

## **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**

#### **T.D. 9323, page 1240.**

Final regulations under section 871 of the Code relate to the exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation. The regulations clarify how the portfolio interest rules apply with respect to interest paid to certain partnerships or trusts that have foreign partners, beneficiaries, or owners. The regulations also retroactively remove the rule in regulations section 1.1441-1(b)(7)(iii) that would impose interest under section 6601 when no underlying tax liability is due.

#### **REG-144859-04, page 1245.**

Proposed regulations under section 1367(b)(2) of the Code provide rules regarding the definition of open account debt and the adjustments in basis of any indebtedness of an S corporation to a shareholder for shareholder advances and repayments on advances of open account debt. The regulations affect shareholders of S corporations and are necessary to provide guidance needed to comply with the applicable tax law. A public hearing is scheduled for July 31, 2007.

### **EMPLOYEE PLANS**

#### **Announcement 2007-47, page 1260.**

##### **Nonbank trustees; section 1.408-2(e) of the regulations.**

This announcement contains a list of entities previously approved to act as nonbank trustees and nonbank custodians within the meaning of section 1.408-2(e) of the regulations. In addition, the announcement contains instructions on how errors in the list may be corrected. Announcement 2006-45 updated and superseded.

### **ADMINISTRATIVE**

#### **Notice 2007-39, page 1243.**

This notice provides guidance to practitioners, employers, firms, and other entities that may be subject to monetary penalties under 31 U.S.C. section 330. The notice also invites comments from the public regarding rules and standards relating to monetary penalties under 31 U.S.C. section 330.

#### **Announcement 2007-48, page 1274.**

This document contains a correction to temporary regulations (T.D. 9313, 2007-13 I.R.B. 805) providing guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) of the Code, where no stock and/or securities of the acquiring corporation are issued and distributed in the transaction.

Announcements of Disbarments and Suspensions begin on page 1249.  
Finding Lists begin on page ii.



# The IRS Mission

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

applying the tax law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

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

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

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

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

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

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

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

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

## Section 871.—Tax on Nonresident Alien Individuals

26 CFR 1.871-14: Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

### T.D. 9323

#### DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

#### Revisions to Regulations Relating to Repeal of Tax on Interest of Nonresident Alien Individuals and Foreign Corporations Received From Certain Portfolio Debt Investments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

**SUMMARY:** This document contains final regulations under sections 871 and 881 of the Internal Revenue Code (Code) relating to the exclusion from gross income of portfolio interest paid to a nonresident alien individual or foreign corporation. These regulations clarify how the portfolio interest rules apply with respect to interest paid to a partnership (or simple or grantor trust) that has foreign partners (or beneficiaries or owners). These regulations also retroactively remove the rule in Treasury Regulation §1.1441-1(b)(7)(iii) that would impose interest under section 6601 when no underlying tax liability is due.

**DATES:** *Effective Date:* These regulations are effective on April 12, 2007.

*Applicability Dates:* The regulations relating to the application of the 10-percent shareholder test for interest paid to partnerships applies to interest paid after April 12, 2007. However, taxpayers may choose to apply the rules in the final reg-

ulations to interest paid during any taxable year which is not closed by the period of limitations, provided they do so consistently with respect to all relevant partnerships during such years. The regulations removing the rule imposing interest and penalties on withholding agents when no underlying tax has in fact been imposed apply to payments made after December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn Holman of the Office of the Associate Chief Counsel (International), (202) 622-3840 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 871(a) of the Code imposes a tax of 30 percent on U.S. source fixed or determinable annual or periodic (FDAP) income, including interest, received by a nonresident alien individual to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States. Section 881(a) imposes a similar tax with respect to FDAP income, including interest, received by a foreign corporation. Both sections 871(h)(3)(A) and 881(c)(3)(B) provide, among other limitations, that portfolio interest does not include interest received by a 10-percent shareholder, as defined in section 871(h)(3)(B).

##### Explanation of Provisions and Summary of Comments

The IRS and the Treasury Department issued proposed regulations (REG-118775-06, 2006-28 I.R.B. 73) under sections 871(h) and 881(c) in the **Federal Register** (71 FR 34047) on June 13, 2006. The proposed regulations address the application of the 10-percent shareholder test when U.S. source interest is paid to a partnership that has a nonresident alien individual or foreign corporation as a partner. The proposed regulations provide that, for interest paid on obligations issued on or after the date that final regulations are published, the

10-percent shareholder test is to be applied only at the partner level and at the time that the withholding agent would otherwise be required to withhold.

No public hearing was requested or held. However, a few comments were received. After consideration of the comments, the proposed regulations are adopted in these final regulations, with two modifications. In addition, these final regulations implement section 5 of Notice 2006-99, 2006-46 I.R.B. 907 (See §601.601(d)(2) of this chapter), modifying §1.1441-1(b)(7)(iii), as discussed below.

##### 1. *Time for Applying the 10-Percent Shareholder Test.*

The proposed regulations provide that the 10-percent shareholder test applies at the time the withholding agent would otherwise be required to withhold. The regulations then provide an example in which the test is stated to apply on the “earliest” of when the interest is distributed, the date the statement under section 6031(b) is mailed, or the due date for furnishing the statement. In order to make clear that the test may be applied on multiple dates (and not only on the date of a first partial distribution of such interest), the example has been rephrased. The example now states that the 10-percent shareholder test is applied when any distributions that include the interest are made to a foreign partner and, to the extent that a foreign partner’s distributive share of the interest has not actually been distributed, on the earlier of the date that the statement required under section 6031(b) is mailed or otherwise provided to such partner, or the due date for furnishing such statement. This change conforms more closely to the language of §1.1441-5(c)(2).

##### 2. *Effective Date of the Regulation.*

The new provisions set forth in the proposed regulations were proposed to apply to interest paid on obligations issued after the date that final regulations are published. One commentator stated that, in order to provide for consistency and to eliminate uncertainty and avoid possible disputes with respect to interest paid to partnerships prior to the date that the final regulations are published, the final regulations should apply to interest paid after July 18,

1984, with respect to obligations issued after July 18, 1984, the effective date of the portfolio interest provisions. Another commentator stated that the final regulations should apply to interest paid after the date the final regulations are issued.

The IRS and the Treasury Department agree that taxpayers should be able to apply the regulations to interest paid in certain prior taxable years. Accordingly, while the final regulations generally provide that the provisions relating to the 10-percent shareholder test for interest paid to partnerships are to apply to interest paid after the date the regulations are published as final regulations, the regulations also permit taxpayers to choose to apply the provisions to interest paid in any taxable year that is not closed by the period of limitations, provided that the taxpayer consistently applies the provisions to all relevant partnerships during such years.

### 3. Interest Imposed When No Tax Due.

Treasury Regulation §1.1441-1(b)(7)(iii) provides that a withholding agent that has failed to withhold tax other than based on reliance on the appropriate presumptions is not relieved from liability for interest under section 6601. It further provides that such liability exists even when there is no underlying tax that is ultimately shown to be due. That is, the regulation imposes an interest charge under section 6601 on a withholding agent for an amount of tax that has not in fact been imposed. Treasury Regulation §1.1441-1(b)(7)(v) sets forth two examples that illustrate the operation of this rule.

In Notice 2006-99, 2006-46 I.R.B. 907, the IRS and the Treasury Department announced their intention to remove the rule in Treasury Regulation §1.1441-1(b)(7)(iii), and the accompanying examples illustrating the rule in Treasury Regulation §1.1441-1(b)(7)(v), that impose interest under section 6601 when no underlying tax liability is imposed. Further, the notice announced that the IRS and the Treasury Department intend to clarify that, like interest, penalties that are computed based on underpayments of tax will not be imposed when no tax has in fact been imposed.

These final regulations retroactively remove, in accordance with Notice 2006-99, the rule in §1.1441-1(b)(7)(iii) that would impose interest and penalties based on hypothetical underpayments of tax when in

fact no tax has been imposed. The examples illustrating this rule in Treasury Regulation §1.1441-1(b)(7) are also removed.

## Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

## Drafting Information

The principal author of the proposed regulations is Kathryn Holman, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.871-14 is amended as follows:

1. Paragraphs (g) and (h) are redesignated as paragraphs (h) and (i), respectively.

2. New paragraph (g) is added.

3. Paragraph (1) of newly-designated paragraph (i) is amended by adding two sentences at the end of the paragraph.

The additions read as follows:

§1.871-14 Rules relating to repeal of tax on interest of nonresident alien individuals

and foreign corporations received from certain portfolio debt investments.

\* \* \* \* \*

(g) *Portfolio interest not to include interest received by 10-percent shareholders*—(1) *In general*. For purposes of section 871(h), the term *portfolio interest* shall not include any interest received by a 10-percent shareholder.

(2) *Ten-percent shareholder*—(i) *In general*. The term *10-percent shareholder* means—

(A) In the case of an obligation issued by a corporation, any person who owns 10-percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote; or

(B) In the case of an obligation issued by a partnership, any person who owns 10-percent or more of the capital or profits interest in such partnership.

(ii) *Ownership*—(A) *Stock ownership*. For purposes of paragraph (g)(2)(i)(A) of this section, *stock owned* means stock directly or indirectly owned and stock owned by reason of the attribution rules of section 318(a), as modified by section 871(h)(3)(C).

(B) *Ownership of partnership interest*. For purposes of paragraph (g)(2)(i)(B) of this section, rules similar to the rules in paragraph (g)(2)(ii)(A) of this section shall be applied in determining the ownership of a capital or profits interest in a partnership.

(3) *Application of 10-percent shareholder test to partners receiving interest through a partnership*—(i) *Partner level test*. Whether interest paid to a partnership and included in the distributive share of a partner that is a nonresident alien individual or foreign corporation is received by a 10 percent shareholder shall be determined by applying the rules of this paragraph (g) only at the partner level.

(ii) *Time at which 10-percent shareholder test is applied*. The determination of whether a nonresident alien individual or foreign corporation that is a partner in a partnership is a 10-percent shareholder under the rules of section 871(h)(3), section 881(c)(3), and this paragraph (g) with respect to interest paid to such partnership shall be made at the time that the withholding agent, absent the provisions of section 871(h), 881(c) and the rules of this paragraph, would otherwise be required to withhold under sections 1441 and 1442

with respect to such interest. For example, in the case of U.S. source interest paid by a domestic corporation to a domestic partnership or withholding foreign partnership (as defined in §1.1441-5(c)(2)), the 10-percent shareholder test is applied when any distributions that include the interest are made to a foreign partner and, to the extent that a foreign partner's distributive share of the interest has not actually been distributed, on the earlier of the date that the statement required under section 6031(b) is mailed or otherwise provided to such partner, or the due date for furnishing such statement. See §1.1441-5(b)(2) and (c)(2)(iii).

(4) *Application of 10-percent shareholder test to interest paid to a simple trust or grantor trust.* Whether interest paid to a simple trust or grantor trust and distributed to or included in the gross income of a nonresident alien individual or foreign corporation that is a beneficiary or owner of such trust, as the case may be, is received by a 10-percent shareholder shall be determined by applying the rules of this paragraph (g) only at the beneficiary or owner level. The 10-percent shareholder test is applied with respect to a nonresident alien individual or foreign corporation that is a beneficiary of a simple trust or an owner of a grantor trust at the time that a withholding agent, absent any exceptions, would otherwise be required to withhold under sections 1441 and 1442 with respect to such interest.

\* \* \* \* \*

(i) \* \* \* (1) \* \* \* The rules of paragraph (g) apply to interest paid after April

12, 2007. Taxpayers may choose to apply the rules of paragraph (g) to interest paid in any taxable year not closed by the period of limitations as of April 12, 2007, provided they do so consistently for all relevant partnerships during such years.

Par. 3. Section 1.881-2 (a)(6) is added to read as follows:

*§1.881-2 Taxation of foreign corporations not engaged in U.S. business.*

(a) \* \* \*

(6) Interest received by a foreign corporation pursuant to certain portfolio debt instruments is not subject to the flat tax of 30 percent described in paragraph (a)(1) of this section. For rules applicable to a foreign corporation's receipt of interest on certain portfolio debt instruments, see sections 871(h), 881(c), and §1.871-14.

\* \* \* \* \*

Par. 4. Section 1.1441-1(b)(7) is amended as follows:

1. Paragraphs (b)(7)(iii) is revised.
2. Paragraph (b)(7)(v) is removed.

The revision reads as follows:

*§1.1441-1 Requirement for the deduction and withholding of tax on payments to foreign persons.*

\* \* \* \* \*

(b) \* \* \*

(7) \* \* \*

(iii) *Liability for Interest and Penalties.* For payments made after December 31, 2000, if a withholding agent fails to deduct and withhold any tax imposed under sections 1441 or 1442, and the tax

against which such tax may be credited under section 1462 is paid, then the amount of tax required to be deducted and withheld shall not be collected from the withholding agent. However, the withholding agent is not relieved from liability for interest or any penalties or additions to the tax otherwise applicable in respect of the failure to deduct and withhold. See section 1463. Further, in the event that a tax liability is assessed against the beneficial owner under section 871, 881, or 882 and interest under section 6601(a) is assessed against, and collected from, the beneficial owner, the interest charge imposed on the withholding agent shall be abated to that extent so as to avoid the imposition of a double interest charge.

\* \* \* \* \*

Kevin M. Brown,  
*Deputy Commissioner for  
Services and Enforcement.*

Approved March 30, 2007.

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

(Filed by the Office of the Federal Register on April 11, 2007, 8:45 a.m., and published in the issue of the Federal Register for April 12, 2007, 72 F.R. 18386)

# Part III. Administrative, Procedural, and Miscellaneous

## Disciplinary Actions Under Section 822 of the American Jobs Creation Act of 2004

### Notice 2007-39

This notice provides guidance to practitioners, employers, firms, and other entities that may be subject to monetary penalties under 31 U.S.C. section 330. This notice also invites comments from the public regarding rules and standards relating to monetary penalties under 31 U.S.C. section 330.

#### BACKGROUND

In general, 31 U.S.C. section 330 authorizes the Secretary to regulate attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others who practice before the Service. Regulations under section 330 are promulgated in 31 CFR part 10 and are reprinted as Treasury Department Circular No. 230.

Section 822 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (the Act), amended 31 U.S.C. section 330 to expand the sanctions that the Secretary may impose for certain prohibited conduct within the meaning of section 10.52 of Circular 230 to include monetary penalties. As amended by the Act, 31 U.S.C. section 330 authorizes the Secretary to impose sanctions, including monetary penalties, against a practitioner who is incompetent or disreputable, who fails to comply with the regulations prescribed under section 330, or who, with intent to defraud, willfully and knowingly misleads or threatens a client or potential client. The Secretary is also authorized to impose monetary penalties against an employer, firm, or other entity, if the practitioner was acting on its behalf in connection with the prohibited conduct giving rise to the penalties and the employer, firm, or other entity knew, or reasonably should have known, of the prohibited conduct.

Monetary penalties apply only with respect to prohibited conduct that occurs after October 22, 2004, the date of enactment of the Act. Under the Act, the aggregate monetary penalties cannot exceed the gross income derived (or to be derived)

from the prohibited conduct giving rise to the penalties.

Monetary penalties may be imposed for a single act of prohibited conduct or for a pattern of misconduct. Monetary penalties may be imposed in addition to, or in lieu of, any suspension, disbarment, or censure of the practitioner. Monetary penalties are not, however, a “bargaining point” that a practitioner may offer to avoid suspension, disbarment, or censure if these sanctions are otherwise appropriate.

#### REQUIREMENTS FOR IMPOSITION OF MONETARY PENALTIES

##### *Amount of the Monetary Penalty*

The aggregate amount of the monetary penalty (or penalties) imposed by the Secretary for any prohibited conduct may not exceed the collective gross income derived by the practitioner and the employer, firm, or other entity in connection with such prohibited conduct. If a single act of prohibited conduct giving rise to a monetary penalty is an integral part of a larger engagement, the amount of the penalty will be limited by the “gross income derived (or to be derived)” from the larger engagement. In the event that the larger engagement began on or before October 22, 2004, the “gross income derived (or to be derived)” will be calculated, on a *pro rata* basis, to exclude amounts attributable to conduct occurring on or before October 22, 2004. In determining the amount of the monetary penalty (or penalties), the Secretary will consider amounts that the practitioner, employer, firm, or other entity could reasonably expect to realize, irrespective of whether the amounts have actually been received.

The Secretary has discretion to impose a monetary penalty in an amount less than the amount allowed by statute. In determining the amount of the penalty (or penalties), the Service will consider the level of culpability of the practitioner, firm, or other entity; whether the practitioner, firm, or other entity violated a duty owed to a client or prospective client; the actual or potential injury caused by the prohibited conduct; and the existence of aggravating or mitigating factors. Mitigating factors may include whether the

practitioner, employer, firm, or other entity took prompt action to correct the noncompliance after the prohibited conduct was discovered; promptly ceased engaging in the prohibited conduct; attempted to rectify any harm caused by the prohibited conduct; or undertook measures to ensure that the prohibited conduct would not occur again in the future. In general, the Service will not impose monetary penalties in cases of minor technical violations, when there is little or no injury to a client, the public, or tax administration, and there is little likelihood of repeated similar misconduct.

The Secretary may impose separate penalties against the practitioner and against the employer, firm, or other entity for any prohibited conduct. Each separate penalty may not exceed the gross income derived by the practitioner and the employer, firm, or other entity, respectively.

##### *Imposition of a Separate Monetary Penalty on an Employer, Firm, or Other Entity*

If a practitioner acted on behalf of an employer, firm, or other entity in connection with prohibited conduct, the Secretary may impose a separate monetary penalty on the employer, firm, or other entity if the employer, firm, or other entity knew, or reasonably should have known, of the prohibited conduct.

A practitioner is considered to have acted on behalf of an employer, firm, or other entity if –

(1) An agency relationship existed between the practitioner and the employer, firm, or other entity;

(2) The purpose of the agency relationship was to provide services in connection with practice before the Internal Revenue Service (as defined in section 10.2(d) of Circular 230); and

(3) The prohibited conduct giving rise to the penalty arose in connection with the agency relationship.

An employer, firm, or other entity knows or reasonably should know of the prohibited conduct if –

(1) One or more members of the principal management (or officers) of the employer, firm, or other entity, or one or more members of the principal management (or

officers) of a branch office knows, or has information from which a person with similar experience and background would reasonably know, of the prohibited conduct; or

(2) The employer, firm, or other entity through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) did not take reasonable steps to ensure compliance with Circular 230; and one or more individuals associated with the employer, firm, or other entity, in connection with their agency relationship with the employer, firm, or other entity, engages in prohibited conduct within the meaning of section 10.52 of Circular 230 that harms a client, the public, or tax administration, or a pattern or practice of failing to comply with Circular 230.

The following examples illustrate the above provisions:

*Example 1:* Attorney A specializes in tax planning and works out of a national accounting firm's headquarters. Attorney A is involved in the development of off-the-shelf tax planning strategies, including Strategy X. Attorney A has wide discretion over his day-to-day work product and rarely supervises other professionals at the firm. Attorney A rarely deals directly with clients as this work is handled by other firm partners or employees. Attorney A works directly with the firm's other attorneys, accountants and support staff across the country to market and fine-tune Strategy X. Clients of the firm are examined by the Service with respect to Strategy X, but Attorney A is not identified on any Form 2848 as a representative.

Attorney A reports to the director of the firm's tax practice. The director of the firm's tax practice provides general oversight as to Attorney A. The director of the firm's tax practice was aware of the strategies that Attorney A developed, including Strategy X, although he was not necessarily familiar with the technical tax details of each strategy. The director of the firm's tax practice also knew that Strategy X generated measurable revenue for the firm.

OPR determines that Attorney A engaged in prohibited conduct in violation of Circular 230 in the creation, promotion and marketing of Strategy X. Attorney A acted on behalf of the firm because an agency relationship existed between Attorney A and the firm, and the misconduct arose in connection with that agency relationship as Attorney A worked on behalf of the firm to promote Strategy X. The firm knew or had reason to know of the prohibited conduct in this situation. The director of the firm's tax practice, who is a member of principal management of the firm, had general knowledge that Attorney A developed the tax-advantaged strategies. Alternatively, in the absence of general knowledge, the director of the firm's tax practice would need to inquire into Strategy X because it added measurably

to the firm's revenue. Both Attorney A and the firm are subject to a monetary penalty.

*Example 2:* Unenrolled Return Preparer B owns and operates her own firm that provides return preparation services to the public and also specializes in preparing Forms 656, *Offers In Compromise*. B's firm employs 10 attorneys, CPAs and enrolled agents (all practitioners) and 15 unenrolled return preparers. B supervises and directs all of her employees. B's firm is structured in such a manner so that the first and predominant contact for clients coming in from the public is with the unenrolled return preparers. The unenrolled return preparers assist clients with preparing Forms 656 that are later submitted directly to the Service. B does not review individual Forms 656 but has provided specific instructions to her staff regarding how to complete false and misleading Forms 656 in violation of Circular 230. In order to facilitate the submission to the Service of the false or misleading Forms 656, B's procedure is to authorize one of her 10 practitioners to submit a Form 2848 on behalf of a client much later in the process, well after submission of the Forms 656 in violation of Circular 230.

Although B is not a practitioner, the practitioner's actions in submitting the Forms 2848 are done on behalf of the firm pursuant to an agency relationship and occur in connection with prohibited conduct. B's firm is considered to know or have reason to know of the prohibited conduct because B, a member of principal management, instructed her staff regarding completion of the forms in violation of Circular 230. The practitioner's actions subject B's firm to a monetary penalty.

When determining if a monetary penalty should be imposed on an employer, firm, or other entity, the Secretary will consider factors in addition to whether the employer, firm, or other entity knew, or reasonably should have known, of the prohibited conduct (or whether the employer, firm or other entity did not use reasonable efforts to ensure compliance with Circular 230). For example, the Secretary will consider the gravity of the misconduct, any history of noncompliance by the employer, firm, or other entity, preventative measures in effect prior to the misconduct, and any corrective measures taken by the employer, firm, or other entity after the prohibited conduct was discovered, including measures to ensure that future prohibited conduct does not occur.

#### *Additional Guidance and Request for Comments*

The Service may issue additional guidance regarding the application of monetary penalties, including, but not limited to, the factors that the Service should consider when evaluating all the facts and circumstances of a particular case. The Ser-

vice requests comments with respect to the appropriate factors to be considered when determining whether a monetary penalty is appropriate. Comments also are requested as to factors that the Service should consider in declining to impose a monetary penalty on an employer, firm, or other entity, including the weight given to adequate procedures in place for purposes of complying with Circular 230.

Additionally, in order to develop a penalty system that best encourages compliance with Circular 230, the Service requests comments regarding mitigating circumstances to consider when determining the amount of a monetary penalty. Mitigating circumstances could be considered, for example, in varying the amount of the penalty to correspond to the seriousness of the misconduct or pattern of misconduct. Mitigating circumstances could include, but not be limited to, the immediacy of the misconduct, history of misconduct, the existence of firm procedures, and corrective measures taken after discovery of the misconduct.

Interested parties are invited to submit comments by August 13, 2007. Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Notice 2007-39), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Alternatively, comments may be hand delivered Monday through Friday between the hours of 8:00 a.m. to 4:00 p.m. to: CC:PA:LPD:PR (Notice 2007-39), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC. Comments may also be submitted electronically via the following e-mail address: [Notice.Comments@irs.counsel.treas.gov](mailto:Notice.Comments@irs.counsel.treas.gov). Please include "Notice 2007-39" in the subject line of any electronic submissions.

#### DRAFTING INFORMATION

The principal author of this notice is Matthew Cooper of the Office of Associate Chief Counsel (Procedure & Administration), Administrative Provisions and Judicial Practice Division. For further information regarding this notice, contact Matthew Cooper at (202) 622-4940 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking and Notice of Public Hearing

### Section 1367 Regarding Open Account Debt

#### REG-144859-04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document proposes amendments to the regulations relating to the treatment of open account debt between S corporations and their shareholders. These proposed regulations provide rules regarding the definition of open account debt and the adjustments in basis of any indebtedness of an S corporation to a shareholder under section 1367(b)(2) of the Internal Revenue Code (Code) for shareholder advances and repayments on advances of open account debt. The proposed regulations affect shareholders of S corporations and are necessary to provide guidance needed to comply with the applicable tax law. This document also provides notice of a public hearing.

DATES: Written or electronic comments and requests for a public hearing must be received by July 11, 2007. Outlines of topics to be discussed at the public hearing scheduled for July 31, 2007, at 10 a.m., must be received by July 10, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-144859-04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions also may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-144859-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-144859-04). The public hearing will be held in the IRS Auditorium,

Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Stacy L. Short or Deane M. Burke, (202) 622-3070; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst at (202) 622-2949 (TDD Telephone) (not toll-free numbers) and his e-mail address is [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov), (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have 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). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224.

The recordkeeping requirement in these proposed regulations is in §1.1367-2(a)(2)(i). This information must be maintained by the shareholder to ensure that the indebtedness of the S corporation to the shareholder continues to meet the definition of open account debt found in §1.1367-2(a)(2)(i). The recordkeepers will be S corporation shareholders who have open account debt.

The following estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on the information that is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 250 hours.

Estimated average annual burden: hours per recordkeeper varies from .75 to 1.25 hours, depending on individual circumstances, with an estimated average of 1 hour.

Estimated number of recordkeepers: 250.

Estimated annual frequency of record-keeping: On occasion.

##### Background

This document proposes to amend §1.1367-2 of the Income Tax Regulations (26 CFR part 1) regarding the definition of open account debt and adjustments in basis of indebtedness for shareholder advances and repayments on advances of open account debt.

Section 1367(a)(1) provides that the basis of each shareholder's stock in an S corporation is increased by the shareholder's *pro rata* share of the S corporation's income (separately and nonseparately computed items of income) and the excess of the deductions for depletion over the basis of the property subject to depletion. Section 1367(a)(2) provides that the basis of each shareholder's stock in the S corporation is decreased by the shareholder's *pro rata* share of distributions not includible in income of the shareholder by reason of section 1368 (nontaxable distributions), losses and deductions (separately and non-separately computed losses), any expense of the corporation that is not deductible and not properly chargeable to capital account, and certain deductions for depletion for any oil and gas property held by the S corporation. Under section 1367(b)(2)(A), if for any taxable year the amounts specified in section 1367(a)(2) (other than distributions) exceed the amount which reduces the shareholder's basis to zero, such excess losses and deductions shall be applied to reduce (but not below zero) the shareholder's basis in any indebtedness of the S corporation to the shareholder. Section 1367(b)(2)(B) provides that if a shareholder's basis in indebtedness is reduced for any taxable year, any net increase (the amount by which the items described in section 1367(a)(1) exceed the items described in section 1367(a)(2)) for any subsequent taxable year is applied to re-



store the reduction in basis in indebtedness before any of the excess is used to increase basis in stock.

On January 3, 1994, the Treasury Department and the IRS published final regulations under section 1367 of the Code (T.D. 8508, 1994-1 C.B. 219 [59 FR 12], amended on December 22, 1999 (T.D. 8852, 2000-1 C.B. 253 [64 FR 71641])). Those final regulations relate, in part, to adjustments to basis in both stock of shareholders and indebtedness of an S corporation to its shareholders. Section 1.1367-2 of the Income Tax Regulations provides specific rules for required adjustments (reductions and restorations) to basis in any indebtedness of an S corporation to a shareholder. Section 1.1367-2(a) also provides that for purposes of adjustments to basis of indebtedness to shareholders, shareholder advances not evidenced by separate written instruments and repayments on the advances (open account debt) are treated as a single indebtedness. Further, §1.1367-2(a) provides that the basis of indebtedness of the S corporation to a shareholder is reduced as provided in §1.1367-2(b) and restored as provided in §1.1367-2(c). Thus, the basis adjustment rules under the final regulations apply to all indebtedness of an S corporation to a shareholder, whether the indebtedness is evidenced by a written instrument or is open account debt.

Section 1.1367-2(b) provides the rules for the reduction of basis of indebtedness of an S corporation to a shareholder. Generally, under §1.1367-2(b)(1), if the basis of a shareholder's stock in the S corporation has been reduced to zero under section 1367(a)(2), the excess of certain losses and deductions specified in section 1367(a)(2) is applied to reduce (but not below zero) the basis of any indebtedness of the S corporation to the shareholder held by the shareholder at the close of the S corporation's taxable year. Any indebtedness of the S corporation to the shareholder that has been satisfied by the S corporation, or disposed of or forgiven by the shareholder during the taxable year, is not held by the shareholder at the close of that year and is not subject to basis reduction. Further, §1.1367-2(b)(2) provides that if the interest of the shareholder in the S corporation is terminated during the taxable year, the rules in §1.1367-2(b) are applied to any indebtedness of the S corporation to the

shareholder held by the shareholder immediately before the termination of the shareholder's interest in the S corporation. If a shareholder holds more than one indebtedness at the close of the taxable year (or, if applicable, immediately prior to the termination of the shareholder's interest in the corporation), the basis of each indebtedness is reduced under §1.1367-2(b)(3) in the same proportion that the basis of each indebtedness bears to the aggregate bases of the indebtedness of the S corporation to the shareholder.

Section 1.1367-2(c) provides the rules for restoring basis of indebtedness of an S corporation to a shareholder. Generally, under §1.1367-2(c)(1), if, for any taxable year of the S corporation, there has been a reduction in the basis of an indebtedness of the S corporation to a shareholder, any net increase in any subsequent taxable year of the S corporation is applied to restore that reduction. For purposes of §1.1367-2, a net increase is the amount by which the shareholder's *pro rata* share of S corporation items described in section 1367(a)(1) exceed the items described in section 1367(a)(2) for the taxable year. The restoration rules apply only to indebtedness held by the shareholder as of the beginning of the taxable year in which the net increase arises. Further, the reduction in basis of indebtedness must be restored before a net increase is used to restore the shareholder's basis in stock. The shareholder's basis in indebtedness may not be restored above the adjusted basis of the indebtedness under section 1016(a) (excluding any prior year's adjustments under section 1367), determined as of the beginning of the taxable year in which the net increase arises.

Under §1.1367-2(c)(2), if a shareholder holds more than one indebtedness as of the beginning of an S corporation's taxable year, any net increase is applied first to restore the reduction of basis in any indebtedness repaid (in whole or in part) in that taxable year to the extent necessary to offset any gain that would otherwise be realized on the repayment. Any remaining net increase is applied to restore each outstanding indebtedness in proportion to the amount that the basis of each outstanding indebtedness has been reduced and not restored.

Section 1.1367-2(d) provides rules for the time at which adjustments to

basis of indebtedness under section 1367(b)(2) are effective. Generally, under §1.1367-2(d)(1) the amount of the adjustments to basis of indebtedness are determined and effective as of the close of an S corporation's taxable year. However, if the shareholder is not a shareholder in the S corporation at that time, the adjustments are effective immediately before the shareholder's interest in the S corporation is terminated. Moreover, if a debt is disposed of or repaid, in whole or in part, before the close of the taxable year, the basis of that debt is restored effective immediately before the disposition or the first repayment on the debt during the taxable year.

On August 25, 2005, the Tax Court issued its decision in *Brooks v. Commissioner*, TC Memo. 2005-204. In *Brooks*, the taxpayer borrowed money from a bank and advanced that money as open account debt to his S corporation in one taxable year and reduced basis in that open account debt for losses passed through to the taxpayer at the end of that same year. In the first few weeks of the subsequent taxable year, the S corporation repaid the open account debt (the taxpayer then repaid his debt for the borrowed money). Late in that subsequent year, the taxpayer advanced additional money (again, amounts borrowed from a bank) in an amount that offset the repayment of advances to avoid the recognition of gain from repayment of the indebtedness. Also, the taxpayer's advances increased the shareholder's basis in the indebtedness and allowed losses for that year to pass through to the taxpayer shareholder. Taxpayer and the S corporation made these repayments and advances for several taxable years and deferred indefinitely the recognition of income on any repayment of his open account debt.

The court in *Brooks* held "that the basis of the open account indebtedness is properly computed by netting at the close of the year advances of open account debt during the year and repayments of open account debt during the year."

### Explanation of Provisions

The Treasury Department and the IRS believe that the concept of "open account debt" as defined in §1.1367-2(a) was intended to provide administrative simplicity for S corporations but was not

intended to permit the deferral allowed in *Brooks*. The IRS and Treasury Department are proposing these amendments to narrow the definition of open account debt and to modify the rules for adjustments of basis in indebtedness for the more narrowly defined open account debt.

In these proposed regulations, open account debt is defined as shareholder advances not evidenced by separate written instruments for which the principal amount of the aggregate advances (net of repayments on the advances) does not exceed \$10,000 at the close of any day during the S corporation's taxable year. Included within that definition are separate advances under a line of credit agreement if the advances are not evidenced by a separate written instrument. Open account debt is treated as a single indebtedness. This \$10,000 limitation on open account debt for the purposes of the §1.1367-2 regulations is modeled after section 7872(c)(3) and the §1.7872-9 proposed regulations, which provide a \$10,000 *de minimis* exception to the treatment of loans with below-market interest rates for compensation-related or corporation-shareholder loans.

Under these proposed regulations, to determine whether shareholder advances and repayments on the advances exceed the \$10,000 aggregate principal threshold on any day during the S corporation's taxable year for open account debt, the shareholder will have to maintain a "running balance" of those advances and repayments, and the outstanding principal amount of the open account debt. If the resulting aggregate principal of the running balance does not exceed \$10,000 at the close of any day during the S corporation's taxable year, the advances and repayments on advances would constitute open account debt, would be treated as a single indebtedness, and would be accounted for at the close of the taxable year (as explained in this preamble). However, if the resulting aggregate principal of the running balance exceeds \$10,000 at the close of any day during the S corporation's taxable year, the entire principal amount of that indebtedness would no longer constitute open account debt effective at the close of the day on the date the amount of the running balance exceeds \$10,000. This principal amount would be treated as indebtedness evidenced by a written in-

strument for that taxable year, and would be accounted for according to the timing rules in §1.1367-2(d) for that taxable year and subsequent taxable years. Any new shareholder advances not evidenced by a written instrument and repayments on those advances within the \$10,000 aggregate principal threshold amount during the taxable year would constitute a new open account debt.

The proposed regulations also modify the manner in which repayments on open account debt are accounted for under the existing final §1.1367-2 regulations. These rules are separate from the maintenance of a running balance of the advances and repayments to determine if a shareholder has exceeded the \$10,000 threshold amount. For purposes of accounting for open account debt, each shareholder, at the end of the S corporation's taxable year, must determine if that shareholder has made a net advance or received a net repayment on open account debt for that taxable year. To determine if a net advance or a net repayment has occurred, each shareholder, at the end of the S corporation's taxable year, must net all advances and repayments made during the year without regard to the outstanding principal amount of the open account debt. If, at the end of the taxable year, a net repayment exists, the net repayment must be taken into account effective at the close of the S corporation's taxable year under the general basis adjustment rules in the existing final §1.1367-2 regulations. If, at the end of the taxable year, a net advance exists, the net advance is combined with the outstanding aggregate principal balance of the existing open account debt and that amount is carried forward to the beginning of the subsequent taxable year as the outstanding aggregate principal amount of the open account debt. If at any time during the taxable year the resulting aggregate principal of the running balance exceeds the \$10,000 threshold amount so the entire principal amount of the indebtedness no longer constitutes open account debt, the running balance must be reconciled effective at the close of the day the balance exceeds \$10,000 to determine the aggregate principal amount of the indebtedness, and for the remainder of the taxable year that principal amount is treated in the same manner as indebted-

ness evidenced by a written instrument for the purposes of this section.

### **Proposed Effective Date**

The regulations, as proposed, apply to any shareholder advances to the S corporation made on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register** and repayments on those advances by the S corporation.

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Comments and 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. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 31, 2007, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name

placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 606.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and time to be devoted to each topic (a signed original and eight (8) copies) by July 10, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal authors of these regulations are Stacy L. Short and Deane M. Burke of the Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS.

\* \* \* \* \*

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAX

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

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

Section 1.1367-2 also issued under 26 U.S.C. 1367(b)(2).\* \* \*

Par. 2. Section 1.1367-2 is amended as follows:

1. Paragraph (a) is revised and redesignated as paragraph (a)(1) and paragraph (a)(2) is added.

2. Paragraphs (c)(2) and (d)(1) are revised.

3. Paragraph (d)(2) is redesignated as paragraph (d)(3).

4. New paragraph (d)(2) is added.

5. Paragraph (e) is amended by adding *Examples 6 and 7*.

The revisions and additions read as follows:

### §1.1367-2 Adjustments to basis of indebtedness to shareholder.

(a) *In general*—(1) *Adjustments under section 1367*. This section provides rules relating to adjustments required by subchapter S to the basis of indebtedness (including open account debt as described in paragraph (a)(2) of this section) of an S corporation to a shareholder. The basis of indebtedness of the S corporation to a shareholder is reduced as provided in paragraph (b) of this section and restored as provided in paragraph (c) of this section in accordance with the timing rules in paragraph (d) of this section.

(2) *Open Account Debt*—(i) *General rule*. The term *open account debt* means shareholder advances not evidenced by separate written instruments and repayments on the advances, the aggregate outstanding principal of which does not exceed \$10,000 of indebtedness of the S corporation to the shareholder at the close of any day during the S corporation's taxable year. Advances and repayments on open account debt are treated as a single indebtedness. For purposes of determining if shareholder advances not evidenced by separate written instruments and repayments on those advances exceed an aggregate outstanding principal of \$10,000, a shareholder must maintain a running daily balance of all advances and repayments on those advances and the outstanding principal amount of the open account debt at the close of each day during the S corporation's taxable year.

(ii) *Exception*. If a shareholder's running balance exceeds an aggregate outstanding principal amount of \$10,000 at the close of any day during the S corporation's taxable year, effective on the close of the day on which the shareholder's running balance exceeds \$10,000, the running balance must be reconciled to determine the aggregate principal amount of indebtedness. For the remainder of the taxable year, that aggregate principal amount of indebtedness is treated in the same manner as indebtedness evidenced by a separate written instrument for purposes of this section. For the remainder of that taxable year and subsequent taxable years, the indebtedness is not open account debt and is subject to all basis adjustment rules applicable to basis of indebtedness of an S corporation to a shareholder in this section.

\* \* \* \* \*

(c) \* \* \* (1) \* \* \*

(2) *Multiple indebtedness*. If a shareholder holds more than one indebtedness (including any open account debt and any debt treated as a single indebtedness under paragraph (a)(2)(ii)) as of the beginning of an S corporation's taxable year, any net increase is applied first to restore the reduction of basis in any indebtedness repaid (in whole or in part) in that taxable year to the extent necessary to offset any gain that would otherwise be realized on the repayment. Any remaining net increase is applied to restore each outstanding indebtedness (including any open account debt and any debt treated as a single indebtedness under paragraph (a)(2)(ii) of this section) in proportion to the amount that the basis of each outstanding indebtedness has been reduced under section 1367(b)(2)(A) and paragraph (b) of this section and not restored under section 1367(b)(2)(B) and this paragraph (c).

(d) *Time at which adjustments to basis of indebtedness are effective*—(1) *In general*. Except as provided in paragraph (d)(2) of this section, the amounts of the adjustments to basis of indebtedness provided in section 1367(b)(2) and this section are determined as of the close of the S corporation's taxable year, and the adjustments are generally effective as of the close of the S corporation's taxable year. However, if the shareholder is not a shareholder in the S corporation at that time, these adjustments are effective immediately before the shareholder terminates his or her interest in the S corporation. If a debt (including any open account debt and any debt treated as a single indebtedness under paragraph (a)(2)(ii) of this section) is disposed of or repaid in whole or in part before the close of the taxable year, the basis of that indebtedness is restored under paragraph (c) of this section, effective immediately before the disposition or the first repayment on the debt (or the net repayment on open account debt) during the taxable year. To the extent any reduction of basis in indebtedness under paragraph (b) of this section that is disposed of or repaid (in whole or in part) during the taxable year is not restored completely under paragraph (c) of this section, gain is realized on the repayment effective immediately before the indebtedness is disposed of or repaid (in whole or in part).

(2) *Open account debt*—(i) *In general.* All advances and repayments on open account debt (as described in paragraph (a)(2)(i) of this section) during the taxable year are netted continuously as the advances and repayments occur. The amount of any net advance or net repayment on open account debt for the S corporation's taxable year is determined at the close of the taxable year. If the shareholder advances, and repayments on the advances, during the S corporation's taxable year result in a net advance or net repayment, the basis of the open account debt is reduced as provided in paragraph (b) of this section and restored as provided in paragraph (c) of this section effective at the close of the taxable year. To the extent any reduction of basis of open account debt under paragraph (b) of this section that is disposed of or repaid (in whole or in part) during the taxable year is not restored completely under paragraph (c) of this section, income is realized on the net repayment at the close of the taxable year in which the open account debt is disposed of or repaid (in whole or in part).

(ii) *Exception.* On the close of the day on which the shareholder's running balance exceeds an aggregate outstanding principal amount of \$10,000, the shareholder's running balance is reconciled to determine an aggregate principal amount of indebtedness. The resulting aggregate principal amount of indebtedness is treated as the principal amount of a debt evidenced by a separate written instrument for the remainder of that taxable year and any subsequent taxable year, and is no longer subject

to the open account debt provisions of this section.

\* \* \* \* \*  
(e) \* \* \* \* \*  
\* \* \* \* \*

*Example 6. Treatment of open account debt.* (i) A has been the sole shareholder in Corporation S since 2000. In 2007, A advances S \$8,000, which is not evidenced by a written instrument. The \$8,000 advance is open account debt and remains outstanding at that amount during 2007. On December 31, 2007, the basis of A's stock is zero; and the basis of the open account debt is reduced under paragraph (b) of this section to \$4,000. On April 1, 2008, S repays \$3,000 of the open account indebtedness. On September 1, 2008, A advances S an additional \$2,000, which is not evidenced by a written instrument. There is no net increase under paragraph (c) of this section in year 2007 or 2008.

(ii) At no time during the 2007 taxable year does the running balance of A's open account debt exceed \$10,000. As of December 31, 2007, A's basis in the open account debt is reduced under paragraph (b) of this section to \$4,000.

(iii) At no time during the 2008 taxable year does the running balance of A's open account debt exceed \$10,000. On April 1, 2008, S's \$3,000 repayment is applied to A's running balance for open account debt carried forward from 2007 in the amount of \$8,000 to reduce the running balance to \$5,000. On September 1, 2008, A's advance to S of \$2,000, which is not evidenced by a written instrument, is applied to A's running balance to bring A's aggregate outstanding principal on A's open account indebtedness to \$7,000.

(iv) At the close of the 2008 taxable year, the \$3,000 April repayment S makes to A and A's \$2,000 September advance are netted to result in a net repayment of \$1,000 for the taxable year on A's \$8,000 open account debt carried forward from 2007. Because there is no net increase in 2008, no basis of indebtedness is restored for the 2008 taxable year.

*Example 7. Treatment of shareholder indebtedness not evidenced by a written instrument which exceeds \$10,000.* (i) The facts are the same as in *Example 6*, in addition to which, on February 1, 2008, S

repays \$1,000 of the open account debt and on March 1, 2008, A advances S \$5,000, which is not evidenced by a written instrument.

(ii) At no time during the 2007 taxable year does the running balance of A's open account debt exceed \$10,000. As of December 31, 2007, the basis of the open account debt is reduced under paragraph (b) of this section to \$4,000.

(iii) The running balance of A's open account debt does exceed \$10,000 during the 2008 taxable year. On February 1, 2008, S's \$1,000 repayment is applied to A's running balance for open account debt carried forward from 2007 in the amount of \$8,000 to reduce the running balance to \$7,000. On March 1, 2008, A's advance to S of \$5,000, which is not evidenced by a written instrument, is applied to A's running balance to bring A's aggregate outstanding principal on A's open account debt to \$12,000. Because this amount exceeds the \$10,000 threshold amount, effective at the close of the day on March 1, 2008, A's running balance must be reconciled to determine an aggregate principal amount of indebtedness.

(iv) As of March 1, 2008, S had made a \$1,000 repayment on A's open account debt, and A had advanced an additional \$5,000 which was not evidenced by a written instrument. To reconcile A's running balance, the \$1,000 repayment and \$5,000 advance are netted first to result in a \$4,000 net advance that is then added with A's existing principal amount of open account debt of \$8,000 to determine the aggregate principal amount of indebtedness of \$12,000. As of March 1, 2008, S's indebtedness to A that is not evidenced by a written instrument has a principal balance of \$12,000 and a basis of \$8,000 (\$4,000 basis on December 31, 2007 + \$4,000 net advance). On April 1, 2008, S repays \$3,000 of that new indebtedness.

(v) On September 1, 2008, A advances S an additional \$2,000, which is not evidenced by a written instrument. The \$2,000 advance is considered new open account debt. On December 31, 2008, A's basis in his stock is zero and the outstanding principal in the two remaining debts are as follows:

	3/1/08 principal	4/1/08 repayment	9/1/08 advance	12/31/08 principal
Indebtedness treated as if evidenced by written instrument	\$12,000	\$3,000		\$9,000
Open account debt			\$2,000	\$2,000

Par. 3. Section 1.1367-3 is amended as follows:

1. The section heading is revised.
2. The first sentence of the paragraph is revised.
3. A new second and last sentence are added.

The revisions and additions read as follows:

*§1.1367-3 Effective dates and transitional rules.*

Section 1.1367-2(a), (c)(2), (d)(2), and (e) *Example 6* and *Example 7* apply to any shareholder advances to the S corporation made on or after the date these regulations are published as final regulations in the **Federal Register** and repayments on those advances by the S corporation.

Kevin M. Brown,  
Deputy Commissioner for  
Services and Enforcement.

(Filed by the Office of the Federal Register on April 11, 2007, 8:45 a.m., and published in the issue of the Federal Register for April 12, 2007, 72 F.R. 18417)

# Announcement of Disciplinary Actions Involving Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries — Suspensions, Censures, Disbarments, and Resignations

## Announcement 2007-41

Under Title 31, Code of Federal Regulations, Part 10, attorneys, certified public accountants, enrolled agents, and enrolled actuaries may not accept assistance from, or assist, any person who is under disbarment or suspension from practice before the Internal Revenue Service if the assistance relates to a matter constituting practice before the Internal Revenue Service and may not knowingly aid or abet another

person to practice before the Internal Revenue Service during a period of suspension, disbarment, or ineligibility of such other person.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify persons to whom these restrictions apply, the Director, Office of Professional Responsibility, will announce in the Internal Revenue Bulletin

their names, their city and state, their professional designation, the effective date of disciplinary action, and the period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks.

## Consent Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service,

may offer his or her consent to suspension from such practice. The Director, Office of Professional Responsibility, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

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

Name	Address	Designation	Date of Suspension
Hankinson, Eugene M.	Somerset, PA	CPA	Indefinite from November 15, 2006
Canzano, Richard M.	Winchester, MA	Attorney	Indefinite from November 20, 2006
Sims, Jr., Lionel	Houston, TX	CPA	Indefinite from November 20, 2006
Wendekier, Raymond J.	Patton, PA	Attorney	Indefinite from November 21, 2006
Golden, Larry	Hinesville, GA	CPA	Indefinite from November 28, 2006
Lane, David B.	Hanover, MA	Attorney	Indefinite from November 28, 2006

Name	Address	Designation	Date of Suspension
Brown, Arthur I.	Miami, FL	CPA	Indefinite from December 1, 2006
Frisk, Daniel J.	Fargo, ND	Attorney	Indefinite from December 1, 2006
Small, Kenneth A.	McMurray, PA	CPA	Indefinite from December 1, 2006
Vazquez, Sonya M.	Port Orchard, WA	CPA	Indefinite from December 1, 2006
Swistak, Anthony	Adams, MA	Enrolled Agent	Indefinite from December 6, 2006
Lenahan, Jr., Robert J.	Elizabeth, NJ	Attorney	Indefinite from December 11, 2006
Hayes, Richard A.	Havervill, MA	Attorney	Indefinite from December 14, 2006
Scheller, Stephen M.	Coppell, TX	CPA	Indefinite from December 15, 2006
Wilson, James M.	Berlin, NJ	CPA	Indefinite from December 15, 2006
Franzese, Joseph P.	Winthrop, MA	Attorney	Indefinite from December 18, 2006
Black, Charles C.	Marietta, GA	Attorney	Indefinite from January 1, 2007
Enright, III, Robert A.	Naples, FL	Attorney	Indefinite from January 1, 2007
Fromovitz, Norman M.	Brooklyn, NY	CPA	Indefinite from January 1, 2007
Saylor, Mary A.	Iowa City, IA	Enrolled Agent	Indefinite from January 1, 2007
Seeherman, Alan	Wynnewood, PA	CPA	Indefinite from January 1, 2007

Name	Address	Designation	Date of Suspension
Beistel, Theodore L.	Canton, OH	CPA	Indefinite from January 3, 2007
Myers, Robert J.	Fairport Harbor, OH	CPA	Indefinite from January 9, 2007
Burrus, Robert V.	Valparaiso, IN	CPA	Indefinite from January 22, 2007
Patterson, Douglas W.	Newburgh, IN	Attorney	Indefinite from January 31, 2007
Lang, Jeffrey H.	Fishers, IN	CPA	Indefinite from January 22, 2007
Chickering, David	Vermillion, SD	CPA	February 5, 2007 to November 4, 2007
Moss, Steve E.	Henderson, NC	CPA	Indefinite from February 5, 2007
Hazlip, Kevin	Orange Park, FL	Enrolled Agent	Indefinite from February 10, 2007
Adelson, Robert A.	Newton, MA	Attorney	Indefinite from February 15, 2007
Boyer, Daniel D.	North Judson, IN	CPA	Indefinite from February 15, 2007
LaRusso, Anthony J.	North Caldwell, NJ	Attorney	Indefinite from February 15, 2007
Martin, Spencer R.	Lancaster, PA	CPA	Indefinite from February 15, 2007
Hursh, Stephanie S.	Brush Prairie, WA	Enrolled Agent	Indefinite from February 20, 2007
Guidera, George C.	Weston, CT	Attorney	Indefinite from February 26, 2007
Ruth, Christopher A.	Cypress, CA	CPA	Indefinite from February 27, 2007
Elias, Lenard S.	El Cajon, CA	Enrolled Agent	Indefinite from March 1, 2007

Name	Address	Designation	Date of Suspension
Ikeji, Chuck	Orlando, FL	CPA	Indefinite from March 1, 2007
Lewis, Craig S.	Savannah, GA	CPA	Indefinite from March 1, 2007
Sloan, Eric R.	Brighton, MI	CPA	Indefinite from March 1, 2007
Gostomski, Michael	Stamford, CT	CPA	Indefinite from March 5, 2007
Hafer, Charles J.	Hamburg, PA	Enrolled Agent	Indefinite from March 5, 2007
Jones, Phillip G.	Andalusia, AL	Enrolled Agent	Indefinite from March 7, 2007
Agashiwala, Mahesh J.	New York, NY	CPA	Indefinite from March 22, 2007
Berndgen, Michael	Plantation, FL	CPA	Indefinite from April 1, 2007
Grahn, Charles R.	Indianapolis, IN	Attorney	Indefinite from April 1, 2007
Shaw, G. Joyce	Hebron, KY	Enrolled Agent	Indefinite from April 1, 2007
Pikaart, Jr., Edward H.	N. Branford, CT	CPA	Indefinite from April 10, 2007
Kelley, Richard S.	Beverly, MA	Attorney	Indefinite from May 1, 2007
Crabtree, Michael L.	San Dimas, CA	Enrolled Agent	Indefinite from May 15, 2007
Hausmann, Mark D.	Troy, NY	Attorney	Indefinite from May 15, 2007



# Expedited Suspensions From Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regulations, Part 10, the Director, Office of Professional Responsibility, is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years from the date

the expedited proceeding is instituted (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause or (2) has been convicted of certain crimes.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions:

Name	Address	Designation	Date of Suspension
Hatchett, William M.	Pontiac, MI	Attorney	Indefinite from November 13, 2006
Jacobs, Mark L.	Jackson Heights, NY	Attorney	Indefinite from November 21, 2006
Sylver, Peter T.	E. Longmeadow, MA	Attorney	Indefinite from November 21, 2006
Portlock, David R.	Pensacola, FL	Enrolled Agent	Indefinite from November 27, 2006
Ascher, Michael P.	North Port, FL	Attorney	Indefinite from November 28, 2006
Barrett, Norman W.	Dover, DE	CPA	Indefinite from November 28, 2006
Burd, Gene	Houston, TX	Attorney	Indefinite from November 28, 2006
Caceres, Carlos H.	Silver Spring, MD	Attorney	Indefinite from November 28, 2006
Carrabotta, Peter S.	Niles, IL	Attorney	Indefinite from November 28, 2006
Davis, Carleton W.	St. Louis, MO	Attorney	Indefinite from November 28, 2006
Frasier, Roland B.	Rancho Santa Fe, CA	Attorney	Indefinite from November 28, 2006
Hubbard, Edward	Chicago, IL	Attorney	Indefinite from November 28, 2006

Name	Address	Designation	Date of Suspension
Hynes, Richard W.	Brookline, MA	Attorney	Indefinite from November 28, 2006
Johnson, Barbara C.	Andover, MA	Attorney	Indefinite from November 28, 2006
Konas, Theodore V.	Lancaster, PA	CPA	Indefinite from November 28, 2006
Korson, Daniel M.	Muskegon, MI	CPA	Indefinite from November 28, 2006
Lee, III, Norman J.	Collegeville, PA	Attorney	Indefinite from November 28, 2006
Loiben, Alan A.	Skokie, IL	Attorney	Indefinite from November 28, 2006
McGarry, Thomas H.	Denver, CO	Attorney	Indefinite from November 28, 2006
Roberts, Quinton D.	Elkridge, MD	Attorney	Indefinite from November 28, 2006
Schofield, Peter L.	Spencer, MA	Attorney	Indefinite from November 28, 2006
Shultz, Ryan K.	Mitchell, NE	Attorney	Indefinite from November 28, 2006
Stenger, Jeanne P.	Temecula, CA	Attorney	Indefinite from November 28, 2006
Wood, Gary K.	Edina, MN	Attorney	Indefinite from November 28, 2006
Bakare, Adigun S.	Laurel, MD	Attorney	Indefinite from December 6, 2006
Biagini, Marc J.	Downers Grove, IL	Attorney	Indefinite from December 6, 2006
Birchall, Richard G.	Brewster, MA	Attorney	Indefinite from December 6, 2006

Name	Address	Designation	Date of Suspension
Brown, Edward E.	Indianapolis, IN	Attorney	Indefinite from December 6, 2006
Cunningham, Jr., Shirley A.	Ft. Lauderdale, FL	Attorney	Indefinite from December 6, 2006
Docherty, Scott R.	Branson West, MO	Attorney	Indefinite from December 6, 2006
Dressler, Peter P.	West Chicago, IL	Attorney	Indefinite from December 6, 2006
Henry, William J.	Irvington, NJ	Attorney	Indefinite from December 6, 2006
Hubbard, Cynthia A.	Geneva, IL	Attorney	Indefinite from December 6, 2006
Jackson, Jr., Donald H.	Hanover, MA	Attorney	Indefinite from December 6, 2006
Katz, Norman H.	Owings Mills, MD	Attorney	Indefinite from December 6, 2006
Lakin, Leonard S.	Wellesley Hills, MA	Attorney	Indefinite from December 6, 2006
McGreevy, Jacqueline K.	Carbondale, CO	Attorney	Indefinite from December 6, 2006
Zepp, Dale D.	Ferguson, MO	Attorney	Indefinite from December 6, 2006
Triplett, Austin H.	Homewood, IL	Attorney	Indefinite from December 11, 2006
Murphy, Patrick W.	Honolulu, HI	Attorney	Indefinite from December 11, 2006
Cronin, Jr., Edward M.	Cambridge, MA	Attorney	Indefinite from December 11, 2006
Christof, Kevin F.	Santa Monica, CA	Attorney	Indefinite from December 21, 2006
Heath, Kenneth J.	Canaan, VT	CPA	Indefinite from December 21, 2006

Name	Address	Designation	Date of Suspension
Madigan, Brian C.	Binghamton, NY	Attorney	Indefinite from December 21, 2006
Malloy, Terry P.	Tulsa, OK	Attorney	Indefinite from December 21, 2006
Baynes, Robert M.	Indianapolis, IN	CPA	Indefinite from December 27, 2006
Ceresa, Richard A.	Woodbridge, CA	CPA	Indefinite from December 27, 2006
Crews, Richard A.	Henderson, CO	Attorney	Indefinite from December 27, 2006
Menkveld, Paul G.	Tucson, AZ	Attorney	Indefinite from December 27, 2006
Worischek, Joseph H.	Tempe, AZ	Attorney	Indefinite from December 27, 2006
Brown, Kirk P.	Pueblo, CO	Attorney	Indefinite from December 28, 2006
Dowling, Stanley W.	Scotts Valley, CA	CPA	Indefinite from December 28, 2006
Simmons, Henry L.	Greensboro, NC	CPA	Indefinite from December 28, 2006
Steele, Regina D.	San Diego, CA	Attorney	Indefinite from December 29, 2006
Craig, III, William A.	Austin, TX	Attorney	Indefinite from January 1, 2007
Acker, Thomas R.	Hollis Center, ME	Attorney	Indefinite from January 8, 2007
Baxter, Laura M.	Monee, IL	CPA	Indefinite from January 8, 2007
Herald, Sally J.	Cold Spring, KY	Attorney	Indefinite from January 8, 2007
Klapheke, II, William T.	Bowling Green, KY	Attorney	Indefinite from January 8, 2007

Name	Address	Designation	Date of Suspension
McCarthy, Charles C.	Encino, CA	Attorney	Indefinite from January 8, 2007
Bolling, Darius C.	Chicago, IL	CPA	Indefinite from January 10, 2007
Breitlauch, Linda	Saylorsburg, PA	Attorney	Indefinite from January 10, 2007
Coddington, Paul F.	Concord, NH	Attorney	Indefinite from January 10, 2007
Davis, Jr., William E.	Pinehurst, TX	CPA	Indefinite from January 10, 2007
Esola, Louis A.	Greensburg, PA	CPA	Indefinite from January 10, 2007
Finch, Judith A.	Walnut Creek, CA	Attorney	Indefinite from January 10, 2007
Jeing, Thomas C.	San Francisco, CA	Attorney	Indefinite from January 10, 2007
Ledbetter, Dean D.	Pelham, AL	CPA	Indefinite from January 10, 2007
McDiarmid, Katherine B.	Greensboro, NC	Attorney	Indefinite from January 10, 2007
Mills, George P.	Oceanside, CA	Attorney	Indefinite from January 10, 2007
Rather, James L.	Irvine, CA	Attorney	Indefinite from January 10, 2007
Rivera, Eduardo M.	Torrance, CA	Attorney	Indefinite from January 10, 2007
Stepovich, Michael A.	Fairbanks, AK	Attorney	Indefinite from January 10, 2007
Ulbrich, David L.	Woodland Hills, CA	CPA	Indefinite from January 10, 2007
Swanson, Todd-Ellis	Greenville, SC	CPA	Indefinite from January 20, 2007

Name	Address	Designation	Date of Suspension
Rubin, Deborah L.	Delray Beach, FL	Attorney	Indefinite from January 26, 2007
Wood, Brent E.	Cary, NC	Attorney	Indefinite from January 26, 2007
Currin, Samuel T.	Raleigh, NC	Attorney	Indefinite from February 7, 2007
Lupo, Robert N.	Weston, MA	Attorney	Indefinite from February 20, 2007
Taggart, Lawrence W.	El Cajon, CA	Attorney	Indefinite from March 7, 2007
Fife, III, James H.	Schererville, IN	Attorney	Indefinite from March 8, 2007
Katsis, Kevin G.	Riverside, IL	Attorney	Indefinite from March 8, 2007
O'Driscoll, Dennis M.	Quincy, MA	Attorney	Indefinite from March 8, 2007
Siever, Beth F.	Austin, TX	Attorney	Indefinite from March 8, 2007
Wheatley-Clark, Sheila R.	Houston, TX	CPA	Indefinite from March 8, 2007

## Suspensions From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been placed under suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Redmond, Debra	Gifford, PA	Enrolled Agent	Indefinite from March 5, 2007

# Disbarments From Practice Before the Internal Revenue Service After Notice and an Opportunity for a Proceeding

Under Title 31, Code of Federal Regulations, Part 10, after notice and an opportunity for a proceeding before an administrative law judge, the following individuals have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Brookstein, Gary	Huntingdon Valley, PA	CPA	December 15, 2006
James T. Jubb	Baltimore, MD	CPA	December 15, 2006

## Censure Issued by Consent

Under Title 31, Code of Federal Regulations, Part 10, in lieu of a proceeding being instituted or continued, an attorney, certified public accountant, enrolled agent, or enrolled actuary, may offer his or her consent to the issuance of a censure. Censure is a public reprimand. The following individuals have consented to the issuance of a Censure:

Name	Address	Designation	Date of Censure
Zucker, Robert W.	Boca Raton, FL	CPA	November 14, 2006
Montgomery, David E.	Pleasanton, CA	Enrolled Agent	November 15, 2006
Higgins, James M.	S. Boston, MA	Attorney	December 1, 2006
Pennington, Debra L.	Lees Summit, MO	Enrolled Agent	January 29, 2007
Goodwin, Steven C.	Concord, MA	Attorney	February 2, 2007
Francis, Andrew W.E.	Houston, TX	CPA	February 21, 2007
Griffin, Richard M.	Duluth, GA	CPA	February 28, 2007

## Resignations of Enrolled Agents

Under Title 31, Code of Federal Regulations, Part 10, an enrolled agent, in order to avoid the institution or conclusion of a proceeding for his or her disbarment or suspension from practice before the Internal Revenue Service, may offer his or her resignation as an enrolled agent. The Director, Office of Professional Responsibility, in his discretion, may accept the offered resignation. The Director, Office of Professional Responsibility, has accepted offers of resignation as an enrolled agent from the following individuals:

Name	Address	Date of Resignation
Filipski, Kenneth M.	Bakersfield, CA	April 16, 2007

## List of Nonbank Trustees and Custodians

### Announcement 2007-47

The following is a list of entities that have been approved by the Commissioner

of the Internal Revenue Service, pursuant to § 1.408-2(e) of the Income Tax Regulations, to serve as a nonbank trustee or custodian. This list updates and supersedes the list published with Announcement 2006-45, 2006-31 I.R.B. 121.

Archer medical savings accounts (Archer MSAs) established under § 220 of the Internal Revenue Code, health savings

accounts described in § 223, custodial accounts of retirement plans qualified under § 401, custodial accounts described in § 403(b)(7), trust or custodial accounts of individual retirement accounts (IRAs) established under §§ 408 and 408A (Roth IRAs), Coverdell education savings accounts described in § 530, and custodial accounts of eligible deferred compensa-

tion plans described in § 457(b) will not be tax exempt if the trustee or custodian of such accounts is not a bank (as defined in § 408(n)) (and in the case of Archer MSAs and health savings accounts, a bank within the meaning of § 408(n) or an insurance company within the meaning of § 816) or an approved nonbank trustee or custodian.

An entity that is not a bank (as defined in § 408(n)) (and in the case of Archer MSAs and health savings accounts a bank within the meaning of § 408(n) or an insurance company within the meaning of § 816) must receive approval from the Service to serve as a nonbank trustee or nonbank custodian. A prospective nonbank trustee or custodian must file a written application with the Commissioner of Internal Revenue demonstrating that the requirements of § 1.408-2(e)(2) through § 1.408-2(e)(7) of the regulations will be met. If the application is approved, a written notice of approval will be issued to the applicant. The notice of approval will state the day on which it becomes effective, and (except as otherwise provided therein) will remain effective until revoked by the Service or withdrawn by the applicant. Entities that have received such approval from the Service may also sponsor certain retirement plans, custodial accounts under § 403(b)(7) and individual retirement arrangements established under §§ 408 and 408A. (See, Rev. Proc. 2005-16, 2005-1 C.B. 674, and Rev. Proc. 87-50, 1987-2 C.B. 647, as modified.)

A prospective nonbank trustee or custodian may not accept any fiduciary account before such notice of approval becomes effective. In addition, a nonbank trustee or custodian may not accept a fiduciary ac-

count until after the plan administrator or the person for whose benefit the account is to be established is furnished with a copy of the written notice of approval issued to the applicant.

The continued reliance on a notice of approval is dependent upon the continued satisfaction of the nonbank trustee requirements set forth in the regulations. The notice of approval issued to an applicant will be revoked if the Commissioner determines that the applicant is unwilling or unable to administer fiduciary accounts in a manner consistent with the requirements of the regulations. Generally, the notice will not be revoked unless the Commissioner determines that the applicant has knowingly, willfully, or repeatedly failed to administer fiduciary accounts in a manner consistent with the requirements of the regulations, or has administered a fiduciary account in a grossly negligent manner.

The written notice of approval to serve as a nonbank trustee or nonbank custodian is not an endorsement of any investment made with respect to any retirement plan or arrangement handled by the approved nonbank trustee or custodian. The Internal Revenue Service does not review or approve investments.

If the trustee or custodian of an account described above is not a bank (and in the case of Archer MSAs and health savings accounts, a bank or an insurance company) or an approved nonbank trustee or nonbank custodian, the amounts held in such account (including earned interest) will be deemed distributed and includible in gross income in the year(s) the account's trustee or custodian was not a bank or, if appli-

cable, an insurance company, or an approved nonbank trustee or nonbank custodian. Contributions made to such account are not deductible from gross income and will be disallowed if claimed on an income tax return.

This list of approved nonbank trustees and nonbank custodians includes their names, addresses, and the date each application was approved.

If an approved nonbank trustee or custodian believes that the information about it is incorrect, incomplete, or that it has been incorrectly omitted from this list, it may, on or before August 13, 2007, notify the Service in writing of any changes it proposes to the list. This notification should include a copy of the notice of approval.

The notification should be addressed to:

Internal Revenue Service  
SE:T:EP:RA:T1  
Announcement 2007-47  
1111 Constitution Ave., NW — PE  
Washington, DC 20224

#### Drafting Information

The principal author of this announcement is Calvin Thompson of the Employee Plans, Tax Exempt and Government Entities Division. Please contact Mr. Thompson at 202-283-9596 (not a toll-free number), if there are any questions regarding the publication of this list. Written inquiries concerning this announcement should be addressed to the Internal Revenue Service at the above address.

APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
1. A.B. Culbertson & Co.	1250 Continental Plaza Fort Worth, TX 76102	5/15/1984
2. A.G. Becker & Co.	Chicago, IL	12/12/1979
3. A.G. Edwards & Sons, Inc.	One North Jefferson St. Louis, MO 63103	11/26/1980
4. ABN AMRO Securities LLC	55 East 52nd Street New York, NY 10022	9/7/2000
5. Adler, Coleman Clearing Corp.	20 Broad St. New York, NY 10005	4/7/1987



APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
6. Advest, Inc.	280 Trumbull Street Hartford, CT 06103	1/24/1989
7. Aisel & Co.	20 Broad Street New York, NY 10005	4/26/1991
8. American Brokerage Services, Inc.	131 Lafayette Ave. Detroit, MI 48226	9/18/1991
9. American Capital Marketing, Inc. (FKA American General Capital)	2777 Allen Parkway Houston, TX 77215	6/25/1984
10. American Express Financial Corp.	200 AXP Financial Center Minneapolis, MN 55474	8/12/1977
11. American Heritage Life Ins. Co.	76 South Laura Street Jacksonville, FL 32202	12/11/1984
12. American Transtech, Inc.	8000 Baymeadows Way Jacksonville, FL 32256	8/15/1990
13. Ameritrade, Inc.	4211 South 102nd Street Omaha, NE 68127-1031	4/18/1984
14. Analytic Investment Management, Inc.	2222 Martin Street, Suite 230 Irvine, CA 92715-1454	5/9/1989
15. Aspen Partnership	1895 Claremont Road Hoffman Estates, IL 60195	10/25/1990
16. B.C. Ziegler & Co.	215 North Main Street West Bend, WI 53095	9/27/1985
17. Banc of America Securities LLC	100 North Tryon Street NC 1-007-20-01 Charlotte, NC 28255	4/30/2003
18. Banc One Capital Corporation	P.O. Box 18277 90 North High Street Columbus, OH 43218	2/24/1992
19. Bank Hapoulim B.M.	6501 Wilshire Blvd. Los Angeles, CA 90048	5/15/1986
20. Bank Julius Baer & Co., LTD	330 Madison Avenue New York, NY 10017	12/15/1988
21. Bank Leumi Le — Israel B.N. Western Hemisphere Regional Mgt.	242 Fifth Avenue New York, NY 10022	2/10/1982
22. Bartlett & Co.	36 East Fourth Street Cincinnati, OH 45202	2/1/1989
23. Bear, Stearns & Co., Inc.	5 Hanover Square New York, NY 10004	6/2/1986
24. Bear, Sterns Securities Corp.	2 Broadway, 12th Floor New York, NY 10004	6/24/1991
25. Berklee College of Music, Inc.	1140 Boylston Street Boston, MA 02110	5/9/1989
26. Bernard L. Madoff Investment Securities LLC	885 Third Avenue New York, NY 10022	7/7/2004
27. BISYS Fund Services, Inc.	3425 Stelzer Rd. Columbus, OH 43219	12/31/2003

## APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
28. Blunt Ellis & Loewi, Inc.	225 East Mason Street Milwaukee, WI 53202	1/25/1982
29. BNY Clearing Services, LLC (FKA Kemper Clearing Corporation)	111 East Kilbourn Ave. Milwaukee, WI 53202	8/21/1989
30. Boettcher & Company, Inc.	828 Seventeenth Street Denver, CO 80201	8/10/1987
31. Brown & Company Securities Corporation	20 Winthrop Square Boston, MA 02110	2/27/1985
32. Bruns, Nordeman, Rea & Co.	New York, NY	10/31/1977
33. Burke, Christensen & Lewis Securities, Inc.	120 S. La Salle Street Suite 940 Chicago, IL 60603	3/11/1986
34. Burton J. Vincent, Chesley & Co.	105 West Adams Street Chicago, IL 60603	3/25/1982
35. Butler Wick & Co., Inc.	City Center One Bldg. Youngstown, OH 44501	10/8/1992
36. BUYandHold Securities Corporation	110 Wall Street New York, NY 10005	10/5/2000
37. Carolina Securities Corp.	239 Fayetteville St. Mall Raleigh, NC 27602	8/29/1983
38. Chapin, Davis & Company, Inc.	3 Village Square, Cross Keys Baltimore, MD 21210	12/7/1983
39. Charles Schwab & Co., Inc.	101 Montgomery Street San Francisco, CA 94104	1/8/1982
40. Christian & Missionary Alliance	P.O. Box C Nyack, NY 10960	8/15/1985
41. CIBC World Markets Corporation	200 Liberty Street New York, NY 10281	7/26/1977
42. Citigroup Global Markets, Inc.	388 Greenwich St. New York, NY 10105	7/22/1985
43. City Securities Corp.	135 North Pennsylvania Street Indianapolis, IN 46204	12/21/1982
44. Commerce First Thrift	Midvale, UT 84047	5/25/1978
45. Commonwealth of Kentucky	105 Sea Hero Road, Suite 1 Frankfort, KY 40601-8862	6/5/2006
46. Comprehensive Investment Services, Inc.	One Moody Plaza Galveston, TX 77550	6/16/2000
47. Continental Trust Co.	17110 Dallas Parkway Suite 200 Dallas, TX 75248	2/22/1977
48. Croatian Fraternal Union Of America	100 Delaney Drive Pittsburgh, PA 15235	10/12/2006
49. D. A. Davidson & Co.	Davidson Building 8 Third Street North Great Falls, MT 59403	6/11/1982

APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
50. D.J. St. Germain, Inc.	1500 Main Street Springfield, MA 01115	1/1/1977
51. Davenport & Co. of Virginia, Inc.	901 E. Cary Street Richmond, VA 23219	2/2/1987
52. Davenport & Company LLC	901 East Cary Street Richmond, VA 23219	3/31/1997
53. Deutsche Bank Securities Corp. d.b.a. C.J. Lawrence Deutsche	1290 Avenue of the Americas New York, NY 10104	3/14/1980
54. Deutsche Bank Securities, Inc.	1 South Street Baltimore, MD 21203	4/11/1994
55. Dougherty, Dawkins, Strand & Yost, Inc.	100 South Fifth Street Suite 2300 Minneapolis, MN 55402	2/22/1986
56. Dresdner Kleinwort Wasserstein Securities LLC	75 Wall Street New York, NY 10005	10/9/2002
57. Dreyfus Investment Services Corp.	Two Mellon Bank Center Pittsburgh, PA 15259	5/18/1989
58. Duncan-Williams, Inc.	5860 Ridgeway Center Parkway Memphis, TN 38120	12/13/1995
59. E*Trade Clearing LLC	10951 White Rock Road Rancho Cordova, CA 95670	9/3/2002
60. E*Trade Securities LLC	4500 Bohannon Drive Menlo Park, CA 94025	8/30/2002
61. E*Trade Securities, Inc.	480 California Avenue Palo Alto, CA 94306	2/1/1996
62. Eads Generoe Trust	St. Louis, MO	2/3/1977
63. Edward D. Jones & Co.	201 Progress Parkway Maryland Height, MO 63043	5/30/1985
64. El Paso Electric Co.	P.O. Box 982 El Paso, TX 79960	6/15/1983
65. Elan Investment Services, Inc.	777 East Wisconsin Avenue Milwaukee, WI 53282	12/21/1987
66. Emmett A. Larkin Co., Inc.	100 Bush Street San Francisco, CA 94104	4/17/1986
67. Eppler, Guerin & Turner, Inc.	2001 Bryan Tower, Suite 2300 Dallas, TX 75201	9/6/1984
68. EVEREN Securities, Inc.	77 West Wacker Drive Chicago, IL 60601-1694	11/19/1998
69. Fahnstock & Co., Inc. (FKA Edward A. Viner & Co.)	110 Wall Street New York, NY 10005	4/15/1982
70. Fechtor, Detwiler & Co., Inc.	155 Federal Street Boston, MA 02110	3/26/1982
71. Ferris, Baker Watts, Inc. (FKA Ferris & Company)	1720 Eye Street, NW Washington, DC 20006	12/4/1987

APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
72. Fiduciary Services Corporation	310 Commercial Drive Savannah, GA 31406	10/2/2003
73. Financial Data Services, Inc.	400 Atrium Drive Somerset, NJ 08873	11/14/1990
74. First Albany Corp.	41 State Street Albany, NY 12207	9/26/1979
75. First Clearing Corporation	10700 Wheat First Drive Glen Allen, VA 23060	4/21/1999
76. First Clearing, LLC (FKA First Clearing Corporation)	10700 Wheat First Drive Glen Allen, VA 23060	5/30/2003
77. First Illinois Capital Corp.	424 7th Street Plaza 7 Rockford, IL 61110	5/27/1982
78. First Manhattan Co.	437 Madison Avenue New York, NY 10022	1/26/1990
79. First of Michigan Corporation	100 Renaissance Center 26th Floor Detroit, MI 48243	8/31/1994
80. Fiserv Securities, Inc.	One Commerce Square 2005 Market Street Philadelphia, PA 19103	11/15/1984
81. Fleet Clearing Corporation	67 Wall Street New York, NY 10005	12/3/1986
82. Fleet Norstar Securities, Inc.	14 Wall Street New York, NY 10005	8/30/1991
83. Fleet Securities, Inc.	26 Broadway New York, NY 10004	5/3/1983
84. Folger, Nolan, Fleming & Douglass	725 15th Street, N.W. Washington, DC 20015	9/16/1981
85. Freedom Capital Management Corporation	One Beacon Street Boston, MA 02108	8/29/1991
86. Freeman Welwood & Co., Inc.	1501 Fourth Avenue Suite 1700 Seattle, WA 98101	2/13/1996
87. General Conference of the Mennonite Brethren Churches, Board of Trustees	315 South Lincoln Hillsboro, KS 67063	3/8/1983
88. Goldman, Sachs & Co.	85 Broad Street New York, NY 10004	12/8/1982
89. Greater Beneficial Union of Pittsburgh	4254 Clairton Blvd. Pittsburgh, PA 15227-3394	9/24/2004
90. Greek Catholic Union of the U.S.A.	5400 Tuscarawas Rd. Beaver, PA 15009-9513	5/24/2000
91. Gruntal & Co., Inc.	14 Wall Street New York, NY 10005	6/13/1984
92. GuideStone Financial Services	2401 Cedar Springs Road Dallas, TX 75201-1498	4/10/2001

APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
93. H&R Block Financial Advisors, Inc.	735 Griswold Street Detroit, MI 48226	12/8/1983
94. H.G. Wellington & Co., Inc.	14 Wall Street New York, NY 10005	9/13/1993
95. H.M. Payson & Co.	One Portland Square P.O. Box 31 Portland, ME 04112	8/20/1987
96. Halpert and Company, Inc.	284 Millburn Avenue Millburn, NJ 07041	4/17/1996
97. Hamilton Investments, Inc. (FKA Illinois Company, Inc.)	30 North La Salle Street Chicago, IL 60602	8/6/1982
98. Hampshire Funding, Inc.	One Granite Place P.O. Box 2005 Concord, NH 03301	5/26/1988
99. Hanifen, Imhoff Clearing Corp.	1125 17th Street Denver, CO 80217	4/22/1997
100. Hanifen, Imhoff, Inc.	1125 17th Street, Suite 1700 Denver, CO 80202	12/3/1985
101. Harrisdirect, LLC	Harborside Financial Center 501 Plaza II Jersey City, NJ 07311	5/1/2002
102. Hartford Life Insurance Co.	Hartford Plaza Hartford, CT 06106	3/3/1982
103. Hartford Securities Distribution Company	200 Hopmeadow Street Simsbury, CT 06089	3/9/2006
104. Hazlett, Burt & Watson, Inc.	1300 Chapline Street Wheeling, WV 26003	4/11/1995
105. HealthEquity, Inc.	5151 East Broadway Boulevard Suite 510 Tucson, AZ 85711	2/27/2006
106. Heartland Securities, Inc.	208 South LaSalle Street Chicago, IL 60604	3/6/1984
107. Henry Scott, Inc.	Philadelphia, PA	3/23/1982
108. Herzfeld & Stern, Inc.	30 Broad Street New York, NY 10004	12/12/1984
109. Herzog, Heine, Geduld, Inc.	26 Broadway New York, NY 10004	2/11/1982
110. Holt & Collins	188 Embarcadero Suite 760 San Francisco, CA 94105	9/8/1988
111. Home Life Financial Assurance Corporation	2400 West Bay Drive Largo, FL 33540	11/13/1986
112. Howard, Weil, Labouisse, Friedrichs, Inc.	1100 Paydrus Street Suite 900 New Orleans, LA 70163	12/28/1987

APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
113. Huntleigh Securities Corporation	222 South Central Avenue St. Louis, MO 63102	10/22/1997
114. I.M. Simon & Co.	7730 Forsyth Blvd. Clayton, MO 63105	11/3/1981
115. iClearing, LLC	100 Wood Avenue South Iselin, NJ 08830	2/7/2001
116. Integrated Fund Services, Inc.	221 East Fourth Street Suite 300 Cincinnati, OH 45202	5/15/2003
117. Investment Advisers, Inc.	1100 Dain Tower Minneapolis, MN 55440	10/9/1981
118. ISDA Fraternal Association	419 Wood Street Pittsburgh, PA 15222	10/28/2004
119. Isler, Colling & McAdams	Portland, OR	10/5/1978
120. J.C. Bradford & Co.	330 Commerce Street Nashville, TN 37201	2/28/1982
121. J.J.B. Hilliard, W.L. Lyons, Inc.	Hilliard Lyons Center 501 South Fourth St. Louisville, KY 40202	2/11/1992
122. Jacob Engle Foundation, Inc. (The)	P.O. Box 1136 Upland, CA 91786	3/25/1983
123. Janney Montgomery Scott, Inc.	1801 Market Street Philadelphia, PA 19103	3/23/1982
124. Jefferson Pilot Investor Services, Inc.	100 North Greene Street Greensboro, NC 27401	10/22/1979
125. Jesup, Josephthal & Co., Inc.	One Whitehall Street New York, NY 10004	12/18/1990
126. John Hancock Clearing Corporation	200 Liberty Street New York, NY 10281	3/21/1991
127. John Hancock Mutual Life Insurance Company	John Hancock Place 200 Clarendon Street Boston, MA 02117	8/24/1993
128. Juran & Moody, Inc.	Minnesota Mutual Life Center 400 North Robert Street Suite 800 Saint Paul, MN 55101	5/27/1994
129. Kagin Numismatic Services, Ltd.	1000 Insurance Exchange Bldg. Des Moines, IA 50309	3/18/1980
130. KH Funding Company	10801 Lockwood Drive Suite 370 Silver Spring, MD 20901	2/13/2002
131. Kirkpatrick, Pettis, Smith, Polian, Inc.	1623 Farnam Street Suite 700 Omaha, NE 68102	8/18/1981
132. L.F. Rothchild, Unterberg, Towbin	55 Water Street New York, NY 10041	12/23/1985

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Name	Address	Approval Date
133. Legg Mason Wood Walker, Inc.	111 S. Calvert Street P.O. Box 1476 Baltimore, MD 21203	6/4/1985
134. Lehman Brothers, Inc.	200 Vesey Street New York, NY 10285	12/20/2000
135. Lester Sumrall Evangelistic Association, Inc.	530 East Ireland Road South Bend, IN 46614	9/2/1988
136. Liberty Life Insurance Co.	P.O. Box 789 Greenville, SC 29602	9/3/1982
137. Manley, Bennett, McDonald & Co.	St. Louis, MO	1/1/1977
138. McDonald & Company Securities, Inc.	580 Walnut Street Cincinnati, OH 45202	12/15/1983
139. MEGA Life and Health Insurance Company	501 West Interstate 44 Service Road Oklahoma City, OK 73118	5/29/1991
140. Menold, Crawford, Hippler & Co.	23930 Michigan Ave. Dearborn, MI 40126	12/9/1988
141. Merrill, Lynch, Pierce, Fenner & Smith, Inc.	1700 Merrill Lynch Drive MSC 0703 Pennington, NJ 08534	8/3/1987
142. Merrimack Valley Investment, Inc.	367 Kingsbury Ave. Haverhill, MA 01830	9/28/1984
143. Mesirow Financial, Inc.	350 N. Clark Street Chicago, IL 60610	5/28/1982
144. Metropolitan Life Insurance Co.	One Madison Avenue New York, NY 10010	1/28/1987
145. Metropolitan Mortgage & Securities Corporation	W. 292 Sprague Ave. Spokane, WA 99204	11/10/1976
146. Mid-Ohio Securities Corp.	225 Burns Road Elyria, OH 44036	1/28/1983
147. Mid-States Enterprises, Inc.	Carroll, IA	12/30/1976
148. Miller Johnson & Kuehn, Inc.	5500 Wayzata Blvd. Minneapolis, MN 55416	11/15/2000
149. Milwaukee Company (The)	250 East Wisconsin Avenue Milwaukee, WI 53202	9/15/1986
150. MKI Securities Corp.	61 Broadway New York, NY 10006	4/17/1985
151. Money Management Associates	4922 Fairmont Avenue Bethesda, MD 20814	5/26/1987
152. Moody Bible Institute of Chicago	820 N. La Salle Boulevard Chicago, IL 60610-3284	4/25/2003
153. Moore & Schley, Cameron & Co.	Two Broadway New York, NY 10004	11/15/1977

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Name	Address	Approval Date
154. Morgan Keegan & Company, Inc.	Morgan Keegan Tower Fifty Front Street Memphis, TN 38108	1/27/1982
155. Morgan Stanley & Co. Incorporated	1585 Broadway New York, NY 10036	3/22/2004
156. Morgan Stanley DW Inc.	1585 Broadway New York, NY 10036	5/29/1986
157. Mortgage Loan Services, Inc.	780 Lynnhaven Parkway Suite 200 Virginia Beach, VA 23452	3/15/1995
158. Moseley, Hallgarten, Estabrook & Weeden, Inc.	One New York Plaza New York, NY 10004	12/10/1985
159. Murphy Favre, Inc.	W. 601 Riverside 9th Floor Spokane, WA 99201	8/2/1976
160. Mutual Service Cooperative	Two Pine Tree Drive Arden Hills, MN 55112	6/6/1996
161. Myriad Corporation	1400 50th Street West Des Moines, IA 50265	7/20/1977
162. National Bank of Greece, S.A.	33 State Street Boston, MA 02109	2/4/1988
163. National Covenant Properties	5701 N. Francisco Dr. Chicago, IL 60625	6/30/1978
164. National Investor Services Corp.	44 Wall Street New York, NY 10005	3/18/1996
165. National Slovak Society of the U.S.A.	351 Valley Brook Road McMurray, PA 15317-3337	10/28/2004
166. Nationwide Advisory Services, Inc. (Nationwide Financial Services, Inc.)	One Nationwide Plaza Columbus, OH 43216	9/25/1985
167. Nationwide Credit Union	One Nationwide Plaza Columbus, OH 43216	4/13/1978
168. NBC Securities, Inc.	1927 First Avenue North Birmingham, AL 35203	7/16/1996
169. Neuberger & Berman	522 Fifth Ave. New York, NY 10036	10/4/1983
170. Newhard, Cook & Co.	300 North Broadway St. Louis, MO 63102	6/4/1985
171. Oberweis Securities, Inc.	841 North Lake Street Aurora, IL 60506	2/11/1985
172. Parker/Hunter, Inc.	600 Grant Street Pittsburgh, PA 15219	6/15/1990
173. Partnership Services, Inc.	5520 LBJ Freeway Suite 430 Dallas, TX 75240	3/31/1993
174. Peninsular Securities Co.	Waters Building Grand Rapids, MI 49503	1/28/1985



APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
175. Penson Financial Services, Inc.	1700 Pacific Avenue Suite 1400 Dallas, TX 75201	6/9/2005
176. Perelman-Carley & Associates, Inc.	Twin Towers 3000 Farnam Street Omaha, NE 68131	1/13/1989
177. Perkins Coie LLP	1201 Third Avenue Suite 4800 Seattle, WA 98101-3099	8/2/2004
178. Pershing LLC	One Pershing Plaza Jersey City, NJ 07399	12/4/1985
179. Pflueger & Baerwald, Inc.	Mills Building 220 Montgomery Street Room 1000 San Francisco, CA 94104	11/9/1981
180. PFS Investments, Inc.	3120 Breckenridge Boulevard Duluth, GA 30199	9/28/1995
181. Pioneer Financial Services, Inc.	4233 Roanoke Road Kansas City, MO 64111	1/25/1985
182. Pioneer Investment Management USA	60 State Street Boston, MA 02109	2/21/1986
183. Piper Jaffray & Co.	Piper Jaffray Center 800 Nicollet Mall Minneapolis, MN 55402-7020	4/21/1982
184. Polish Falcons of America	615 Iron City Drive Pittsburgh, PA 15205-4397	11/3/2004
185. Prescott, Ball & Turben, Inc.	1331 Euclid Ave. Cleveland, OH 44115	1/27/1983
186. PrimeVest Financial Services, Inc.	400 First Street South St. Cloud, MN 56301-3600	12/8/1993
187. Principal Life Insurance Company	711 High Street Des Moines, IA 50392-0001	7/27/1988
188. PWMCO, LLC	310 South Michigan Avenue Chicago, IL 60604	1/6/2005
189. R. Rowland & Co., Inc.	St. Louis, MO	3/29/1984
190. R.G. Dickinson & Co.	200 Des Moines Building 405 6th Ave. Des Moines, IA 50309	7/20/1983
191. R.J. Steichen & Company	Midwest Plaza, Suite 100 801 Nicolett Mall Minneapolis, MN 55402-2526	5/21/1993
192. Raymond James & Associates, Inc.	880 Carillon Parkway P.O. Box 12749 St. Petersburg, FL 33733-2749	4/26/1982
193. Raymond James & Associates, Inc.	880 Carillon Parkway P.O. Box 12749 St. Petersburg, FL 33733-2749	3/8/1982

## APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
194. RBC Dain Rauscher, Inc.	Dain Rauscher Plaza 60 South Sixth Street Minneapolis, MN 55402-4422	3/2/1998
195. RBC Dain Rauscher, Inc.	Dain Rauscher Plaza 60 South Sixth Street Minneapolis, MN 55402-4422	1/22/1982
196. Regan MacKenzie, Incorporated	999 Third Avenue Suite 4300 Seattle, WA 98104	8/31/1989
197. Regions Investment Company, Inc.	2011 Fourth Avenue North Birmingham, AL 35203	7/20/2000
198. Reserve Management Company, Inc.	810 Seventh Avenue New York, NY 10019	10/18/1989
199. Robert W. Baird & Co., Inc.	777 East Wisconsin Avenue Milwaukee, WI 53202	6/10/2004
200. Robert W. Baird & Co., Inc.	777 E. Wisconsin Avenue Milwaukee, WI 53202	7/31/1986
201. Robinson-Humphrey Co., Inc. (The)	Two Peachtree Street, N.W. Atlanta, GA 30383	5/24/1982
202. Romano Bros. & Co.	820 Davis Street Evanston, IL 60201	9/28/1984
203. Rose & Company Investment Brokers, Inc.	141 West Jackson Blvd. Chicago, IL 60604	4/14/1982
204. Rotan Mosle, Inc.	1500 S. Tower Pennzoil Place P.O. Box 3226 Houston, TX 77001	5/6/1980
205. Rushmore Investment Brokers, Inc.	4922 Fairmont Avenue Bethesda, MD 20814	9/24/1986
206. Sanford C. Bernstein & Co., Inc.	767 Fifth Avenue New York, NY 10153	11/13/1986
207. Santa Ana City Employees Credit Union	800 West Santa Ana Blvd. Santa Ana, CA 92701	3/25/1982
208. Saturna Capital Corporation	101 Prospect Street Bellingham, WA 98227-2838	3/28/1991
209. SBCI Swiss Bank Corporation Investment Banking, Inc.	222 Broadway, 4th Floor New York, NY 10038	2/11/1992
210. SBM Financial Services, Inc.	8400 Normandale Lake Blvd. Suite 1150 Minneapolis, MN 55437	5/13/1995
211. Scott & Stringfellow, Inc. (FKA Craige, Inc.)	823 E. Main Street Richmond, VA 23219	5/5/1999
212. Scottsdale Securities, Inc.	12855 Flushing Meadow St. Louis, MO 63131	10/9/1996
213. Securities America, Inc.	7100 West Center Road Suite 500 Omaha, NE 68106-2798	9/21/2006

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Name	Address	Approval Date
214. Securities Management Research, Inc.	Two Moody Plaza Galveston, TX 77550	6/22/1978
215. Security Management Company, LLC (Formerly, Security Management Co.)	700 SW Harrison Street Topeka, KS 66636-0001	8/14/1996
216. SG Cowen Securities Corporation	1221 Avenue of the Americas New York, NY 10020	6/30/1998
217. ShareBuilder Securities Corporation	1000 124th Avenue, NE Bellevue, WA 98005	4/15/2003
218. SMA Services, Inc.	35 Lakeshore Drive Birmingham, AL 35209	8/27/1998
219. Smith, Moore & Co.	400 Locust Street St. Louis, MO 63102	1/18/1983
220. Southwest Securities, Inc.	Renaissance Tower 1201 Elm Street Suite 4300 Dallas, TX 75270	12/9/1992
221. Spear Rees & Co.	505 North Brand Boulevard Sixteenth Floor Glendale, CA 91203	1/13/1988
222. Spear, Leeds & Kellog	120 Broadway New York, NY 10271	3/29/1996
223. State Bond and Mortgage Company	8500 Normandale Lake Boulevard Minneapolis, MN 55437	12/21/1990
224. State Employees Credit Union	801 Hillsborough Street P.O. Box 26807 Raleigh, NC 27611-6807	1/1/1977
225. State Farm Investment Management Corporation	One State Farm Plaza Bloomington, IL 61410	9/22/1999
226. Stephens, Inc.	111 Center Street Little Rock, AR 72201	12/4/1987
227. Stern Brothers & Co.	1100 Main Street, Suite 2200 Kansas City, MO 64199	12/15/1987
228. Sterne, Agee & Leach, Inc.	1500 Am South-Sonat Tower Birmingham, AL 35203	9/11/1981
229. Stifel, Nicolaus & Co., Inc.	500 North Broadway St. Louis, MO 63102	9/9/1981
230. Summit Discount Brokerage (FKA Lehigh Securities Corp.)	1457 MacArthur Road Lehigh Valley, PA 18002	4/4/1990
231. Sunpoint Securities, Inc.	911 W. Loop 281 Longview, TX 75604	4/1/1998
232. SunTrust Capital Markets, Inc.	3333 Peachtree Road, NE Atlanta, GA 30326	5/27/1982
233. Sutro & Company, Inc.	201 California Street San Francisco, CA 94111-5096	12/8/1988
234. Swiss American Securities, Inc.	100 Wall Street New York, NY 10005	12/2/1980

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Name	Address	Approval Date
235. Texas First Securities Corporation	1360 Post Oak Blvd. Suite 120 Houston, TX 77056	11/17/1988
236. TIAA-CREF Individual & Institutional Services, Inc.	730 Third Avenue New York, NY 10017	9/9/2002
237. Tucker Anthony, Incorporated	One Beacon Street Boston, MA 02108	10/23/1980
238. UBS Financial Services, Inc. (FKA UBS Paine Webber, Inc.)	1285 Avenue of the Americas New York, NY 10019	5/12/1989
239. UBS Financial Services, Inc. (FKA UBS Paine Webber, Inc.)	1285 Avenue of the Americas New York, NY 10019	8/26/2004
240. Ukrainian National Association	2200 Route 10 Parsippany, NJ 07054	9/24/2004
241. Unified Financial Securities, Inc.	429 North Pennsylvania Indianapolis, IN 46204	10/28/1976
242. United of Omaha Life Insurance Co.	Mutual of Omaha Plaza Omaha, NE 68175	3/16/1982
243. Variable Annuity Life Insurance Company	2929 Allen Parkway Houston, TX 77019	3/16/2006
244. W.H. Reaves & Co., Inc.	30 Montgomery Street Jersey City, NJ 07302	12/7/1990
245. W.H. Turlington & Co.	509 East Center Street Lexington, NC 27292	11/3/1980
246. Wachovia Securities, Inc.	201 North Tryon Street Charlotte, NC 28202	4/6/1990
247. Wachovia Securities, LLC	901 East Byrd Street Richmond, VA 23219	7/1/2003
248. Wayne Hummer & Co.	300 South Wacker Drive Chicago, IL 60606	1/25/1983
249. Web Street Securities, Inc.	222 South Riverside Plaza 11th Floor Chicago, IL 60601	4/27/2000
250. Wedbush Morgan Securities	1000 Wilshire Boulevard Los Angeles, CA 90030	12/24/1984
251. Weiss, Peck & Greer	One New York Plaza New York, NY 10004	6/16/1982
252. Wells Advisors, Inc.	3885 Holcomb Bridge Road Norcross, GA 30092	3/20/1992
253. Wexford LLC Corporation	1 New York Plaza, 11th Floor New York, NY 10292	6/30/1998

APPROVED Nonbank Trustees/Custodians as of December 31, 2006

Name	Address	Approval Date
254. Wheat, First Securities, Inc.	707 East Main Street P.O. Box 1357 Richmond, VA 23211	3/23/1983
255. William R. Hough & Co., Inc.	100 2nd Avenue South Suite 800 St. Petersburg, FL 33701	4/18/1995

**Corporate Reorganizations;  
Additional Guidance on  
Distributions Under Sections  
368(a)(1)(D) and 354(b)(1)(B);  
Correction**

**Announcement 2007-48**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to temporary regulations (T.D. 9313, 2007-13 I.R.B. 805) that were published in the **Federal Register** on Thursday, March 1, 2007 (72 FR 9262) providing guidance regarding the qualification of certain transactions as reorganizations described in section 368(a)(1)(D) where no stock and/or securities of the acquiring corporation are issued and distributed in the transaction.

DATES: This correcting amendment is effective April 13, 2007.

FOR FURTHER INFORMATION CONTACT: Bruce A. Decker at (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

The temporary regulations that are the subject of this correction are under section 368 of the Internal Revenue Code.

**Need for Correction**

As published, temporary regulations (T.D. 9313) contain an error that may prove to be misleading and is in need of clarification.

\* \* \* \* \*

**Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following amendment:

**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 1.368-2T is amended by revising paragraph (1)(2)(iv) to read as follows:

*§1.368-2T Definition of terms (temporary).*

\* \* \* \* \*

(1) \* \* \*

(2) \* \* \*

(iv) *Exception.* This paragraph (1)(2) does not apply to a transaction otherwise described in section 1.358-6(b)(2) or section 368(a)(1)(G) by reason of section 368(a)(2)(D).

\* \* \* \* \*

LaNita Van Dyke,  
*Chief, Publications and  
Regulations Branch,  
Legal Processing Division,  
Associate Chief Counsel  
(Procedure and Administration).*

(Filed by the Office of the Federal Register on April 12, 2007, 8:45 a.m., and published in the issue of the Federal Register for April 13, 2007, 72 F.R. 18575)

# 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.

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