adding paragraph (c) to read as follows:

§1.338-10 Filing of returns.

[The text of the proposed amendment to §1.338-10 is the same as the text for §1.338-10T published elsewhere in this issue of the Bulletin].

Par. 7. Section 1.351-3 is added to read as follows:

§1.351-3 Records to be kept and information to be filed.

[The text of the proposed §1.351-3 is the same as the text for §1.351-3T published elsewhere in this issue of the Bulletin].

Par. 8. Section 1.355-5 is added to read as follows:

§1.355-5 Records to be kept and information to be filed.

[The text of the proposed §1.355-5 is the same as the text for §1.355-5T published elsewhere in this issue of the Bulletin].

Par. 9. Section 1.368-3 is added to read as follows:

§1.368-3 Records to be kept and information to be filed with returns.

[The text of the proposed §1.368-3 is the same as the text for §1.368-3T published elsewhere in this issue of the Bulletin].

Par. 10. Section 1.381(b)-1 is amended by revising paragraph (b)(3) and adding paragraph (e) to read as follows:

§1.381(b)-1 Operating rules applicable to carryovers in certain corporate acquisitions.

[The text of the proposed amendment to §1.381(b)-1 is the same as the text for §1.381(b)-1T published elsewhere in this issue of the Bulletin].

Par. 11. Section 1.382-8 is amended by:

1. Revising paragraphs (c)(2) and (h).

2. Redesignating paragraph (e)(4) as paragraph (e)(5).

3. Adding new paragraphs (e)(4) and (j)(4).

The additions and revisions read as follows:

§1.382-8 Controlled groups.

[The text of the proposed amendment to §1.382-8 is the same as the text for §1.382-8T published elsewhere in this issue of the Bulletin].

Par. 12. Section 1.382-11 is added to read as follows:

§1.382–11 Reporting requirements.

[The text of the proposed §1.382–11 is the same as the text for §1.382–11T published elsewhere in this issue of the Bulletin].

Par. 13. Section 1.1081–11 is added to read as follows:

§1.1081–11 Records to be kept and information to be filed with returns.

[The text of the proposed §1.1081–11 is the same as the text for §1.1081–11T published elsewhere in this issue of the Bulletin].

Par. 14. Section 1.1221–2 is amended by revising paragraph (e)(2)(iv) and adding paragraphs (i) through (j) to read as follows:

§1.1221–2 Hedging transactions.

[The text of the proposed amendment to §1.1221–2 is the same as the text for §1.1221–2T published elsewhere in this issue of the Bulletin].

Par. 15. Section 1.1502–13 is amended by revising paragraphs (f)(5)(ii)(E) and (f)(6)(i)(C)(2) and adding paragraph (m) to read as follows:

§1.1502–13 Intercompany transactions.

[The text of the proposed amendment to §1.1502–13 is the same as the text for §1.1502–13T published elsewhere in this issue of the Bulletin].

Par. 16. Section 1.1502–31 is amended by revising paragraph (e)(2) and adding paragraphs (i) through (j) to read as follows:

§1.1502–31 Stock basis after a group structure change.

[The text of the proposed amendment to §1.1502–31 is the same as the text for §1.1502–31T published elsewhere in this issue of the Bulletin].

Par. 17. Section 1.1502–32 is amended by revising paragraph (b)(4)(iv) and adding paragraphs (i) through (j) to read as follows:

§1.1502–32 Investment adjustments.

[The text of the proposed amendment to §1.1502–32 is the same as the text for

§1.1502–32T published elsewhere in this issue of the Bulletin].

Par. 18. Section 1.1502–33 is amended by revising paragraph (d)(5)(i)(D) and adding paragraph (k) to read as follows:

§1.1502–33 Earnings and profits.

[The text of the proposed amendment to §1.1502–33 is the same as the text for §1.1502–33T published elsewhere in this issue of the Bulletin].

Par. 19. Section 1.1502–35 is amended by revising paragraph (c)(4)(i) and adding paragraph (k) to read as follows:

§1.1502–35 Transfers of subsidiary stock and deconsolidations of subsidiaries.

[The text of the proposed amendment to § 1.1502–35 is the same as the text of §1.1502–35T published elsewhere in this issue of the Bulletin].

Par. 20. Section 1.1502–76 is amended by revising paragraph (b)(2)(ii)(D) and adding paragraph (d) to read as follows:

§1.1502–76 Taxable year of members of group.

[The text of the proposed amendment to §1.1502–76 is the same as the text for §1.1502–76T published elsewhere in this issue of the Bulletin].

Par. 21. Section 1.1502–95 is amended by revising paragraphs (e)(8) and (f) and adding paragraph (g) to read as follows:

§1.1502–95 Rules on ceasing to be a member of a consolidated group (or loss subgroup).

[The text of the proposed amendment to §1.1502–95 is the same as the text for §1.1502–95T published elsewhere in this issue of the Bulletin].

Par. 22. Section 1.1563–1 is amended by revising paragraph (c)(2) and adding paragraph (e) to read as follows:

§1.1563–1 Definition of controlled group of corporations and component members.

[The text of the proposed amendment to §1.1563–1 is the same as the text for §1.1563–1T published elsewhere in this issue of the Bulletin].

Par. 23. Section 1.1563–3 is amended by revising paragraph (d)(2)(iv) and adding paragraph (e) to read as follows:

§1.1563–3 Rules for determining stock ownership.

[The text of the proposed amendment to §1.1563–3 is the same as the text for §1.1563–3T published elsewhere in this issue of the Bulletin].

Par. 24. Section 1.6012–2 is amended by revising paragraph (c) and adding paragraph (k) to read as follows:

§1.6012–2 Corporations required to make returns of income.

[The text of the proposed amendment to §1.6012–2 is the same as the text for §1.6012–2T published elsewhere in this issue of the Bulletin].

Mark E. Matthews,
Deputy Commissioner for
Services and Enforcement.

(Filed by the Office of the Federal Register on May 26, 2006, 8:45 a.m., and published in the issue of the Federal Register for May 30, 2006, 71 F.R. 30640)

Correction to the 2005 Form 6765, Credit for Increasing Research Activities

Announcement 2006–39

The 2005 Form 6765 has been revised to show that only 20% (instead of 100%) of the energy research consortia expense is included in the alternative incremental credit. Under Section B—Alternative Incremental Credit, the following changes are made:

- Line 21 is changed to line 21a
- Line 21b is added to show the sum of lines 18 and 21a.
- The line 22 text is changed to incorporate line 21b.
- The reference to line 18 in the line 40 text is deleted.

A corrected version of 2005 Form 6765, *Credit for Increasing Research Activities*, is now available for download at <http://www.irs.gov/pub/irs-pdf/f6765.pdf>

**Notice of Disposition of
Declaratory Judgment
Proceedings Under Section
7428**

Announcement 2006-40

This announcement serves notice to donors that on May 9, 2006, the United

States Court of Federal Claims entered Stipulations of Dismissal with Prejudice pursuant to the agreement of the parties that the organizations listed below are described in section 501(c)(3) and are recognized as exempt from tax under section 501(a), effective as of the dates in parentheses.

Northern Riverview, Inc. Monsey, NY	(January 1, 2000)
Fountainview at College Road, Inc. Monsey, NY	(January 1, 2000)
Northern Metropolitan, Inc. Monsey, NY	(January 1, 2000)
Northern Manor Multicare, Inc. Nanuet, NY	(January 1, 2000)
Northern Services Group, Inc. Monsey, NY	(January 1, 2001)

**Notice of Disposition of
Declaratory Judgment
Proceedings Under Section
7428**

Announcement 2006-41

This announcement serves notice to donors that on May 12, 2006, pursuant to

agreement of the parties, the United States Tax Court entered a decision declaring that the organization listed below is described in section 501(c)(3) and is recognized as exempt from tax under section 501(a), effective as of the date in parenthesis.

Northern Metropolitan Foundation for Healthcare, Inc. Monsey, NY	(January 1, 2000)
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Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

Bulletin 2006–1 through 2006–26

Announcements:

2006-1, 2006-1 I.R.B. 260
2006-2, 2006-2 I.R.B. 300
2006-3, 2006-3 I.R.B. 327
2006-4, 2006-3 I.R.B. 328
2006-5, 2006-4 I.R.B. 378
2006-6, 2006-4 I.R.B. 340
2006-7, 2006-4 I.R.B. 342
2006-8, 2006-4 I.R.B. 344
2006-9, 2006-5 I.R.B. 392
2006-10, 2006-5 I.R.B. 393
2006-11, 2006-6 I.R.B. 420
2006-12, 2006-6 I.R.B. 421
2006-13, 2006-7 I.R.B. 462
2006-14, 2006-8 I.R.B. 516
2006-15, 2006-11 I.R.B. 632
2006-16, 2006-12 I.R.B. 653
2006-17, 2006-12 I.R.B. 653
2006-18, 2006-12 I.R.B. 654
2006-19, 2006-13 I.R.B. 674
2006-20, 2006-13 I.R.B. 675
2006-21, 2006-14 I.R.B. 703
2006-22, 2006-16 I.R.B. 779
2006-23, 2006-14 I.R.B. 729
2006-24, 2006-16 I.R.B. 820
2006-25, 2006-18 I.R.B. 871
2006-26, 2006-18 I.R.B. 871
2006-27, 2006-18 I.R.B. 871
2006-28, 2006-18 I.R.B. 873
2006-29, 2006-19 I.R.B. 879
2006-30, 2006-19 I.R.B. 879
2006-31, 2006-20 I.R.B. 912
2006-32, 2006-20 I.R.B. 913
2006-33, 2006-20 I.R.B. 914
2006-34, 2006-21 I.R.B. 937
2006-35, 2006-24 I.R.B. 1061
2006-36, 2006-23 I.R.B. 1038
2006-37, 2006-23 I.R.B. 1039
2006-38, 2006-24 I.R.B. 1062
2006-39, 2006-26 I.R.B. 1186
2006-40, 2006-26 I.R.B. 1187
2006-41, 2006-26 I.R.B. 1187

Court Decisions:

2081, 2006-13 I.R.B. 656
2082, 2006-14 I.R.B. 697

Notices:

2006-1, 2006-4 I.R.B. 347
2006-2, 2006-2 I.R.B. 278
2006-3, 2006-3 I.R.B. 306
2006-4, 2006-3 I.R.B. 307

Notices— Continued:

2006-5, 2006-4 I.R.B. 348
2006-6, 2006-5 I.R.B. 385
2006-7, 2006-10 I.R.B. 559
2006-8, 2006-5 I.R.B. 386
2006-9, 2006-6 I.R.B. 413
2006-10, 2006-5 I.R.B. 386
2006-11, 2006-7 I.R.B. 457
2006-12, 2006-7 I.R.B. 458
2006-13, 2006-8 I.R.B. 496
2006-14, 2006-8 I.R.B. 498
2006-15, 2006-8 I.R.B. 501
2006-16, 2006-9 I.R.B. 538
2006-17, 2006-10 I.R.B. 559
2006-18, 2006-8 I.R.B. 502
2006-19, 2006-9 I.R.B. 539
2006-20, 2006-10 I.R.B. 560
2006-21, 2006-12 I.R.B. 643
2006-22, 2006-11 I.R.B. 593
2006-23, 2006-11 I.R.B. 594
2006-24, 2006-11 I.R.B. 595
2006-25, 2006-11 I.R.B. 609
2006-26, 2006-11 I.R.B. 622
2006-27, 2006-11 I.R.B. 626
2006-28, 2006-11 I.R.B. 628
2006-29, 2006-12 I.R.B. 644
2006-30, 2006-24 I.R.B. 1044
2006-31, 2006-15 I.R.B. 751
2006-32, 2006-13 I.R.B. 677
2006-33, 2006-15 I.R.B. 754
2006-34, 2006-14 I.R.B. 705
2006-35, 2006-14 I.R.B. 708
2006-36, 2006-15 I.R.B. 756
2006-37, 2006-18 I.R.B. 855
2006-38, 2006-16 I.R.B. 777
2006-39, 2006-17 I.R.B. 841
2006-40, 2006-18 I.R.B. 855
2006-41, 2006-18 I.R.B. 857
2006-42, 2006-19 I.R.B. 878
2006-43, 2006-21 I.R.B. 921
2006-44, 2006-20 I.R.B. 889
2006-45, 2006-20 I.R.B. 891
2006-46, 2006-24 I.R.B. 1044
2006-47, 2006-20 I.R.B. 892
2006-48, 2006-21 I.R.B. 922
2006-49, 2006-22 I.R.B. 943
2006-50, 2006-25 I.R.B. 1141
2006-51, 2006-25 I.R.B. 1144
2006-52, 2006-26 I.R.B. 1175
2006-53, 2006-26 I.R.B. 1180
2006-54, 2006-26 I.R.B. 1180
2006-55, 2006-25 I.R.B. 1146

Proposed Regulations:

REG-107722-00, 2006-4 I.R.B. 354
REG-104385-01, 2006-5 I.R.B. 389

Proposed Regulations— Continued:

REG-122380-02, 2006-10 I.R.B. 563
REG-137243-02, 2006-3 I.R.B. 317
REG-139059-02, 2006-24 I.R.B. 1052
REG-144784-02, 2006-23 I.R.B. 1036
REG-133446-03, 2006-2 I.R.B. 299
REG-113365-04, 2006-10 I.R.B. 580
REG-148568-04, 2006-6 I.R.B. 417
REG-106418-05, 2006-7 I.R.B. 461
REG-133036-05, 2006-20 I.R.B. 911
REG-134317-05, 2006-26 I.R.B. 1184
REG-138879-05, 2006-8 I.R.B. 503
REG-143244-05, 2006-6 I.R.B. 419
REG-146384-05, 2006-17 I.R.B. 843
REG-146459-05, 2006-8 I.R.B. 504
REG-157271-05, 2006-12 I.R.B. 652
REG-164247-05, 2006-15 I.R.B. 758
REG-111578-06, 2006-24 I.R.B. 1060

Revenue Procedures:

2006-1, 2006-1 I.R.B. 1
2006-2, 2006-1 I.R.B. 89
2006-3, 2006-1 I.R.B. 122
2006-4, 2006-1 I.R.B. 132
2006-5, 2006-1 I.R.B. 174
2006-6, 2006-1 I.R.B. 204
2006-7, 2006-1 I.R.B. 242
2006-8, 2006-1 I.R.B. 245
2006-9, 2006-2 I.R.B. 278
2006-10, 2006-2 I.R.B. 293
2006-11, 2006-3 I.R.B. 309
2006-12, 2006-3 I.R.B. 310
2006-13, 2006-3 I.R.B. 315
2006-14, 2006-4 I.R.B. 350
2006-15, 2006-5 I.R.B. 387
2006-16, 2006-9 I.R.B. 539
2006-17, 2006-14 I.R.B. 709
2006-18, 2006-12 I.R.B. 645
2006-19, 2006-13 I.R.B. 677
2006-20, 2006-17 I.R.B. 841
2006-21, 2006-24 I.R.B. 1050
2006-22, 2006-23 I.R.B. 1033
2006-23, 2006-20 I.R.B. 900
2006-24, 2006-22 I.R.B. 943
2006-25, 2006-21 I.R.B. 926
2006-26, 2006-21 I.R.B. 936
2006-27, 2006-22 I.R.B. 945
2006-28, 2006-25 I.R.B. 1147

Revenue Rulings:

2006-1, 2006-2 I.R.B. 261
2006-2, 2006-2 I.R.B. 261
2006-3, 2006-2 I.R.B. 276
2006-4, 2006-2 I.R.B. 264
2006-5, 2006-3 I.R.B. 302
2006-6, 2006-5 I.R.B. 381

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.

Revenue Rulings— Continued:

2006-7, 2006-6 I.R.B. 399
2006-8, 2006-9 I.R.B. 520
2006-9, 2006-9 I.R.B. 519
2006-10, 2006-10 I.R.B. 557
2006-11, 2006-12 I.R.B. 635
2006-12, 2006-12 I.R.B. 637
2006-13, 2006-13 I.R.B. 656
2006-14, 2006-15 I.R.B. 740
2006-15, 2006-13 I.R.B. 661
2006-16, 2006-14 I.R.B. 694
2006-17, 2006-15 I.R.B. 748
2006-18, 2006-15 I.R.B. 743
2006-19, 2006-15 I.R.B. 749
2006-20, 2006-15 I.R.B. 746
2006-21, 2006-15 I.R.B. 745
2006-22, 2006-14 I.R.B. 687
2006-23, 2006-17 I.R.B. 839
2006-24, 2006-19 I.R.B. 875
2006-25, 2006-20 I.R.B. 882
2006-26, 2006-22 I.R.B. 939
2006-27, 2006-21 I.R.B. 915
2006-28, 2006-22 I.R.B. 938
2006-29, 2006-23 I.R.B. 1031
2006-30, 2006-25 I.R.B. 1134
2006-31, 2006-25 I.R.B. 1133
2006-32, 2006-26 I.R.B. 1170
2006-33, 2006-26 I.R.B. 1148
2006-34, 2006-26 I.R.B. 1171

Tax Conventions:

2006-6, 2006-4 I.R.B. 340
2006-7, 2006-4 I.R.B. 342
2006-8, 2006-4 I.R.B. 344
2006-19, 2006-13 I.R.B. 674
2006-20, 2006-13 I.R.B. 675
2006-21, 2006-14 I.R.B. 703

Treasury Decisions:

9231, 2006-2 I.R.B. 272
9232, 2006-2 I.R.B. 266
9233, 2006-3 I.R.B. 303
9234, 2006-4 I.R.B. 329
9235, 2006-4 I.R.B. 338
9236, 2006-5 I.R.B. 382
9237, 2006-6 I.R.B. 394
9238, 2006-6 I.R.B. 408
9239, 2006-6 I.R.B. 401
9240, 2006-7 I.R.B. 454
9241, 2006-7 I.R.B. 427
9242, 2006-7 I.R.B. 422
9243, 2006-8 I.R.B. 475
9244, 2006-8 I.R.B. 463
9245, 2006-14 I.R.B. 696
9246, 2006-9 I.R.B. 534
9247, 2006-9 I.R.B. 521
9248, 2006-9 I.R.B. 524
9249, 2006-10 I.R.B. 546

Treasury Decisions— Continued:

9250, 2006-11 I.R.B. 588
9251, 2006-11 I.R.B. 590
9252, 2006-12 I.R.B. 633
9253, 2006-14 I.R.B. 689
9254, 2006-13 I.R.B. 662
9255, 2006-15 I.R.B. 741
9256, 2006-16 I.R.B. 770
9257, 2006-17 I.R.B. 821
9258, 2006-20 I.R.B. 886
9259, 2006-19 I.R.B. 874
9260, 2006-23 I.R.B. 1001
9261, 2006-21 I.R.B. 919
9262, 2006-24 I.R.B. 1040
9263, 2006-25 I.R.B. 1063
9264, 2006-26 I.R.B. 1150

Finding List of Current Actions on Previously Published Items¹

Bulletin 2006–1 through 2006–26

Announcements:

2000-48

Modified by

Notice 2006-35, 2006-14 I.R.B. 708

Notices:

89-85

Amplified by

Notice 2006-46, 2006-24 I.R.B. 1044

2001-4

Sections (V)(C), (D), and (E) superseded by

T.D. 9253, 2006-14 I.R.B. 689

2001-11

Superseded by

T.D. 9253, 2006-14 I.R.B. 689

2001-43

Modified by

Notice 2006-35, 2006-14 I.R.B. 708

Sections 2 and 3 superseded by

T.D. 9253, 2006-14 I.R.B. 689

2002-35

Clarified and modified by

Notice 2006-16, 2006-9 I.R.B. 538

2005-14

Obsoleted for taxable years beginning on or after

June 1, 2006, by

T.D. 9263, 2006-25 I.R.B. 1063

2005-30

Modified and superseded by

Notice 2006-31, 2006-15 I.R.B. 751

2005-44

Supplemented by

Notice 2006-1, 2006-4 I.R.B. 347

2005-66

Supplemented by

Notice 2006-20, 2006-10 I.R.B. 560

2005-73

Supplemented by

Notice 2006-20, 2006-10 I.R.B. 560

2005-79

Revoked by

Notice 2006-50, 2006-25 I.R.B. 1141

2005-81

Supplemented by

Notice 2006-20, 2006-10 I.R.B. 560

Notices— Continued:

2005-98

Supplemented by

Notice 2006-7, 2006-10 I.R.B. 559

2006-26

Clarified by

Notice 2006-53, 2006-26 I.R.B. 1180

Proposed Regulations:

REG-103829-99

Withdrawn by

Ann. 2006-16, 2006-12 I.R.B. 653

REG-150313-01

Withdrawn by

Ann. 2006-30, 2006-19 I.R.B. 879

REG-131739-03

Corrected by

Ann. 2006-10, 2006-5 I.R.B. 393

REG-131264-04

Withdrawn by

Ann. 2006-34, 2006-21 I.R.B. 937

REG-138647-04

Corrected by

Ann. 2006-4, 2006-3 I.R.B. 328

REG-158080-04

Corrected by

Ann. 2006-11, 2006-6 I.R.B. 420

Revenue Procedures:

81-17

Obsoleted by

Rev. Proc. 2006-24, 2006-22 I.R.B. 943

89-8

Superseded by

Rev. Proc. 2006-23, 2006-20 I.R.B. 900

89-56

Modified by

Rev. Proc. 2006-21, 2006-24 I.R.B. 1050

90-39

Modified by

Rev. Proc. 2006-21, 2006-24 I.R.B. 1050

96-52

Superseded by

Rev. Proc. 2006-10, 2006-2 I.R.B. 293

97-27

Modified by

Rev. Proc. 2006-11, 2006-3 I.R.B. 309

Modified and amplified by

Rev. Proc. 2006-12, 2006-3 I.R.B. 310

Revenue Procedures— Continued:

2002-9

Modified by

Rev. Proc. 2006-11, 2006-3 I.R.B. 309

Modified and amplified by

Notice 2006-47, 2006-20 I.R.B. 892

Rev. Proc. 2006-12, 2006-3 I.R.B. 310

Rev. Proc. 2006-14, 2006-4 I.R.B. 350

Rev. Proc. 2006-16, 2006-9 I.R.B. 539

2002-17

Modified by

Rev. Proc. 2006-14, 2006-4 I.R.B. 350

2002-32

Modified by

Rev. Proc. 2006-21, 2006-24 I.R.B. 1050

2002-52

Modified by

Rev. Proc. 2006-26, 2006-21 I.R.B. 936

2003-31

Superseded by

Rev. Proc. 2006-19, 2006-13 I.R.B. 677

2003-38

Modified by

Rev. Proc. 2006-16, 2006-9 I.R.B. 539

2003-44

Modified and superseded by

Rev. Proc. 2006-27, 2006-22 I.R.B. 945

2004-23

Superseded for certain taxable years by

Rev. Proc. 2006-12, 2006-3 I.R.B. 310

2004-40

Superseded by

Rev. Proc. 2006-9, 2006-2 I.R.B. 278

2005-1

Superseded by

Rev. Proc. 2006-1, 2006-1 I.R.B. 1

2005-2

Superseded by

Rev. Proc. 2006-2, 2006-1 I.R.B. 89

2005-3

Superseded by

Rev. Proc. 2006-3, 2006-1 I.R.B. 122

2005-4

Superseded by

Rev. Proc. 2006-4, 2006-1 I.R.B. 132

2005-5

Superseded by

Rev. Proc. 2006-5, 2006-1 I.R.B. 174

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2005–27 through 2005–52 is in Internal Revenue Bulletin 2005–52, dated December 27, 2005.

Revenue Procedures— Continued:**2005-6**

Superseded by
Rev. Proc. 2006-6, 2006-1 I.R.B. 204

2005-7

Superseded by
Rev. Proc. 2006-7, 2006-1 I.R.B. 242

2005-8

Superseded by
Rev. Proc. 2006-8, 2006-1 I.R.B. 245

2005-9

Superseded for certain taxable years by
Rev. Proc. 2006-12, 2006-3 I.R.B. 310

2005-12

Section 10 modified and superseded by
Rev. Proc. 2006-1, 2006-1 I.R.B. 1

2005-15

Obsoleted in part by
Rev. Proc. 2006-17, 2006-14 I.R.B. 709

2005-21

Superseded by
Rev. Proc. 2006-25, 2006-21 I.R.B. 926

2005-22

Obsoleted by
Rev. Proc. 2006-20, 2006-17 I.R.B. 841

2005-24

Modified by
Notice 2006-15, 2006-8 I.R.B. 501

2005-61

Superseded by
Rev. Proc. 2006-3, 2006-1 I.R.B. 122

2005-68

Superseded by
Rev. Proc. 2006-1, 2006-1 I.R.B. 1
Rev. Proc. 2006-3, 2006-1 I.R.B. 122

Revenue Rulings:**55-355**

Obsoleted by
T.D. 9244, 2006-8 I.R.B. 463

74-503

Revoked by
Rev. Rul. 2006-2, 2006-2 I.R.B. 261

75-365

Revoked by
Rev. Rul. 2006-34, 2006-26 I.R.B. 1171

75-367

Revoked in part by
Rev. Rul. 2006-34, 2006-26 I.R.B. 1171

77-230

Obsoleted by
T.D. 9249, 2006-10 I.R.B. 546

Revenue Rulings— Continued:**91-5**

Modified by
T.D. 9250, 2006-11 I.R.B. 588

92-19

Supplemented in part by
Rev. Rul. 2006-25, 2006-20 I.R.B. 882

92-86

Modified by
T.D. 9250, 2006-11 I.R.B. 588

2000-2

Modified and superseded by
Rev. Rul. 2006-26, 2006-22 I.R.B. 939

2006-1

Modified and clarified by
Rev. Rul. 2006-31, 2006-25 I.R.B. 1133

2006-25

Corrected by
Ann. 2006-35, 2006-24 I.R.B. 1061

Treasury Decisions:**9191**

Corrected by
Ann. 2006-26, 2006-18 I.R.B. 871

9192

Corrected by
Ann. 2006-15, 2006-11 I.R.B. 632

9203

Corrected by
Ann. 2006-12, 2006-6 I.R.B. 421

9243

Corrected by
Ann. 2006-38, 2006-24 I.R.B. 1062

9244

Corrected by
Ann. 2006-31, 2006-20 I.R.B. 912

9248

Corrected by
Ann. 2006-32, 2006-20 I.R.B. 913

INDEX

Internal Revenue Bulletins 2006–1 through 2006–26

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

Key to Abbreviations:

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

EMPLOYEE PLANS

- Determination letters, issuing procedures (RP 6) 1, 204
- Disaster relief, expanded postponement of deadlines for certain acts under section 7508A with respect to taxpayers affected by Hurricane Katrina (Notice 20) 10, 560
- Disclosure of relative values of optional forms of benefit (TD 9256) 16, 770
- Employee Plans Compliance Resolution System (EPCRS), correction programs (RP 27) 22, 945
- Full funding limitations, weighted average interest rate for:
 - January 2006 (Notice 8) 5, 386
 - February 2006 (Notice 19) 9, 539
 - March 2006 (Notice 32) 13, 677
 - April 2006 (Notice 39) 17, 841
 - May 2006 (Notice 49) 22, 943
 - June 2006 (Notice 55) 25, 1146
- Letter rulings:
 - And determination letters, areas which will not be issued from:
 - Associates Chief Counsel and Division Counsel (TE/GE) (RP 3) 1, 122
 - Associate Chief Counsel (International) (RP 7) 1, 242
 - And information letters, procedures (RP 4) 1, 132
 - User fees, request for letter rulings (RP 8) 1, 245
- Proposed regulations:
 - 26 CFR 1.402(g)–1, amended; 1.402A–1, –2, added; 1.403(b)–2, –3, –5, –7, amended; 1.408A–10, added; designated Roth accounts under section 402A (REG–146459–05) 8, 504
- Regulations:
 - 26 CFR 1.401(a)–20, amended; 1.417(a)(3)–1, amended; disclosure of relative values of optional forms of benefit (TD 9256) 16, 770

EMPLOYEE PLANS—Cont.

- 26 CFR 1.401(k)–0, –2, –6, amended; 1.401(k)–1(f), revised; 1.401(m)–0, –2, –5, amended; 602.101, amended; designated Roth contributions to cash or deferred arrangements under section 401(k) (TD 9237) 6, 394
- Retirement plans, sample amendment for Roth section 401(k) plan (Notice 44) 20, 889
- Roth IRAs:
 - Designated Roth contributions to cash or deferred arrangements under section 401(k) (TD 9237) 6, 394
 - Distributions of designated Roth contributions (REG–146459–05) 8, 504
 - Reporting requirements, fair market value, Roth IRA conversion (RP 13) 3, 315
- Technical advice to IRS employees (RP 5) 1, 174

EMPLOYMENT TAX

- Bankruptcy estate, unpaid tax liability, procedure for trustees to obtain determination by the Service (RP 24) 22, 943
- Disaster relief:
 - Backup withholding, postponement of deadlines for certain acts due to Hurricanes Katrina and Rita (Notice 12) 7, 458
 - Expanded postponement of deadlines for certain acts under section 7508A with respect to taxpayers affected by Hurricane Katrina (Notice 20) 10, 560
 - Hurricane Katrina, treatment of special evacuation allowances (Notice 10) 5, 386
- Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
- Proposed regulations:
 - 26 CFR 31.6011(a)–1, –4, amended; 31.6302–1, amended; time for filing employment tax returns and modifications to the deposit rules (REG–148568–04) 6, 417
- Publications:
 - 1223, General Rules and Specifications for Substitute Forms W-2c and W-3c, revised (RP 19) 13, 677
 - 4436, General Rules and Specifications for Substitute Form 941 and Schedule B (Form 941), revised (RP 25) 21, 926
- Regulations:
 - 26 CFR 1.6302–1, –2, amended; 31.6011(a)–1, –4, amended; 31.6011(a)–1T, –4T, added; 31.6071(a)–1, amended; 31.6302–0, –1, amended; 31.6302–1T, added; time for filing employment tax returns and modifications to the deposit rules (TD 9239) 6, 401
 - 26 CFR 31.3121(a)(2)–1, amended; 32.1, amended; sickness or accident disability payments (TD 9233) 3, 303
- Substitute forms:
 - W-2c and W-3c, general rules and specifications (RP 19) 13, 677
 - 941 and Schedule B (Form 941), general rules and specifications (RP 25) 21, 926
- Technical Advice Memoranda (TAMs) and Technical Expedited Advice Memoranda (TEAMs) (RP 2) 1, 89

EMPLOYMENT TAX—Cont.

Time for filing employment tax returns and modifications to the deposit rules (TD 9239) 6, 401; (REG-148568-04) 6, 417
Treatment of sickness or accident disability payments (TD 9233) 3, 303

ESTATE TAX

Disaster relief, expanded postponement of deadlines for certain acts under section 7508A with respect to taxpayers affected by Hurricane Katrina (Notice 20) 10, 560
Individual retirement account (IRA), marital trust as IRA beneficiary, qualifying income interest (RR 26) 22, 939
Interest rates, farm real property, special use value (RR 32) 26, 1170
Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
Real property interest, determination of whether certain interests constitute closely held business interest (RR 34) 26, 1171
Technical Advice Memoranda (TAMs) and Technical Expedited Advice Memoranda (TEAMs) (RP 2) 1, 89

EXCISE TAX

Bankruptcy estate, unpaid tax liability, procedure for trustees to obtain determination by the Service (RP 24) 22, 943
Disaster relief, expanded postponement of deadlines for certain acts under section 7508A with respect to taxpayers affected by Hurricane Katrina (Notice 20) 10, 560
Health Savings Accounts (HSAs), employer comparable contributions, public hearing on REG-138647-04 (Ann 4) 3, 328
Highway vehicle, definition, withdrawal of REG-103829-99 (Ann 16) 12, 653
Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
Technical Advice Memoranda (TAMs) and Technical Expedited Advice Memoranda (TEAMs) (RP 2) 1, 89
Telecommunications excise tax on toll telephone service (Notice 50) 25, 1141

EXEMPT ORGANIZATIONS

Annual notice to donors regarding pending and settled declaratory judgment suits (Ann 1) 1, 260
Determination of gross receipts for purposes of section 501(c)(15), insurance companies (Notice 42) 19, 878
Disaster relief, expanded postponement of deadlines for certain acts under section 7508A with respect to taxpayers affected by Hurricane Katrina (Notice 20) 10, 560
Down payment assistance, home buyers (RR 27) 21, 915
Information reporting by organizations that receive charitable contributions of certain motor vehicles, boats, and airplanes (Notice 1) 4, 347

EXEMPT ORGANIZATIONS—Cont.

Letter rulings:
And determination letters, areas which will not be issued from Associates Chief Counsel and Division Counsel (TE/GE) (RP 3) 1, 122
And information letters, procedures (RP 4) 1, 132
User fees, request for letter rulings (RP 8) 1, 245
List of organizations classified as private foundations (Ann 5) 4, 378; (Ann 14) 8, 516; (Ann 18) 12, 654; (Ann 27) 18, 871; (Ann 36) 23, 1038
Revocations (Ann 3) 3, 327; (Ann 9) 5, 392; (Ann 13) 7, 462; (Ann 17) 12, 653; (Ann 24) 16, 820; (Ann 28) 18, 873; (Ann 33) 20, 914; (Ann 37) 23, 1039
Technical advice to IRS employees (RP 5) 1, 174

GIFT TAX

Charitable remainder trusts, waiver of spousal right of election to ensure qualification of charitable remainder annuity trust (CRAT) or charitable remainder unitrust (CRUT) (Notice 15) 8, 501
Disaster relief, expanded postponement of deadlines for certain acts under section 7508A with respect to taxpayers affected by Hurricane Katrina (Notice 20) 10, 560
Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
Technical Advice Memoranda (TAMs) and Technical Expedited Advice Memoranda (TEAMs) (RP 2) 1, 89

INCOME TAX

Acceptance agent revenue procedure (RP 10) 2, 293
Accounting methods:
Automatic consent to change procedures (RP 12) 3, 310
Automatic consent to change, replacement cost method for parts inventory of heavy equipment dealers (RP 14) 4, 350
Normalization public utilities (REG-104385-01) 5, 389
Simplified service cost and simplified production methods, consent procedures (RP 11) 3, 309
Advance Pricing Agreement (APA) Program:
Administration (RP 9) 2, 278
Annual report to the public, 2005 (Ann 22) 16, 779
Agent for a consolidated group with foreign common parent (TD 9255) 15, 741; (REG-164247-05) 15, 758
Aircraft and vessel leasing income, modifications to subpart F treatment (Notice 48) 21, 922
Allocation and apportionment of expenses, tax book value method (TD 9247) 9, 521
Annual notice to donors regarding pending and settled declaratory judgment suits (Ann 1) 1, 260
Application of section 108 to members of a consolidated group, correction to TD 9192 (Ann 15) 11, 632
Automobile owners and lessees, inflation adjustment for 2006 (RP 18) 12, 645

INCOME TAX—Cont.

Bankruptcy estate, unpaid tax liability, procedure for trustees to obtain determination by the Service (RP 24) 22, 943

Bonds:

Clean renewable energy bonds (Notice 7) 10, 559

Exempt facility bonds, qualified highway or surface freight transfer facilities (Notice 45) 20, 891

Gulf Opportunity Zone Bonds, Gulf Opportunity Zone Advance Refunding Bonds, and Gulf Tax Credit Bonds (Notice 41) 18, 857

Private activity bond, definition, tax-exempt bonds issued by state and local governments (TD 9234) 4, 329

Book-tax filter of reportable transactions under regulations section 1.6011-4, removal (Notice 6) 5, 385

Commercial revitalization deduction for buildings located in the expanded area of a renewal community (RP 16) 9, 539

Competent authority procedures with respect to the U.S. possessions (RP 23) 20, 900

Computer software, domestic production activities deduction under section 199(c)(5)(B) (TD 9262) 24, 1040; (REG-111578-06) 24, 1060

Consolidated returns:

Basis reallocation, loss suspension, and expiration of losses on certain stock dispositions (TD 9254) 13, 662

E-filing, corporate tax returns (RP 21) 24, 1050

Intercompany transactions (TD 9261) 21, 919; withdrawal of REG-131264-04 (Ann 34) 21, 937

Corporations:

Clarification of section 1374 effective dates (TD 9236) 5, 382

Consolidated returns, e-filing corporate tax returns (RP 21) 24, 1050

Determination of surrogate foreign corporation status when there is an expanded affiliated group (TD 9238) 6, 408; (REG-143244-05) 6, 419

Entity classification, classification of:

Foreign entities, per se corporations (TD 9235) 4, 338

Japanese Tokurei Yugen Kaisha (TYK) (RR 3) 2, 276

Estimated tax payments by corporations (REG-107722-00) 4, 354

Information reporting for distributions with respect to securities issued by foreign corporations (Notice 3) 3, 306

Look-through treatment of dividends from noncontrolled section 902 corporations (TD 9260) 23, 1001; (REG-144784-02) 23, 1036

Passive foreign investment company (PFIC) purging elections:

Foreign corporation no longer satisfies definition of PFIC under section 1297(a) (TD 9231) 2, 272

Foreign corporation no longer treated as PFIC under section 1297(a) or (e) (TD 9232) 2, 266; (REG-133446-03) 2, 299

Section 951 pro rata share allocations, special rules (TD 9251) 11, 590

Statutory mergers or consolidations:

Definition (TD 9242) 7, 422; amendment (TD 9259) 19, 874

INCOME TAX—Cont.

Under section 368(a)(1)(A), involving one or more foreign corporations (TD 9243) 8, 475; correction (Ann 38) 24, 1062

Subpart F income (TD 9240) 7, 454; (REG-106418-05) 7, 461

Transfers to corporations, corporate formations, corporate reorganizations (RR 2) 2, 261

U.S. real property interests (USRPIs), disposition in inbound and foreign-to-foreign section 368(a)(1)(A) reorganizations (Notice 46) 24, 1044

Credits:

Alternative motor vehicle credit:

Advanced lean burn and hybrid motor vehicles (Notice 9) 6, 413

Mixed fuel vehicles (Notice 54) 26, 1180

Child and dependent care credit, expenses (REG-139059-02) 24, 1052

Clean renewable energy bonds (Notice 7) 10, 559

Energy efficient home credit:

Certification for dwelling unit other than manufactured home (Notice 27) 11, 626

Certification for manufactured home (Notice 28) 11, 628

Low-income housing credit:

2006 population figures used for calculation (Notice 22) 11, 593

Satisfactory bond, "bond factor" amounts for the period:

January through March 2006 (RR 5) 3, 302

January through June 2006 (RR 14) 15, 740

Suspension of certain requirements under section 42 due to Hurricane Rita (Notice 11) 7, 457

Nonbusiness energy property credit:

Eligible Building Envelope Component or Qualified Energy Property (Notice 26) 11, 622

Siding not component specifically and primarily designed to reduce heat loss or gain of dwelling (Notice 53) 26, 1180

Nonconventional source fuel credit, inflation adjustment factor, reference price for CY 2005 (Notice 37) 18, 855

Nuclear energy tax credits (Notice 40) 18, 855

Qualifying advanced coal project credit (Notice 24) 11, 595

Qualifying gasification project credit (Notice 25) 11, 609

Rehabilitation tax credit, disaster relief (Notice 38) 16, 777

Renewable electricity credit:

And refined coal production credit, 2006 inflation adjustment (Notice 51) 25, 1144

Reduction under section 45(b)(3) (RR 9) 9, 519

Deduction for energy efficient commercial buildings, guidance for section 179D requirements (Notice 52) 26, 1175

Deemed election to be an association taxable as a corporation for a qualified electing S corporation, correction to TD 9203 (Ann 12) 6, 421

Determination of bona fide residence in a U.S. possession (TD 9248) 9, 524; correction (Ann 32) 20, 913

INCOME TAX—Cont.

Disaster relief:

- Additional first year depreciation deduction relief for certain disaster areas (Ann 29) 19, 879
- Backup withholding, postponement of deadlines for certain acts due to Hurricanes Katrina and Rita (Notice 12) 7, 458
- Expanded postponement of deadlines for certain acts under section 7508A with respect to taxpayers affected by Hurricane Katrina (Notice 20) 10, 560
- Gulf Opportunity (GO) Zone resident population estimates (Notice 21) 12, 643
- Gulf Opportunity Zone Bonds, Gulf Opportunity Zone Advance Refunding Bonds, and Gulf Tax Credit Bonds (Notice 41) 18, 857
- Hurricanes Katrina, Rita, and Wilma, postponement of deadline to make certain section 165(i) elections (Notice 17) 10, 559
- Hurricane Katrina, treatment of special evacuation allowances (Notice 10) 5, 386
- Rehabilitation tax credit (Notice 38) 16, 777
- Suspension of certain requirements under section 42 due to Hurricane Rita (Notice 11) 7, 457
- Disciplinary actions involving attorneys, certified public accountants, enrolled agents, and enrolled actuaries (Ann 23) 14, 729
- Disclosure and use of tax return information:
 - Disclosure of return information to Department of Agriculture for use in census of agriculture (TD 9245) 14, 696
 - New and additional rules for electronic consent (REG-137243-02) 3, 317
- Domestic production activities, income attributable (TD 9263) 25, 1063
- Down payment assistance, home buyers (RR 27) 21, 915
- E-file, guidance necessary to facilitate business electronic filing and burden reduction (TD 9264) 26, 1150; (REG-134317-05) 26, 1184
- Elections created or affected by the American Jobs Creation Act of 2004, procedures for making or revoking (Notice 47) 20, 892
- Employer-provided vehicles, maximum values for which the special valuation rules of regulations sections 1.61-21(d) and (e) may be used (RP 15) 5, 387
- Entity classification, dually chartered entity, clarification of definitions (TD 9246) 9, 534
- Foreign earned income exclusion (RP 28) 25, 1147
- Forms:
 - 6765, Credit for Increasing Research Activities, revised (Ann 39) 26, 1186
 - 8609 revision, 8609-A replaces Schedule A (Form 8609) (Ann 2) 2, 300
 - 8898 (March 2006), Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession, new (Ann 25) 18, 871
- Frivolous tax returns, tax avoidance:
 - All individuals are subject to federal income tax (RR 18) 15, 743
 - Attempts to escape taxation by attributing income to purported trust (RR 19) 15, 749

INCOME TAX—Cont.

- Claim of tax exempt status based on an unspecified "Native American Treaty" (RR 20) 15, 746
- Common frivolous arguments and schemes (Notice 31) 15, 751
- Insertion of phrase "nunc pro tunc" on tax return (RR 17) 15, 748
- Paperwork Reduction Act does not relieve taxpayers of the duty to file a federal income tax return (RR 21) 15, 745
- Guidance Priority List, recommendations for 2006-2007 (Notice 36) 15, 756
- Individual Retirement Accounts (IRAs), bankruptcy, right to receive payments (CD 2081) 13, 656
- Information reporting by organizations that receive charitable contributions of certain motor vehicles, boats, and airplanes (Notice 1) 4, 347
- Insurance companies:
 - Deemed sale or acquisition of an insurance company's assets (TD 9257) 17, 821; (REG-146384-05) 17, 843
 - Life-nonlife tacking rule (TD 9258) 20, 886; (REG-133036-05) 20, 911
 - Prevailing state assumed interest rates, 2006 (RR 25) 20, 882; correction (Ann 35) 24, 1061
 - Tentative recomputed differential earnings rate for 2004 (Notice 18) 8, 502
- Interest:
 - Election to treat qualified dividend income as investment income, correction to TD 9191 (Ann 26) 18, 871
- Investment:
 - Federal short-term, mid-term, and long-term rates for:
 - January 2006 (RR 4) 2, 264
 - February 2006 (RR 7) 6, 399
 - March 2006 (RR 10) 10, 557
 - April 2006 (RR 22) 14, 687
 - May 2006 (RR 24) 19, 875
 - June 2006 (RR 29) 23, 1031
- Rates:
 - Underpayments and overpayments, quarter beginning:
 - April 1, 2006 (RR 12) 12, 637
 - July 1, 2006 (RR 30) 25, 1134
- Interim guidance with respect to the application of regulations section 1.883-3 (Notice 43) 21, 921
- Inventory:
 - Heavy equipment dealers, replacement cost method of accounting (RP 14) 4, 350
 - LIFO, price indexes used by department stores for:
 - November 2005 (RR 6) 5, 381
 - December 2005 (RR 8) 9, 520
 - January 2006 (RR 15) 13, 661
 - February 2006 (RR 23) 17, 839
 - March 2006 (RR 28) 22, 938
 - April 2006 (RR 33) 26, 1148
- Joint tax return, relief from joint and several liability (RR 16) 14, 694
- Leases, tax-exempt use property (Notice 2) 2, 278

INCOME TAX—Cont.

Letter rulings:

And determination letters, areas which will not be issued from:

Associates Chief Counsel and Division Counsel (TE/GE) (RP 3) 1, 122

Associate Chief Counsel (International) (RP 7) 1, 242

And information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1

Methods of determining W-2 wages for purposes of section 199 (RP 22) 23, 1033

Mortgage bonds and credit certificates, median income figures, 2006 (RP 20) 17, 841

National and area median gross income figures, guidance for 2006 (RP 20) 17, 841

Non-mortgage widely held fixed investment trusts (NMWHFITs) (Notice 29) 12, 644; exception extended (Notice 30) 24, 1044

Nonqualified deferred compensation plans:

Application of section 409A, correction to REG-158080-04 (Ann 11) 6, 420

With associated offshore trusts or financial health triggers, transition guidance on the application of section 409A(b) (Notice 33) 15, 754

Notional principal contracts, nonperiodic payment, listed transactions, disclosure safe harbor (Notice 16) 9, 538

Partnerships:

Certain distributions treated as sales or exchanges (Notice 14) 8, 498

Classification of items under the TEFRA partnership provisions (RR 11) 12, 635

Patriots' Day 2006 in Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, and the District of Columbia, April 18 filing deadline (Notice 23) 11, 594

Practice before the Internal Revenue Service (REG-122380-02) 10, 563

Private foundations, organizations now classified as (Ann 5) 4, 378; (Ann 14) 8, 516; (Ann 18) 12, 654; (Ann 27) 18, 871; (Ann 36) 23, 1038

Proposed Regulations:

26 CFR 1.21-1 redesignated as 1.15-1; 1.21-1 thru -4, added; 1.44A-1 thru -4, removed; 1.214-1, removed; 1.214A-1 thru -5, removed; 602.101, amended; expenses for household and dependent care services necessary for gainful employment (REG-139059-02) 24, 1052

26 CFR 1.46-6, amended; 1.168(i)-3, added; application of normalization accounting rules to balances of excess deferred income taxes and accumulated deferred investment tax credits of public utilities whose assets cease to be public utility property (REG-104385-01) 5, 389

26 CFR 1.56-0, -1, revised; 1.6425-2, revised; 1.6425-3, amended; 1.6655-0, added; 1.6655-1 thru -3, revised; 1.6655-4 thru -6, added; 1.6655-7, removed; 1.6655-5 redesignated as 1.6655-7 and revised; 301.6655-1, revised; corporate estimated tax (REG-107722-00) 4, 354

INCOME TAX—Cont.

26 CFR 1.197-2, amended; 1.338-1, -11, amended; 1.846-2, -4, amended; application of section 338 to insurance companies (REG-146384-05) 17, 843

26 CFR 1.199-3, -8, amended; computer software under section 199(c)(5)(B) (REG-111578-06) 24, 1060

26 CFR 1.302-2, -4, amended; 1.331-1, amended; 1.332-6, added; 1.338-10, amended; 1.351-3, added; 1.355-5, added; 1.368-3, added; 1.381(b)-1, amended; 1.382-8, amended; 1.382-11, added; 1.1081-11, added; 1.1221-2, amended; 1.1502-13, -31, -32, -33, -35, -76, -95, amended; 1.1563-1, -3, amended; 1.6012-2, amended; guidance necessary to facilitate business electronic filing and burden reduction (REG-134317-05) 26, 1184

26 CFR 1.468B-0, amended; 1.468B-6, added; 1.1031(k)-1, amended; 1.7872-16, added; escrow accounts, trusts, and other funds used during deferred exchanges of like-kind property (REG-113365-04) 10, 580

26 CFR 1.861-9, -12, revised; 1.902-1, revised; 1.904-2, -4, -5, revised; 1.904-7, amended; 1.904(f)-12, amended; 1.964-1, revised; application of separate limitations to dividends from noncontrolled section 902 corporations (REG-144784-02) 23, 1036

26 CFR 1.954-2, amended; guidance under subpart F relating to partnerships (REG-106418-05) 7, 461

26 CFR 1.1291-9, revised; 1.1297-0, revised; 1.1297-3, added; 1.1298-0, -3, revised; guidance on passive foreign investment company (PFIC) purging elections (REG-133446-03) 2, 299

26 CFR 1.1502-19, amended; treatment of excess loss accounts (REG-138879-05) 8, 503

26 CFR 1.1502-47, -76, amended; amendment of tacking rule requirements of life-nonlife consolidated regulations (REG-133036-05) 20, 911

26 CFR 1.1502-77, amended; agent for a consolidated group with foreign common parent (REG-164247-05) 15, 758

26 CFR 1.7874-1, added; guidance for determining ownership by former shareholders or partners of domestic entities (REG-143244-05) 6, 419

26 CFR 301.6103(p)(4)-1, (p)(7)-1, added; procedures for administrative review of a determination that an authorized recipient has failed to safeguard tax returns or return information (REG-157271-05) 12, 652

26 CFR 301.7216-0, added; 301.7216-1, -2, -3, revised; guidance necessary to facilitate electronic tax administration (REG-137243-02) 3, 317

31 CFR 10.1, 10.25, 10.27, 10.29, 10.34, 10.51, 10.52, 10.61, 10.65, 10.68, 10.76, 10.77, 10.78, 10.90, 10.91, revised; 10.2, 10.5, 10.6, 10.7, 10.22, 10.50, 10.60, 10.62, 10.70, 10.72, 10.73, 10.82, amended; 10.73, removed; 10.72 redesignated as 10.73; 10.71 redesignated as 10.72, 10.71, added; regulations governing practice before the Internal Revenue Service (REG-122380-02) 10, 563

INCOME TAX—Cont.

Publications:

1223, General Rules and Specifications for Substitute Forms W-2c and W-3c, revised (RP 19) 13, 677

4436, General Rules and Specifications for Substitute Form 941 and Schedule B (Form 941), revised (RP 25) 21, 926

Qualified Intermediary (QI) branch rule, revocation (Notice 35) 14, 708

Qualified mortgage bonds (QMBs) and mortgage credit certificates (MCCs), average area housing purchase prices for 2006 (RP 17) 14, 709

Qualified settlement funds and certain other escrow accounts, trusts, and funds, taxation and reporting of earned income (TD 9249) 10, 546; (REG-113365-04) 10, 580

Redemptions taxable as dividend distributions, withdrawal of REG-150313-01 (Ann 30) 19, 879

Regulated investment company (RIC), commodity swaps (RR 1) 2, 261; clarified (RR 31) 25, 1133

Regulations:

26 CFR 1.141-0, -1, -15, amended; 1.141-13, added; 1.145-0, -2, amended; 1.149(d)-1, amended; 1.150-1, amended; obligations of states and political subdivisions (TD 9234) 4, 329

26 CFR 1.163(d)-1T, removed; time and manner of making section 163(d)(4)(B) election to treat qualified dividend income as investment income, correction to TD 9191 (Ann 26) 18, 871

26 CFR 1.197-0, -2, amended; 1.197-2T, added; 1.338-0, -1, amended; 1.338-1T, -11, -11T, added; 1.338(i)-1, amended; 1.381(c)(22)-1, amended; 1.846-0, -2, amended; 1.846-2T, -4T, added; 1.846-4, revised; 1.1060-1, amended; 602.101, amended; application of section 338 to insurance companies (TD 9257) 17, 821

26 CFR 1.199-0 thru -9, added; 602.101, amended; income attributable to domestic production activities (TD 9263) 25, 1063

26 CFR 1.199-3T, -8T, added; computer software under section 199(c)(5)(B) (TD 9262) 24, 1040

26 CFR 1.279-5, amended; 1.302-2, -4, amended; 1.302-2T, -4T, added; 1.331-1, amended; 1.331-1T, added; 1.332-6, removed; 1.332-6T, added; 1.338-0, -10, amended; 1.338-10T, added; 1.351-3, removed; 1.351-3T, added; 1.355-0, amended; 1.355-5, removed; 1.355-5T, added; 1.368-3, removed; 1.368-3T, added; 1.381(b)-1, amended; 1.381(b)-1T, added; 1.382-1, -2T, -8, amended; 1.382-11, removed; 1.382-8T, -11T, added; 1.1081-11, removed; 1.1081-11T, added; 1.1221-2, amended; 1.1221-2T, added; 1.1502-13, -31, -32, -33, -35, -76, -95, amended; 1.1502-13T, -31T, -32T, -33T, -35T, -76T, -95T, added; 1.1563-1, -3, amended; 1.1563-1T, -3T, added; 1.6012-2, amended; 1.6012-2T, added; 602.101, amended; guidance necessary to facilitate business electronic filing and burden reduction (TD 9264) 26, 1150

INCOME TAX—Cont.

26 CFR 1.356-1, revised; 1.358-1, revised; 1.358-2, amended; 1.1502-19, amended; 1.1502-19T, revised; 1.1502-32, amended; determination of basis of stock or securities received in exchange for, or with respect to, stock or securities in certain transactions, treatment of excess loss accounts (TD 9244) 8, 463; correction (Ann 31) 20, 912

26 CFR 1.358-6, amended; 1.367(a)-3, (a)-8, (b)-1, (b)-3, (b)-4, (b)-6, amended; 1.367(b)-13, added; 1.884-2, -2T, amended; 1.6038B-1, -1T, amended; statutory mergers or consolidations under section 368(a)(1)(A) involving one or more foreign corporations, and guidance necessary to facilitate business electronic filing under section 6038B (TD 9243) 8, 475; correction (Ann 38) 24, 1062

26 CFR 1.367(a)-3, (b)-4, (b)-6, amended; application of section 367 in cross border section 304 transactions, certain transfers of stock involving foreign corporations (TD 9250) 11, 588

26 CFR 1.368-2, amended; 1.368-2T, removed; statutory mergers and consolidations (TD 9242) 7, 422; 1.368-2, amended; amendment (TD 9259) 19, 874

26 CFR 1.468B-0, -1, -5, amended; 1.468B-6 thru -9, added; 602.101, amended; escrow funds and other similar funds (TD 9249) 10, 546

26 CFR 1.671-4, amended; 1.671-5, added; 1.6041-9, added; 1.6042-5, added; 1.6045-1, amended; 1.6049-4, -5, amended; 1.6050N-2, added; 301.6109-1, amended; reporting for widely held fixed investment trusts (TD 9241) 7, 427

26 CFR 1.861-9, -9T, amended; allocation and apportionment of expenses, alternative method for determining tax book value of assets (TD 9247) 9, 521

26 CFR 1.861-9T, -12T, amended; 1.902-0, -1, -2, amended; 1.902-1T, added; 1.904-0, -2, -4 thru -7, amended; 1.904-2T, -4T, -5T, -7T, added; 1.904(f)-12, amended; 1.904(f)-12T, added; 1.964-1, -1T, amended; 602.101, amended; application of separate limitations to dividends from noncontrolled section 902 corporations (TD 9260) 23, 1001

26 CFR 1.881-5, added; 1.881-5T, revised; 1.931-1T, amended; 1.932-1T, amended; 1.933-1T, amended; 1.935-1T, amended; 1.937-1, added; 1.937-1T, removed; 602.101, amended; residence rules involving U.S. possessions (TD 9248) 9, 524; correction (Ann 32) 20, 913

26 CFR 1.951-1, amended; special rules regarding certain section 951 pro rata share allocations (TD 9251) 11, 590

26 CFR 1.954-2, amended; 1.954-2T, added; guidance under subpart F relating to partnerships (TD 9240) 7, 454

26 CFR 1.1291-9, amended; 1.1297-0, revised; 1.1297-3, added; 1.1298-0, -3, added; 602.101, amended; guidance on passive foreign investment company (PFIC) purging elections (TD 9231) 2, 272

INCOME TAX—Cont.

- 26 CFR 1.1291-9T, added; 1.1297-0T, added; 1.1297-3T, revised; 1.1298-0T, -3T, added; 602.101, amended; guidance on passive foreign investment company (PFIC) purging elections (TD 9232) 2, 266
- 26 CFR 1.1374-0, -8, -10, amended; 1.1374-8T, -10T, removed; section 1374 effective dates (TD 9236) 5, 382
- 26 CFR 1.1441-1, -3, amended; 1.1441-6, revised; 1.6049-5, amended; 301.6114-1, amended; revisions to regulations relating to withholding of tax on certain U.S. source income paid to foreign persons and revisions of information reporting regulations (TD 9253) 14, 689
- 26 CFR 1.1502-11, amended; application of section 108 to members of a consolidated group, correction to TD 9192 (Ann 15) 11, 632
- 26 CFR 1.1502-13(c)(7)(ii), Example 13, removed and reserved; intercompany transactions, manufacturer incentive payments (TD 9261) 21, 919
- 26 CFR 1.1502-21, -21T, -32, amended; 1.1502-32T, -35T, removed; 1.1502-35, added; 602.101, amended; suspension of losses on certain stock dispositions (TD 9254) 13, 662
- 26 CFR 1.1502-47, -76, amended; 1.1502-47T, -76T, added; amendment of tacking rule requirements of life-nonlife consolidated regulations (TD 9258) 20, 886
- 26 CFR 1.1502-77, amended; 1.1502-77T, added; agent for a consolidated group with foreign common parent (TD 9255) 15, 741
- 26 CFR 1.7874-1T, added; guidance for determining ownership by former shareholders or partners of domestic entities (TD 9238) 6, 408
- 26 CFR 301.6103(j)(5)-1, added; 301.6103(j)(5)-1T, removed; disclosure of return information to the Department of Agriculture (TD 9245) 14, 696
- 26 CFR 301.6103(p)(4)-1T, (p)(7)-1T, added; 6103(p)(7)-1, removed; procedures for administrative review of a determination that an authorized recipient has failed to safeguard tax returns or return information (TD 9252) 12, 633
- 26 CFR 301.7701-1, -2, -5, revised; 301.7701-1T, -2T, -5T, removed; clarification of definitions (TD 9246) 9, 534
- 26 CFR 301.7701-2, -2T, amended; classification of definitions (TD 9235) 4, 338
- 26 CFR 301.7701-3T, added; deemed election to be an association taxable as a corporation for a qualified electing S corporation, correction to TD 9203 (Ann 12) 6, 421
- Reporting requirements for widely held fixed investment trusts (TD 9241) 7, 427
- Revocations, exempt organizations (Ann 3) 3, 327; (Ann 9) 5, 392; (Ann 13) 7, 462; (Ann 17) 12, 653; (Ann 24) 16, 820; (Ann 28) 18, 873; (Ann 33) 20, 914; (Ann 37) 23, 1039
- Section 1503(d) filings, adoption of reasonable cause standard (Notice 13) 8, 496
- Standard Industry Fare Level (SIFL) formula (RR 13) 13, 656

INCOME TAX—Cont.

- Stocks:
- Cross border section 304 transactions, application of section 367 (TD 9250) 11, 588
- Determination of basis of stock and securities received in certain transactions (TD 9244) 8, 463; correction (Ann 31) 20, 912
- Outstanding stock rights, application of section 409A (Notice 4) 3, 307
- Treatment of excess loss accounts (TD 9244) 8, 463; (REG-138879-05) 8, 503
- Substitute for return, Internal Revenue officer or employee, hearing on REG-131739-03 (Ann 10) 5, 393
- Substitute forms:
- W-2c and W-3c, general rules and specifications (RP 19) 13, 677
- 941 and Schedule B (Form 941), general rules and specifications (RP 25) 21, 926
- Tax conventions:
- Competent authority procedures with respect to the U.S. possessions (RP 23) 20, 900
- Superseding U.S.-Mexico LLC mutual agreement procedure (MAP) (Ann 8) 4, 344
- U.S.-Canada Appeals memorandum of understanding (MOU) (Ann 7) 4, 342
- U.S.-Ireland Common Contractual Funds MAP (Ann 19) 13, 674
- U.S.-Japan Investment Bank MOU (Ann 6) 4, 340; self-certification of resident investment banks (Ann 20) 13, 675
- U.S.-Spain limited liability company (LLC) MAP (Ann 21) 14, 703
- Tax delinquency, sale of seized property (CD 2082) 14, 697
- Tax returns and return information, administrative review if recipient failed to safeguard information (TD 9252) 12, 633; (REG-157271-05) 12, 652
- Taxation of cross licenses (Notice 34) 14, 705
- Technical Advice Memoranda (TAMs) and Technical Expedited Advice Memoranda (TEAMs) (RP 2) 1, 89
- User fees for competent authority limitation on benefits determination (RP 26) 21, 936
- Waiver of penalties for failure to report loan origination fees and capitalized interest (Notice 5) 4, 348
- Withholding tax, U.S. source income paid to foreign persons (TD 9253) 14, 689

SELF-EMPLOYMENT TAX

- Disaster relief, expanded postponement of deadlines for certain acts under section 7508A with respect to taxpayers affected by Hurricane Katrina (Notice 20) 10, 560
- Letter rulings and information letters issued by Associate Offices, determination letters issued by Operating Divisions (RP 1) 1, 1
- Technical Advice Memoranda (TAMs) and Technical Expedited Advice Memoranda (TEAMs) (RP 2) 1, 89