

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. 9333, page 350.

REG-149036-04, page 365.

Temporary and proposed regulations under section 6404 of the Code provide guidance on the suspension of interest, penalty, addition to tax, or additional amounts with respect to listed transactions or undisclosed reportable transactions. A public hearing on the proposed regulations is scheduled for October 11, 2007.

REG-128274-03, page 356.

Proposed regulations under section 42 of the Code, which concern the low-income housing credit, would amend the utility allowances regulations under section 1.42-10. A public hearing is scheduled for October 9, 2007.

REG-163195-05, page 366.

Proposed regulations under section 3406(g) of the Code provide amendments to the existing regulations for backup withholding for reportable payments made through a Qualified Payment Card Agent (QPCA). See related Notice 2007-59, 2007-30 I.R.B. 135, containing a proposed revenue procedure for guidance on QPCA determinations. A public hearing is scheduled for November 7, 2007.

Notice 2007-63, page 353.

Repayment of Commodity Credit Corporation (CCC) loans. This notice provides guidance regarding the tax treatment and information reporting of "market gain" associated with the repayment of nonrecourse marketing assistance loans made by the CCC under the Farm Security and Rural Investment Act of 2002.

EXEMPT ORGANIZATIONS

Announcement 2007-69, page 371.

The IRS has revoked its determination that The Brewer Family Foundation of Orem, UT; Keystone Grants, Inc., of Mesa, AZ; Jeffrey and Lisa Bowen Charitable Supporting Organization of Greenville, DE; 55 Whipple Street Housing Development Fund Corporation of Brooklyn, NY; The Champions Association, Inc., of Pittsburgh, PA; and The Horsetone Foundation of Sandy, UT, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

Announcement 2007-70, page 371.

This announcement is public notice of the suspension of a particular organization's federal tax exemption under section 501(p) of the Code. The organization has been designated as supporting or engaging in terrorist activity or supporting terrorism. Contributions made to this organization are not deductible for federal tax purposes for the period that the organization's tax-exempt status is suspended.

ADMINISTRATIVE

T.D. 9333, page 350.

REG-149036-04, page 365.

Temporary and proposed regulations under section 6404 of the Code provide guidance on the suspension of interest, penalty, addition to tax, or additional amounts with respect to listed transactions or undisclosed reportable transactions. A public hearing on the proposed regulations is scheduled for October 11, 2007.

(Continued on the next page)

Announcements of Disbarments and Suspensions begin on page 373.
Finding Lists begin on page ii.



REG-114084-04, page 359.

Proposed regulations under section 42 of the Code provide guidance concerning taxpayers' requests to housing credit agencies to obtain a qualified contract, as defined in section 42(h)(6)(F), for the acquisition of a low-income housing credit building. A public hearing is scheduled for October 15, 2007.

Rev. Proc. 2007-55, page 354.

This procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under section 42(h)(3)(D) of the Code for calendar year 2007.

Announcement 2007-71, page 372.

This document contains corrections to proposed regulations (REG-143601-06, 2007-24 I.R.B. 1398) that provide mortality tables to be used in determining present value or making any computation for purposes of applying certain pension funding requirements.

The IRS Mission

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

applying the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

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

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

Section 42.—Low-Income Housing Credit

26 CFR 1.42-14: Allocation rules for post-1989 State housing credit ceiling amounts.

Guidance is provided to state housing credit agencies of qualified states that request an allocation of unused housing credit carryover under section 42(h)(3)(D) of the Internal Revenue Code. See Rev. Proc. 2007-55, page 354.

Section 6404.—Abatements

26 CFR 301.6404-4T: Listed transactions and undisclosed reportable transactions (temporary).

T.D. 9333

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 301

Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 6404(g)(2)(E) of the Internal Revenue Code on the suspension of any interest, penalty, addition to tax, or additional amount with respect to listed transactions or undisclosed reportable transactions. The temporary regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, the Tax Relief and Health Care Act of 2006, and the Small Business and Work Opportunity Tax Act of 2007. The temporary regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions. The text of the temporary regulations also serves as the text of the proposed regulations

(REG-149036-04) set forth in the notice of proposed rulemaking on this subject in this issue of the Bulletin.

DATES: Effective Date: These regulations are effective on June 21, 2007.

Applicability Date: These regulations apply to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

FOR FURTHER INFORMATION CONTACT: Stuart Spielman, (202) 622-7950 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR part 301) by adding rules under section 6404(g) relating to the suspension of interest, penalties, additions to tax, or additional amounts with respect to listed transactions or undisclosed reportable transactions. Section 3305 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685, 743) (RRA 98), added section 6404(g) to the Code, effective for taxable years ending after July 22, 1998. Section 6404(g) generally suspends interest and certain penalties if the IRS does not contact a taxpayer regarding possible adjustments to the taxpayer's liability within a specified period of time. Section 903(c) of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1652) (AJCA), excepted from the general interest suspension rules any interest, penalty, addition to tax, or additional amount with respect to a listed transaction or an undisclosed reportable transaction, effective for interest accruing after October 3, 2004. Section 303 of the Gulf Opportunity Zone Act of 2005, Public Law 109-135 (119 Stat. 2577, 2608-09) (GOZA), modified the effective date of the exception from the suspension rules for certain listed and reportable transactions. Section 426(b) of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2922, 2975),

provided a technical correction regarding the authority to exercise the "reasonably and in good faith" exception to the effective date rules. Section 8242 of the Small Business and Work Opportunity Tax Act of 2007, Public Law 110-28 (121 Stat. 190, 200), extended the current eighteen-month period within which the IRS can, without suspension of interest, contact a taxpayer regarding possible adjustments to the taxpayer's liability to thirty-six months, effective for notices provided after November 25, 2007.

Explanation of Provisions

If an individual taxpayer files a Federal income tax return on or before the due date for that return (including extensions), and if the IRS does not timely provide a notice to that taxpayer specifically stating the taxpayer's liability and the basis for that liability, then the IRS must suspend any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return that is computed by reference to the period of time the failure continues and that is properly allocable to the suspension period. A notice is timely if provided before the close of the eighteen-month period (thirty-six month period, in the case of notices provided after November 25, 2007) beginning on the later of the date on which the return is filed or the due date of the return without regard to extensions. The suspension period begins on the day after the close of the eighteen-month period (or thirty-six month period) and ends twenty-one days after the IRS provides the notice. This suspension rule applies separately with respect to each item or adjustment. If, on or after December 21, 2005, a taxpayer provides to the IRS an amended return or other signed written document showing an additional tax liability, then the eighteen-month period (or thirty-six month period) does not begin to run with respect to the items that gave rise to the additional tax liability until that return or other signed written document is provided to the IRS.

The general rule for suspension does not apply to any interest, penalty, addition to tax, or additional amount relating

to any reportable transaction with respect to which the requirement of section 6664(d)(2)(A) is not met or a listed transaction as defined in section 6707A(c). This exception applies to interest accruing after October 3, 2004. With respect to interest relating to listed transactions or undisclosed reportable transactions accruing on or before October 3, 2004, the general rule for suspension applies only to (1) a participant in a settlement initiative, (2) a taxpayer acting reasonably and in good faith, or (3) a closed transaction. A *participant in a settlement initiative* is a taxpayer who, as of January 23, 2006, was participating in a settlement initiative described in IRS Announcement 2005–80, 2005–2 C.B. 967 (see §601.601(d)(2)(ii)(b)); or had entered into a settlement agreement under Announcement 2005–80 or any other prior or contemporaneous settlement initiative either formally published or directly communicated to taxpayers known to have participated in a tax shelter promotion. A *taxpayer acting reasonably and in good faith* is a taxpayer who the IRS determines has acted reasonably and in good faith, taking into account all the facts and circumstances surrounding a transaction. A *transaction* is a “closed transaction” if, as of December 14, 2005, the assessment of all federal income taxes for the taxable year in which the tax liability to which the interest relates is prevented by the operation of any law or rule of law. A transaction is also a closed transaction if a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. A regulatory assessment is therefore 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. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the Bulletin. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be 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 these regulations is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration).

* * * * *

Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301 PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6404–0T is added to read as follows:

§301.6404–0T Table of contents (temporary).

This section lists the paragraphs contained in §301.6404–4T.

§301.6404–4T Listed transactions and undisclosed reportable transactions (temporary).

(a) [Reserved].

(b)(1) through (b)(4) [Reserved].

(5) Listed transactions and undisclosed reportable transactions.

(i) In general.

(ii) Effective dates.

(iii) Special rule for certain listed or undisclosed reportable transactions.

(A) Participant in a settlement initiative.

(1) Participant in a settlement initiative who as of January 23, 2006, had not reached agreement with the IRS.

(2) Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS.

(B) Taxpayer acting in good faith.

(1) In general.

(2) Presumption.

(3) Examples.

(C) Closed transactions.

Par. 3. Section 301.6404–4T is added to read as follows:

§301.6404–4T Listed transactions and undisclosed reportable transactions (temporary).

(a) [Reserved].

(b)(1) through (4) [Reserved].

(5) *Listed transactions and undisclosed reportable transactions—(i) In general.* The general rule of suspension under section 6404(g)(1) does not apply to any interest, penalty, addition to tax, or additional amount with respect to any listed transaction as defined in section 6707A(c) or any undisclosed reportable transaction. For purposes of this section, an *undisclosed reportable transaction* is a reportable transaction described in the regulations under section 6011 that is not adequately disclosed under those regulations and that is not a listed transaction. Whether a transaction is a listed transaction or an undisclosed reportable transaction is determined as of the date the IRS provides notice to the taxpayer regarding that transaction that specifically states the taxpayer’s liability and the basis for that liability.

(ii) *Effective/applicability dates.* (A) These regulations apply to interest relating to listed transactions and undisclosed reportable transactions accruing before, on, or after October 3, 2004.

(B) The applicability of these regulations expires on or before June 18, 2010.

(iii) *Special rule for certain listed or undisclosed reportable transactions.* With respect to interest relating to listed transactions and undisclosed reportable transactions accruing on or before October 3, 2004, the exception to the general rule of interest suspension will not apply to a taxpayer who is a participant in a settlement initiative with respect to that transaction, to any transaction in which the taxpayer has acted reasonably and in good faith, or to a closed transaction. For purposes of this special rule, a “participant in a settlement initiative,” a “taxpayer acting in good faith,” and a “closed transaction” have the following meanings:

(A) *Participant in a settlement initiative—(1) Participant in a settlement initiative who, as of January 23, 2006, had not reached agreement with the IRS.* A *participant in a settlement initiative* includes a

taxpayer who, as of January 23, 2006, was participating in a settlement initiative described in Internal Revenue Service Announcement 2005–80, 2005–2 C.B. 967. See §601.601(d)(2)(ii)(b) of this chapter. A taxpayer participates in the initiative by complying with Section 5 of the announcement. A taxpayer is not a participant in a settlement initiative if, after January 23, 2006, the taxpayer withdraws from or terminates participation in the initiative, or the IRS determines that a settlement agreement will not be reached under the initiative within a reasonable period of time.

(2) *Participant in a settlement initiative who, as of January 23, 2006, had reached agreement with the IRS.* A participant in a settlement initiative is a taxpayer who, as of January 23, 2006, had entered into a settlement agreement under Announcement 2005–80 or any other prior or contemporaneous settlement initiative either offered through published guidance or, if the initiative was not formally published, direct contact with taxpayers known to have participated in a tax shelter promotion.

(B) *Taxpayer acting in good faith—(1) In general.* The IRS may suspend interest relating to a listed transaction or an undisclosed reportable transaction accruing on or before October 3, 2004, if the taxpayer has acted reasonably and in good faith. The IRS' determination of whether a taxpayer has acted reasonably and in good faith will take into account all the facts and circumstances surrounding the transaction. The facts and circumstances include, but are not limited to, whether the taxpayer disclosed the transaction and the taxpayer's course of conduct after being identified as participating in the transaction, including the taxpayer's response to opportunities afforded to the taxpayer to settle the transaction, and whether the taxpayer engaged in unreasonable delay at any stage of the matter.

(2) *Presumption.* If a taxpayer and the IRS promptly enter into a settlement agreement with respect to a transaction on terms proposed by the IRS or, in the event of atypical facts and circumstances, on terms more favorable to the taxpayer, and the taxpayer has complied with the terms of that agreement without unreasonable delay, the taxpayer will be presumed to have acted reasonably and in good faith except in rare and unusual circumstances. Rare and unusual circumstances must in-

volve specific actions involving harm to tax administration. Even if a taxpayer does not qualify for the presumption described in this paragraph (b)(5)(iii)(B)(2), the taxpayer may still be granted interest suspension under the general facts and circumstances test set forth in paragraph (b)(5)(iii)(B)(1) of this section.

(3) *Examples.* The following examples illustrate the rules the IRS uses in determining whether a taxpayer has acted reasonably and in good faith.

Example 1. The taxpayer participated in a listed transaction. The IRS, in a letter sent directly to the taxpayer in July 2005, proposed a settlement of the transaction. The taxpayer informed the IRS of his interest in the settlement within the prescribed time period. The revenue agent assigned to the taxpayer's case was not able to calculate the taxpayer's liability under the settlement or tender a closing agreement to the taxpayer until March 2006. The taxpayer promptly executed the closing agreement and returned it to the IRS with a proposal for arrangements to pay the agreed-upon liability. The IRS agreed with the proposed arrangements for full payment. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 2. The facts are the same as in *Example 1*, except that the letter was sent by the IRS in February 2006, and the closing agreement was tendered to the taxpayer in April 2006. For purposes of the application of section 6404(g)(2)(E), the taxpayer has acted reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will be suspended.

Example 3. The taxpayer participated in a listed transaction. In response to an offer of settlement extended by the IRS in August 2005, the taxpayer informed the IRS of her interest in entering into a closing agreement on the terms proposed by the IRS. The revenue agent assigned to the transaction calculated the taxpayer's liability under the settlement and tendered a closing agreement to the taxpayer in November 2005. The taxpayer executed the closing agreement but failed to make any arrangement for payment of the agreed-upon liability stated in the closing agreement. Taking into account all the facts and circumstances surrounding the transaction, the taxpayer did not act reasonably and in good faith. Interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated will not be suspended.

Example 4. The taxpayer participated in a listed transaction. In a letter sent by the IRS directly to the taxpayer in July 2005, the IRS extended an offer of settlement. The July 2005 letter informed the taxpayer that, absent atypical facts and circumstances, the taxpayer should not expect resolution of the tax issues on more favorable terms than proposed in the letter. The taxpayer declined the proposed settlement terms of the letter and proceeded to Appeals to present what the taxpayer claimed were atypical facts and circumstances. The administrative file did

not contain sufficient information bearing on atypical facts and circumstances, and the taxpayer failed to provide additional information when requested by Appeals to explain how the transaction originally proposed to the taxpayer differed in structure or types of tax benefits claimed, from the transaction as implemented by the taxpayer. Appeals determined that the taxpayer's facts and circumstances were not significantly different from those of other taxpayers who participated in that listed transaction and thus, were not atypical. In September 2006, the taxpayer and Appeals entered into a closing agreement on terms consistent with those originally proposed in the July 2005 letter. The taxpayer has complied with the terms of that closing agreement. For purposes of the application of section 6404(g)(2)(E), this taxpayer is not presumed to have acted reasonably and in good faith; instead, the IRS will apply the general rule to determine whether to suspend interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

Example 5. The facts are the same as in *Example 4*, except that Appeals agrees that atypical facts were present that warrant additional concessions by the government. A settlement is reached on terms more favorable to the taxpayer than those proposed in the July 2005 letter. For purposes of the application of section 6404(g)(2)(E), this taxpayer is presumed to have acted reasonably and in good faith, and absent evidence of rare or unusual circumstances harmful to tax administration, is eligible for suspension of interest accruing on or before October 3, 2004, relating to the transaction in which the taxpayer participated.

(C) *Closed transactions.* A transaction is considered closed for purposes of this clause if, as of December 14, 2005, the assessment of all federal income taxes for the taxable year in which the tax liability to which the interest relates is prevented by the operation of any law or rule of law, or a closing agreement under section 7121 has been entered into with respect to the tax liability arising in connection with the transaction.

(c) [Reserved].

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

Approved June 15, 2007.

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

(Filed by the Office of the Federal Register on June 20, 2007, 8:53 a.m., and published in the issue of the Federal Register for June 21, 2007, 72 F.R. 34176)

Part III. Administrative, Procedural, and Miscellaneous

Repayment of Commodity Credit Corporation Loans

Notice 2007-63

PURPOSE

This notice provides answers to frequently asked questions regarding the tax treatment of “market gain” associated with the repayment of Commodity Credit Corporation (CCC) loans under the nonrecourse marketing assistance loan program authorized under the Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, 116 Stat. 134 (2002). Under §§ 1201-1204 of that Act, 7 U.S.C. §§ 7931-7934, as amended by § 763(b)-(c) of Division A of the Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7 (2003), the CCC provides nonrecourse marketing assistance loans for the 2002-2007 crops of certain commodities (the 2002 Act nonrecourse marketing assistance loan program). This notice provides answers for taxpayers that elect, and those that do not elect, to include the proceeds of CCC loans in income under § 77 of the Internal Revenue Code.

BACKGROUND

Under § 77, a taxpayer receiving amounts as loans from the CCC may elect to include those amounts in gross income for the taxable year in which received. Most individual taxpayers report the loan proceeds as a Commodity Credit Corporation loan on line 7a of Schedule F, *Profit or Loss From Farming*. A taxpayer that makes the election under § 77 for any taxable year must compute income using that method for all subsequent years until the taxpayer receives the permission of the Internal Revenue Service to change to a different method of accounting. Rev. Proc. 2002-9, 2002-1 C.B. 327, provides procedures under which a taxpayer may obtain automatic consent of the Service to change the taxpayer’s method of accounting for CCC loans from including the loan amount in gross income to treating the loan amount as a loan.

Under the 2002 Act nonrecourse marketing assistance loan program, CCC loans for each eligible commodity are made at a specified rate per unit of commodity (the original loan rate). The repayment amount for a loan secured by the pledge of an eligible commodity generally is based on the lower of the original loan rate or the alternative repayment rate, as determined by the CCC, for the commodity as of the date of repayment. The alternative repayment rate may be adjusted to reflect quality and location for each type of commodity. A taxpayer can use cash to repay a CCC loan, purchase CCC certificates for use in repayment of the loan, or deliver the pledged collateral as full payment for the loan at maturity. CCC certificates are available for purchase by producers that have outstanding commodity loans for which a crop is pledged as collateral.

If a taxpayer uses cash or CCC certificates to repay a CCC loan, and the loan is repaid when the alternative repayment rate is less than the original loan rate, the difference between the original loan amount and the lesser repayment amount is market gain. Regardless of whether a taxpayer repays a CCC loan in cash or uses CCC certificates in repayment of the loan, the market gain is taken into account either as income (if the taxpayer has not made an election under § 77) or as an adjustment to the basis of the commodity (if the taxpayer has made an election under § 77).

QUESTIONS AND ANSWERS

The answers to the following questions apply whether a taxpayer repays a CCC loan with cash or uses CCC certificates in repayment of the loan.

Q-1. How does a taxpayer that has elected under § 77 to include the amount of CCC loans in gross income report market gain associated with the repayment of a CCC loan?

A-1. A taxpayer that has made an election under § 77 accounts for market gain for the year in which a CCC loan is repaid by making an adjustment to the basis of the commodity that secures the loan. The taxpayer’s basis in the commodity be-

fore the repayment of the loan is equal to the amount of the loan previously reported as income. That basis is reduced by the amount of any market gain associated with the repayment of the loan. An individual taxpayer that has made a § 77 election should report the market gain as an Agricultural Program Payment on line 6a of Schedule F, but not as a taxable amount on line 6b, for the year in which the loan is repaid.

Q-2. How does a taxpayer that has not elected under § 77 to include the amount of CCC loans in gross income report market gain associated with the repayment of a CCC loan?

A-2. A taxpayer that has not made an election under § 77 reports market gain as income for the year in which a CCC loan is repaid. An individual taxpayer that has not made an election under § 77 should report the market gain as an Agricultural Program Payment on line 6a and as a taxable amount on line 6b of Schedule F for the year in which the loan is repaid.

Q-3. Will the market gain associated with the repayment of a CCC loan be reported to a taxpayer whether the taxpayer repays a CCC loan with cash or uses CCC certificates in repayment of the loan?

A-3. Yes. For loans repaid on or after January 1, 2007, the CCC reports market gain associated with the repayment of a CCC loan whether the taxpayer repays the loan with cash or uses CCC certificates in repayment of the loan. The CCC reports the market gain on Form 1099-G, *Certain Government Payments*.

DRAFTING INFORMATION

The principal author of this notice is Marnette M. Myers of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this notice (except Q&A-3), contact Ms. Myers at (202) 662-4920. For further information regarding Q&A-3 of this notice, contact Stephen J. Coleman of the Office of Associate Chief Counsel (Procedure and Administration) at (202) 622-4910 (not toll-free calls).

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also Part I, § 42; 1.42-14.)

Rev. Proc. 2007-55

SECTION 1. PURPOSE

This revenue procedure publishes the amounts of unused housing credit carryovers allocated to qualified states under

§ 42(h)(3)(D) of the Internal Revenue Code for calendar year 2007.

SECTION 2. BACKGROUND

Rev. Proc. 92-31, 1992-1 C.B. 775, provides guidance to state housing credit agencies of qualified states on the procedure for requesting an allocation of unused housing credit carryovers under § 42(h)(3)(D). Section 4.06 of Rev. Proc. 92-31 provides that the Internal Revenue Service will publish in the Internal Revenue Bulletin the amount of unused

housing credit carryovers allocated to qualified states for a calendar year from a national pool of unused credit authority (the National Pool). This revenue procedure publishes these amounts for calendar year 2007.

SECTION 3. PROCEDURE

The unused housing credit carryover amount allocated from the National Pool by the Secretary to each qualified state for calendar year 2007 is as follows:

<i>Qualified State</i>	<i>Amount Allocated</i>
Alabama	\$ 107,371
Alaska	15,643
Arizona	143,961
California	851,151
Connecticut	81,825
Delaware	19,926
Florida	422,333
Georgia	218,614
Illinois	299,580
Indiana	147,398
Kansas	64,531
Kentucky	98,197
Maine	30,854
Maryland	131,107
Massachusetts	150,285
Michigan	235,697
Minnesota	120,633
Missouri	136,406
Nebraska	41,284
New Hampshire	30,698
New Jersey	203,687
New Mexico	45,633
New York	450,729
North Carolina	206,767
North Dakota	14,845
Ohio	267,970
Oklahoma	83,562
Oregon	86,399
Pennsylvania	290,443
Rhode Island	24,925
South Carolina	100,885
South Dakota	18,255
Tennessee	140,984
Texas	548,821
Utah	59,535
Vermont	14,566
Virginia	178,434
Washington	149,319
Wisconsin	129,724
Wyoming	12,023

EFFECTIVE DATE

This revenue procedure is effective for allocations of housing credit dollar

amounts attributable to the National Pool component of a qualified state's housing credit ceiling for calendar year 2007.

DRAFTING INFORMATION

The principal author of this revenue procedure is Christopher J. Wilson of

the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Mr. Wilson at (202) 622-3040 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking and Notice of Public Hearing

Section 42 Utility Allowance Regulations Update

REG-128274-03

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that amend the utility allowances regulations concerning the low-income housing tax credit. The proposed regulations update the utility allowances regulations to provide new options for estimating tenant utility costs. The proposed regulations affect owners of low-income housing projects who claim the credit, the tenants in those low-income housing projects, and the state and local housing credit agencies who administer the credit. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 17, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 9, 2007, must be received by September 18, 2007.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-128274-03), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-128274-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-128274-03). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Selig, at (202) 622-3040; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Richard Hurst, at Richard.A.Hurst@irs.counsel.treas.gov or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking in §1.42-10(b)(4)(ii) have previously been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1102.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the low-income housing credit under section 42 of the Internal Revenue Code. Section 42(a) provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. A qualified low-income building is defined in section 42(c)(2) as any building that is part of a qualified low-income housing project.

A qualified low-income housing project is defined in section 42(g)(1) as any project for residential rental housing if the project meets one of the following tests elected by the taxpayer: (1) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (2) at least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. If a taxpayer does not meet the elected test, the project is not eligible for the section 42 credit.

In order to qualify as a rent-restricted unit within the meaning of section 42(g), the gross rent for the unit must not exceed 30 percent of the applicable income limitation. If any utilities are paid directly by the tenant, section 42(g)(2)(B)(ii) requires the inclusion in gross rent of a utility allowance determined by the Secretary, after taking into account the procedures under section 8 of the United States Housing Act of 1937.

Section 1.42-10(b) provides rules for calculating the appropriate utility allowance based upon whether (1) the building receives rental assistance from the Farmers Home Administration (FmHA), now known as the Rural Housing Service; (2) the building has any tenant that receives FmHA rental assistance; (3) the building's rents and utility allowances are reviewed by the Department of Housing and Urban Renewal (HUD) on an annual basis; or (4) the building is not described in (1), (2), or (3) above (other buildings).

Under §1.42-10(b)(4), other buildings generally use the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program or use a local utility company estimate. The local utility company estimate may be obtained by any interested party (including a low-income tenant, a building owner, or a State or local housing credit agency (Agency)).

Explanation of Provisions

The IRS and Treasury Department have received comments from organizations representing tenants, non-profit housing organizations, housing credit agencies, building owners, building management companies, developers, and others noting that the existing methods in §1.42-10 that provide rules for calculating utility expenses often result in flawed information being used for calculating rent adjustments and need updating. These organizations assert that PHA utility schedules referenced by the existing regulations do not represent the proper usage of utilities for low-income housing tax credit units. This is primarily because PHA utility schedules are designed for Section 8 properties, which generally are older buildings with higher utility costs, whereas low-income

housing projects require measurements that are appropriate for new construction. Further, a number of project developers, owners, and building managers have indicated that they are unable to obtain local utility estimates due to a lack of data or an unwillingness on the part of utility companies to provide the information. Even if a utility company is willing to provide an initial estimate, annual updates are often difficult to obtain. Therefore, these commentators have recommended that §1.42–10 be amended to provide more viable and accurate options for estimating tenant utility costs.

In response to these concerns, §1.42–10(b)(4)(ii) is amended by these proposed regulations to provide additional options for accurately calculating utility allowances. Section 1.42–10(b)(4)(ii)(B), which permits any interested party to obtain a local utility company estimate for a unit, is revised to accommodate multiple utility services to a property. When charges for electricity transmission and distribution are paid to more than one company, cost estimates must be obtained from each of the utilities when computing the utility allowance.

Section 1.42–10(b)(4)(ii) is amended to permit a building owner to obtain a utility estimate for each unit in a building from the Agency that has jurisdiction over the building. The Agency's estimate must take into account the local utility rate data, property type, climate variables by region in the State, taxes and fees on utility charges, and property building materials and mechanical systems. An Agency may also use actual utility company usage data and rates for the building.

Further, the regulations are proposed to be amended to permit a building owner to calculate utility allowances using the "HUD Utility Schedule Model" that can be found on the Low-Income Housing Tax Credits page at www.huduser.org/datasets/lihtc.html. The HUD Utility Schedule Model is based on data from the Residential Energy Consumption Survey (RECS) conducted by the Department of Energy. RECS data provides energy consumption by structure for heating, air conditioning, cooking, water heating, and other electric (lighting and refrigeration). The HUD Utility Schedule Model incorporates building location and climate. A building owner who chooses

to use the HUD Utility Schedule Model must furnish a copy of the calculations using the HUD Utility Schedule Model to the Agency that has jurisdiction over the building. A building owner also must make available copies of the calculations to the tenants in the building.

Section 1.42–10(c) provides that if the applicable utility allowance for a unit in a building changes, the new utility allowance must be used to compute gross rent of rent-restricted units due 90 days after the change. Commentators requested that this rule be modified to restrict changes to the building's utility allowance until after the building has achieved 90 percent occupancy for a period of 90 consecutive days, or by the end of the first year of the credit period, whichever is earlier. The proposed regulations adopt this comment. Section 1.42–10(c) also is modified to require that a building owner must review at least annually the basis on which utility allowances have been established and must update the applicable utility allowance. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

The IRS and Treasury Department request comments on whether other methods should be used for calculating utility allowances such as energy or water and sewer services using a software model run by a State-certified engineer who is approved by the Agency that has jurisdiction over the building.

Proposed Effective Date

The regulations are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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, and because the regulations do not impose a collection of information on

small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their 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. Comments are requested on all aspects of the proposed regulations. In addition, the IRS and Treasury Department specifically 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 October 9, 2007, at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 30 minutes before the hearing starts. 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. 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 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by September 17, 2007 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 18, 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 author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.42–10 is amended by:

1. Revising the first sentence of paragraph (a).

2. Revising paragraphs (b)(1), (b)(2), (b)(3), (b)(4) introductory text and (c).

3. Removing the language “HUD rental assistance” from the first place that it appears in paragraph (b)(4)(i) and adding the language “rental assistance from the Department of Housing and Urban Development” in its place.

4. Adding two sentences at the end of paragraph (b)(4)(ii)(A).

5. Revising the second sentence in paragraph (b)(4)(ii)(B).

6. Adding new paragraphs (b)(4)(ii)(C) and (b)(4)(ii)(D).

The additions and revisions read as follows:

§1.42–10 Utility allowances.

(a) * * * If the cost of any utility (other than telephone or cable television) for a residential rental unit is paid directly by the tenant(s), the gross rent for that unit includes the applicable utility allowance determined under this section. * * *

(b) *Applicable utility allowances—(1) Buildings assisted by the Rural Housing Service.* If a building receives assistance from the Rural Housing Service (RHS-assisted building) the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by

the Rural Housing Service (RHS) for the building.

(2) *Buildings with Rural Housing Service assisted tenants.* If any tenant in a building receives RHS rental assistance payments (RHS tenant assistance), the applicable utility allowance for all rent-restricted units in the building (including any units occupied by tenants receiving rental assistance payments from the Department of Housing and Urban Development (HUD)) is the applicable RHS utility allowance.

(3) *Buildings regulated by the Department of Housing and Urban Development.* If neither a building nor any tenant in the building receives RHS housing assistance, and the rents and utility allowances of the building are reviewed by HUD on an annual basis (HUD-regulated building), the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance.

(4) *Other buildings.* If a building is neither an RHS-assisted nor a HUD-regulated building, and no tenant in the building receives RHS tenant assistance, the applicable utility allowance for rent-restricted units in the building is determined under the following methods.

(i) * * *

(ii) * * * (A) * * * However, if a local utility company estimate is obtained for any unit in the building under paragraph (b)(4)(ii)(B) of this section, a State or local housing credit agency (Agency) provides a building owner with an estimate for any unit in a building under paragraph (b)(4)(ii)(C) of this section, or a cost estimate is calculated using the HUD Utility Schedule Model under paragraph (b)(4)(ii)(D) of this section, then the estimate under paragraph (b)(4)(ii)(B), (C), or (D) of this section becomes the applicable utility allowance for all rent-restricted units of similar size and construction in the building. Paragraphs (b)(4)(ii)(B), (C), and (D) of this section do not apply to units to which the rules of paragraphs (b)(1), (2), (3), or (4)(i) of this section apply.

(B) * * * The estimate is obtained when the interested party receives, in writing, information from a local utility company (including combined rate charges from multiple utility companies) providing the estimated cost of the utilities provided by that company for a unit of similar size and con-

struction for the geographic area in which the building containing the unit is located.

(C) *Agency estimate.* A building owner may obtain a utility estimate for each unit in the building from the Agency that has jurisdiction over the building provided the Agency agrees to provide the estimate. The estimate is obtained when the building owner receives, in writing, information from the Agency providing the estimated per-unit cost of the utilities for units of similar size and construction for the geographic area in which the building containing the units is located. The Agency estimate may be obtained by a building owner at any time during the building’s extended use period (see section 42(h)(6)(D)). Costs incurred in obtaining the estimate are borne by the building owner. In establishing an accurate utility allowance estimate for a particular building, an Agency (or an agent or other private contractor of the Agency) must take into account, among other things, local utility rate data, property type, climate and degree-day variables by region in the state, taxes and fees on utility charges, building materials, and mechanical systems. An Agency may also use actual utility company usage data and rates for the building.

(D) *HUD Utility Schedule Model.* A building owner may calculate a utility estimate using the “HUD Utility Schedule Model” that can be found on the Low-Income Housing Tax Credits page at www.huduser.org/datasets/lihtc.html. A building owner who chooses this method must furnish a copy of the calculations using the HUD Utility Schedule Model to the Agency that has jurisdiction over the building. A building owner also must make available copies of the calculations to the tenants in the building.

(c) *Changes in applicable utility allowance—(1) In general.* If at any time during the building’s extended use period, the applicable utility allowance for a unit changes, the new utility allowance must be used to compute gross rents of rent-restricted units due 90 days after the change. For example, if rent must be lowered because a local utility company estimate is obtained that shows a higher utility cost than the otherwise applicable PHA utility allowance, the lower rent must be in effect for rent due more than 90 days after the date of the local utility company estimate.

This paragraph (c)(1) does not apply until the building has achieved 90 percent occupancy for a period of 90 consecutive days or by the end of the first year of the credit period, whichever is earlier.

(2) *Annual review.* A building owner must review at least annually the basis on which utility allowances have been established and must update the applicable utility allowance in accordance with paragraph (c)(1) of this section. The review must take into account any changes to the building such as any energy conservation measures that affect energy consumption and changes in utility rates.

Par. 3. Section 1.42-12 is amended by adding paragraph (a)(4) to read as follows:

§1.42-12 Effective/applicability dates and transitional rules.

(a) * * *

(4) *Utility allowances.* Section 1.42-10 is applicable to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on June 18, 2007, 8:45 a.m., and published in the issue of the Federal Register for June 19, 2007, 72 F.R. 33703)

Notice of Proposed Rulemaking and Notice of Public Hearing

Section 42 Qualified Contract Provisions

REG-114084-04

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: Section 42(h)(6)(F) requires the Secretary to prescribe such regulations as may be necessary or appropriate to carry out the provisions of section 42(h)(6)(F), including regulations to prevent the manipulation of the qualified

contract amount. This document contains proposed regulations that provide guidance concerning taxpayers' requests to housing credit agencies to obtain a qualified contract (as defined in section 42(h)(6)(F) of the Internal Revenue Code) for the acquisition of a low-income housing credit building. The regulations will affect taxpayers requesting a qualified contract, potential buyers, and low-income housing credit agencies responsible for the administration of the low-income housing credit program. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 17, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 15, 2007, must be received by September 13, 2007.

ADDRESSES: Send submissions to: Internal Revenue Service, CC:PA:LPD:PR (REG-114084-04), room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-114084-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or may be sent electronically via the Federal eRulemaking Portal at: www.regulations.gov (IRS REG-114084-04). The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jack Malgeri (202) 622-3040; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks, (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(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by August 20, 2007.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §1.42-18(a)(1)(ii)(B). This information is required in order for a taxpayer to provide a written request to a housing credit agency to obtain a qualified contract (as defined in section 42(h)(6)(F) of the Internal Revenue Code) for the acquisition of a low-income housing credit building. The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting burden: 20,000 hours.

Estimated average annual burden hours per respondent: 1 hour.

Estimated number of respondents: 20,000.

Estimated annual frequency of responses: one time.

An agency may not conduct or sponsor, and a person is not required to respond to, a

collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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

Background

This document contains amendments to 26 CFR part 1 under section 42 of the Internal Revenue Code (Code). Section 42 was amended by section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101-239, 103 Stat. 2106) to add paragraph (h)(6). In general, section 42(h)(6)(A) provides that no credit will be allowed with respect to any building for the taxable year unless an extended low-income housing commitment (commitment) (as defined in section 42(h)(6)(B)) is in effect as of the end of the taxable year.

Section 42(h)(6)(B) provides in part that the term commitment means any agreement between the taxpayer and the low-income housing credit agency (Agency) that requires that the applicable fraction (as defined in section 42(c)(1)) for the building for each taxable year in the extended use period will not be less than the applicable fraction specified in the commitment, and that prohibits the eviction or termination of tenancy (other than for good cause) of an existing tenant of any low-income unit and any increase in the gross rent with respect to the unit not otherwise permitted under section 42.

Section 42(h)(6)(D) defines the term extended use period as the period beginning on the first day in the compliance period under section 42(i)(1) on which the building is part of a qualified low-income housing project and ending on the later of: (1) the date specified by the Agency in the commitment, or (2) the date which is 15 years after the close of the compliance period.

Section 42(h)(6)(E)(i)(II) provides for the termination of the extended use period if the Agency is unable to present within a specified period of time a qualified contract for the acquisition of the low-income portion of the building by any person who

will continue to operate such portion as a low-income building.

Section 42(h)(6)(F) defines the term qualified contract as a *bona fide* contract to acquire (within a reasonable period of time after the contract is entered into) the non low-income portion of the building for fair market value and the low-income portion of the building for an amount not less than the applicable fraction (specified in the commitment) of the sum of: (I) the outstanding indebtedness secured by, or with respect to the building, (II) the adjusted investor equity in the building, plus (III) other capital contributions not reflected in these amounts, reduced by cash distributions from (or available for distribution from) the project.

Section 42(h)(6)(F) also provides that the Secretary shall prescribe regulations as may be necessary or appropriate to carry out that paragraph, including regulations to prevent the manipulation of the amount determined under section 42(h)(6)(F).

Section 42(h)(6)(I) provides that the Agency must present the qualified contract within the 1-year period beginning on the date (after the 14th year of the compliance period) the taxpayer submits a written request to the Agency to find a person to acquire the taxpayer's interest in the low-income portion of the building.

These proposed regulations provide guidance with respect to the application of the qualified contract provisions of section 42.

Explanation of Provisions

Qualified Contract Formula

Section 1.42-18(c)(1) of the proposed regulations defines the qualified contract formula used to compute the purchase price amount of the low-income housing building as: (1) the fair market value of the non low-income portion of the building, plus (2) the low-income portion of the building. Section 1.42-18(c)(2) of the proposed regulations defines the low-income portion of the building as an amount not less than the applicable fraction (as specified in the commitment) of the total of: (a) outstanding indebtedness on the building, plus (b) the adjusted investor equity in the building, plus (c) other capital contributions not reflected in the amounts described in (a) and (b), minus (d) cash

distributions from (or available for distribution from) the project.

Under §1.42-18(b)(3) of the proposed regulations, the fair market value of the non low-income portion of the building is its fair market value at the time of the Agency's offer of sale. Because the intent of the extended-long term commitment is the continued use of the low-income portion of the building as low-income housing, the Treasury Department and IRS believe that fair market value must reflect the restrictions on the use of the low-income portion of the building. Therefore, the proposed regulations provide that the valuation must take into account the existing and continuing requirements under the commitment for the building.

Section 42(h)(6) does not discuss the appropriate treatment of land in the calculation of qualified contracts. Qualified contracts are defined by reference to the building, which for other purposes of section 42 generally does not include the underlying land. However, because the Treasury Department and the IRS anticipate that the sales of the building without the underlying land would be infrequent, the Treasury Department and the IRS believe that it is necessary to include the underlying land in the computation of the qualified contract formula. Therefore, the proposed regulations provide that the non low-income portion also includes the fair market value of the land underlying the entire building, both the non low-income portion and the low-income portion, regardless of whether the building is entirely low-income. Comments are requested on whether low-income buildings are ever sold without the underlying land, and if so, the appropriate treatment in those cases. In addition, comments are requested on the appropriate treatment of leased land and the prevalence of leased land in low-income housing credit transactions.

For purposes of determining the low-income portion of the building, §1.42-18(c)(3) defines the term outstanding indebtedness as the outstanding principal balance, at the time of the sale, of any indebtedness or loan that is secured by, or with respect to, the building, and that does not exceed the amount of qualifying building costs. Qualifying building costs are generally defined in §1.42-18(b)(4) of the proposed regulations as those costs that would have been includible in eligible

basis of a low-income housing building under section 42(d)(1), provided the amounts were expended for depreciable property that conveys under the contract with the building. Thus, for example, the outstanding mortgage on the building will generally be outstanding indebtedness for purposes of section 42(h)(6)(F), even if the indebtedness is incurred after the first year of the credit period, but only up to the amount of costs included in original eligible basis established at the end of the first year of the credit period under section 42(f)(1), plus indebtedness for qualifying building costs incurred after the first year of the credit period of a type that could be includible in eligible basis under section 42(d)(1). Thus, any proceeds from refinancing indebtedness or additional mortgages in excess of such qualifying building costs are not outstanding indebtedness for purposes of section 42(h)(6)(F).

Outstanding indebtedness with an interest rate below the applicable Federal rate (as determined under section 1274(d)) at the time of issuance must be discounted using a present-value calculation to obtain an imputed principal amount. This imputed principal amount constitutes the amount of indebtedness that must be utilized in calculating the amount of outstanding indebtedness under the qualified contract formula.

Section 1.42-18(c)(4) of the proposed regulations provides that adjusted investor equity includes only those cash investments by owners of the low-income building used for qualifying building costs. Investor equity is adjusted by a cost of living adjustment not to exceed five percent. The cost-of-living adjustment is determined under section 1(f)(3), substituting the language in section 1(f)(3)(B) with "the CPI for the base calendar year." The base calendar year is the calendar year with or within which the first taxable year of the credit period ends. Thus, the cost-of-living adjustment is the percent by which the Consumer Price Index (CPI) for the year preceding the written request to find a person to acquire the project exceeds the CPI for the base calendar year.

Under §1.42-18(c)(5) of the proposed regulations, other capital contributions are defined as contributions for qualifying building costs other than amounts included in the calculation of outstanding indebtedness or adjusted investor equity as defined in this section. An example

of other capital contributions includes an amount expended to replace a furnace after the first year of the credit period, provided any loan taken to finance the furnace was not secured by the furnace or the building. In this example, the loan would be outstanding indebtedness on the building.

Qualifying building costs are defined under §1.42-18(b)(4)(i) and (ii) of the proposed regulations. Under §1.42-18(b)(4)(i) of the proposed regulations, a qualifying building is a cost included in eligible basis under section 42(d)(1). A cost is included in eligible basis under section 42(d)(1) only if the cost is (1) included in the adjusted basis of depreciable property subject to section 168 and the property qualifies as residential rental property under section 142(d) and §1.103-8(b)(4)(iii), or (2) included in the adjusted basis of depreciable property subject to section 168 that is used in a common area or provided as a comparable amenity to all residential rental units in the building, but only if the property conveys under the contract with the building. A qualifying building cost also includes costs incurred after the first year of the credit period (as defined in section 42(f)) of the type included in eligible basis under section 42(d)(1). See §1.42-18(b)(4)(ii) of the proposed regulations.

Under the qualified contract formula, the sum of the outstanding indebtedness, adjusted investor equity, and other capital contributions is reduced by cash distributions from or available for distribution from the project. Section 1.42-18(c)(6) of the proposed regulations defines cash distributions as including all distributions to owners or related parties within the meaning of section 267(b) or 707(b) (for example, cash distributions to owners from the proceeds of refinancings and second mortgages in excess of existing mortgages), and all cash and cash equivalents including reserve funds (for example, replacement and operating reserves) generated by cash flow from the project. To the extent an owner contributed his or her own funds to a reserve fund for replacement and improvements, such amounts are evaluated as either adjusted investor equity or other capital contributions. The Treasury Department and the IRS request comments and examples of forms of cash distributions from or available for distribution from the

project that should or should not be included in the regulatory definition. Additionally, comments are requested whether low-income housing is owned by other than a corporation or partnership, for example, a sole proprietor, estate, or trust, and if so, what rules should apply for determining the amount of cash distributions from the project.

Administrative Discretion and Responsibilities of Agency

Under §1.42-18(d)(1) of the proposed regulations, the Agency may exercise administrative discretion in evaluating and acting upon an owner's request to find a buyer to acquire the building. For example, the Agency may determine that an owner's request to find a buyer for the project lacks essential information and it may suspend the one-year period for finding a buyer until essential information is submitted.

Actual Offer of Sale

Section 1.42-18(d)(2) of the proposed regulations provides that in order to satisfy the qualified contract requirements under section 42(h)(6), the Agency must offer the building for sale to the general public at the determined qualified contract price upon receipt of a written request by the owner to find a buyer to acquire the building.

Fair Market Value Cap

Commentators suggested the inclusion of a fair market value cap on the low-income portion of the qualified contract amount as defined in section 42(h)(6)(F) noting that the qualified contract price may exceed the fair market value of a project. Commentators noted one reason for the qualified contract price exceeding fair market value is the formula for adjusted investor equity, which includes the CPI-based cost of living adjustments. The statute defines a qualified contract, in part, as a contract to acquire the low-income portion of the building for an amount "not less than" the applicable fraction of the statutorily provided formula. Therefore, the proposed regulations do not adopt this comment. However, the flush language of section 42(h)(6)(E) provides that the qualified contract exception to the termination

of the extended use period of a commitment shall not apply to the extent more stringent requirements are provided in the commitment or in state law. The Treasury Department and the IRS request comments on the extent of Agency and state authority in providing more stringent requirements than the provisions contained in section 42(h)(6)(F), and specifically, the authority of Agency or state regulators to require in agreements a fair market value cap that would restrict any qualified contract price to fair market value.

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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information described under the heading "Paperwork Reduction Act" imposes virtually no incremental burden in time or expense and is voluntary for the taxpayer to obtain a benefit. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been 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 (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and 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 October 15, 2007, beginning at 10 a.m.

in the auditorium of the 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 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments on September 17, 2007 and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 13, 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 author of these proposed regulations is Jack Malgeri, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

* * * * *

Proposed Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.42-18 also issued under 26 U.S.C. 42(h)(6)(F) and 42(h)(6)(K); * * *

Par. 2. Section 1.42-18 is added to read as follows:

§1.42-18 Qualified contracts.

(a) *Extended low-income housing commitment*—(1) *In general.* No credit under section 42(a) is allowed by reason of section 42 and this section with respect to any building for the taxable year unless an extended low-income housing commitment (commitment) (as defined in section 42(h)(6)(B)) is in effect as of the end of such taxable year. A commitment must be in effect for the extended use period (as defined in paragraph (a)(1)(i) of this section).

(i) *Extended use period.* The term *extended use period* means the period beginning on the first day in the compliance period (as defined in section 42(i)(1)) on which the building is part of a qualified low-income housing project (as defined in section 42(g)(1)) and ending on the later of—

(A) The date specified by the low-income housing credit agency (Agency) in the commitment; or

(B) The date that is 15 years after the close of the compliance period.

(ii) *Termination of extended use period.* The extended use period under paragraph (a)(1)(i) of this section for any building will terminate—

(A) On the date the building is acquired by foreclosure (or instrument in lieu of foreclosure) unless the Secretary determines that such acquisition is part of an arrangement with the taxpayer a purpose of which is to terminate such period; or

(B) On the last day of the one-year period beginning on the date (after the 14th year of the compliance period) the owner submits a written request to the Agency to find a person to acquire the owner's interest in the low-income portion of the building and the Agency is unable to present during such period a qualified contract for the acquisition of the low-income portion of the building by any person who will continue to operate such portion as a qualified low-income building (as defined in section 42(c)(2)). This paragraph (a)(1)(ii)(B) shall not apply to the extent more stringent requirements are provided in the commitment or under state law. If the Agency provides a qualified contract within the one-year period and the owner rejects or fails to act upon the contract, the building remains subject to the existing commitment.

(iii) *Eviction, gross-rent increase concerning existing low-income tenants not permitted.* During the three year period following the termination of a commitment, no owner shall be permitted to evict or terminate the tenancy (other than for good cause) of an existing tenant of any low-income unit, or increase the gross rent for such unit in a manner or amount not otherwise permitted by section 42.

(2) [Reserved].

(b) *Special rules.* For purposes of this section, the following terms are defined:

(1) *Base calendar year* means the calendar year with or within which the first taxable year of the credit period ends.

(2) *The low-income portion* of a building is the portion of the building equal to the applicable fraction (as defined in section 42(c)(1)) specified in the commitment for the building.

(3) *The fair market value* of the non low-income portion of the building is determined at the time of the Agency's offer of sale of the project to the general public. This valuation must take into account the existing and continuing requirements contained in the commitment for the building. The non low-income portion also includes the fair market value of the land underlying the entire building, both the non low-income portion and the low-income portion regardless of whether the project is entirely low-income. The non low-income portion also includes the fair market value of items of personal property not included in eligible basis under section 42(d)(1) that convey under the contract with the building.

(4) *A qualifying building cost* is—

(i) A cost that is included in eligible basis of a low-income housing building under section 42(d)(1) which is—

(A) Included in the adjusted basis of depreciable property subject to section 168 and the property qualifies as residential rental property under section 142(d) and §1.103-8(b)(4)(iii); or

(B) Included in the adjusted basis of depreciable property subject to section 168 that is used in a common area or provided as a comparable amenity to all residential rental units in the building; and

(ii) Of the type described in paragraph (b)(4)(i) of this section incurred after the first year of the low-income building's credit period under section 42(f).

(c) *Qualified contract purchase price formula*—(1) *In general.* For purposes of

this section, the term *qualified contract* means a *bona fide* contract to acquire (within a reasonable period after the contract is entered into) the non low-income portion of the building for fair market value (as defined in paragraph (b)(3) of this section) and the low-income portion of the building (as defined in paragraph (b)(2) of this section) for the low-income portion amount as calculated in paragraph (c)(2) of this section. The qualified contract amount is determined at the time of the Agency's offer of sale of the project to the general public. An Agency must, however, adjust the amount of the low-income portion of the qualified contract formula to reflect changes in the components of the qualified contract formula such as mortgage payments which reduce outstanding indebtedness between the time of the seller's request to the Agency to obtain a buyer and the project's actual sale closing date. In addition, the Agency may adjust the fair market value of the building if, after a reasonable period of time within the one-year offer of sale period, no buyer has made an offer or market values have adjusted downward.

(2) *Low-income portion amount.* The low-income portion amount is an amount not less than the applicable fraction specified in the commitment, as defined in section 42(h)(6)(B)(i), multiplied by the total of—

(i) The outstanding indebtedness for the building (as defined in paragraph (c)(3) of this section); plus

(ii) The adjusted investor equity in the building (as defined in paragraph (c)(4) of this section); plus

(iii) Other capital contributions (as defined in paragraph (c)(5) of this section), not including any amounts described in paragraphs (c)(2)(i) and (ii) of this section; minus

(iv) Cash distributions from (or available for distribution from) the building (as defined in paragraph (c)(6) of this section).

(3) *Outstanding indebtedness.* (i) For purposes of paragraph (c)(2)(i) of this section, except as provided in paragraph (c)(3)(ii) of this section, the term *outstanding indebtedness* for the building means the remaining stated principal balance, at the time of the Agency's offer of sale of the project to the general public, of any indebtedness secured by, or with respect to, the building that does not exceed the

amount of qualifying building costs described in paragraph (b)(4) of this section. Examples of such indebtedness include certain mortgages and developer fee notes (excluding developer service costs not included in eligible basis). Outstanding indebtedness does not include debt used to finance nondepreciable land costs, syndication costs, legal and accounting costs, and operating deficit payments. The term outstanding indebtedness for the building only includes obligations that are indebtedness under general principles of Federal income tax law.

(ii) For purposes of paragraph (c)(2)(i) of this section, if the indebtedness had a yield to maturity below the applicable Federal rate (as determined under section 1274(d)) at the time of issuance, the term outstanding indebtedness for the building is the imputed principal amount of the indebtedness, secured by, or with respect to, the building, at the time of the Agency's offer of sale of the project to the general public, that does not exceed the amount of qualifying building costs described in paragraph (b)(4) of this section. The imputed principal amount of the indebtedness is the sum of the present values, as of the Agency's offer of sale of the project to the general public, of all the remaining payments of principal and interest payable on the indebtedness after the Agency's offer of sale of the project to the general public. The present value of each payment is determined by using a discount rate equal to the applicable Federal rate (as determined under section 1274(d)) at the time of issuance of the indebtedness. In the case of a variable rate debt instrument, rules similar to those in §1.1274-2(f) are used to determine the instrument's imputed principal amount.

(4) *Adjusted investor equity.* (i) For purposes of paragraph (c)(2)(ii) of this section, the term *adjusted investor equity* for any calendar year means the aggregate amount of cash invested by owners for qualifying building costs described in paragraph (b)(4)(i) of this section. Thus, equity paid for land, credit adjuster payments, Agency low-income housing credit application and allocation fees, operating deficit contributions, and legal, syndication, and accounting costs all are examples of cost payments that do not qualify as adjusted investor equity under this section.

(ii) The adjusted investor equity as determined under paragraph (c)(4)(i) of this section is increased by an amount equal to the adjusted investor equity multiplied by the cost-of-living adjustment for such calendar year, determined under section 1(f)(3) by substituting for the language in section 1(f)(3)(B), the Consumer Price Index for all urban consumers (CPI) (not seasonally adjusted, U.S. City Average) as specified in paragraph (c)(4)(v) of this section for the base calendar year (as defined in paragraph (b)(1) of this section).

(iii) Adjusted investor equity is taken into account under this section only to the extent there existed an obligation to invest the amount as of the beginning of the low-income building's credit period (as defined in section 42(f)(1)).

(iv) Adjusted investor equity does not include amounts included in the calculation of outstanding indebtedness as defined in paragraph (c)(3) of this section.

(v) *The cost-of-living adjustment* is based on the CPI as of the close of the 12-month period ending on August 31 of the calendar year. The *cost-of-living adjustment* is the percent by which the CPI for the year preceding the written request to find a person to acquire the taxpayer's project (CPI_p) exceeds the CPI for the base calendar year (CPI_b). If the CPI for any calendar year during this period (after the base calendar year) exceeds the CPI for the preceding calendar year by more than 5 percent, the CPI for the base calendar year shall be increased such that such excess shall never be taken into account under paragraph (c)(4) of this section. The adjusted investor equity equals the aggregate amount of cash invested by the taxpayer in the building multiplied by the ratio of CPI_p to CPI_b .

(vi) *Example.* The following example illustrates the CPI calculation:

Example. Owner contributed \$600,000 in equity to a building in 1991, which was the first year of the credit period for the project. In year 2005, owner requests Agency to find a buyer to purchase the building. The CPI_b (at the close of the 12-month period ending on August 31, 1991) is 136.6. The CPI_p for the close of the 12-month period ending August 31, 2004, is 189.5. At no time during this period (after the base calendar year) did the CPI for any calendar year exceed the CPI for the preceding calendar year by more than 5 percent. The owner's adjusted investor equity is \$600,000 multiplied by $189.5/136.6$, or \$832,357.

(5) *Other capital contributions.* For purposes of paragraph (c)(2)(iii) of this section, other capital contributions to a low-income building are qualifying building costs described in paragraph (b)(4)(ii) of this section paid or incurred by the owner of the low-income building other than amounts included in the calculation of outstanding indebtedness or adjusted investor equity as defined in this section. For example, other capital contributions may include amounts incurred to replace a furnace after the first year of a low-income housing credit building's credit period under section 42(f), provided any loan used to finance the replacement of the furnace is not secured by the furnace or the building. Other capital contributions do not include expenditures for land costs, operating deficit payments, credit adjuster payments, and payments for legal, syndication, and accounting costs.

(6) *Cash distribution*—(i) *In general.* For purposes of paragraph (c)(2)(iv) of this section, the term *cash distributions* from (or available for distribution from) the project include—

(A) All distributions from the project to the owners or to related parties within the meaning of section 267(b) or section 707(b), including distributions under section 301 (relating to distributions by a corporation), section 731 (relating to distributions by a partnership), or section 1368 (relating to distributions by a S corporation); and

(B) All cash and cash equivalents available for distribution at the time of sale, including for example, reserve funds whether operating or replacement reserves.

(ii) *Anti-abuse rule.* The Commissioner will interpret and apply the rules in this paragraph (c)(6) as necessary and appropriate to prevent manipulation of the qualified contract amount. For example, cash distributions include payments to owners or related parties within the meaning of section 267(b) or section 707(b) for any operating expenses in excess of amounts reasonable under the circumstances.

(d) *Administrative responsibilities of the Agency*—(1) *In general.* An Agency may exercise administrative discretion in evaluating and acting upon an owner's

request to find a buyer to acquire the building. Examples of administrative discretion may include but are not limited to the following:

(i) Concluding that the owner's request lacks essential information and denying the request until such information is provided.

(ii) Refusing to consider an owner's representations without substantiating documentation verified with the Agency's records.

(iii) Suspending the one-year period for finding a buyer until the owner provides requested information.

(iv) Determining how many subsequent requests to find a buyer, if any, may be submitted if the owner has previously submitted a request for a qualified contract and then rejects or fails to act upon the qualified contract furnished by the Agency.

(v) Assessing and charging the seller certain administrative fees for the performance of services in obtaining a qualified contract (for example, real estate appraiser costs).

(vi) Requiring other conditions applicable to the qualified contract consistent with this section.

(2) *Actual offer.* Upon receipt of a written request from the owner to find a person to acquire the building, the Agency must offer the building for sale at the determined qualified contract amount to the general public in order for the qualified contract to satisfy the requirements of this section unless the Agency has already identified a willing buyer who submitted a contract to purchase the building.

(e) *Effective/Applicability date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

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

(Filed by the Office of the Federal Register on June 18, 2007, 8:45 a.m., and published in the issue of the Federal Register for June 19, 2007, 72 F.R. 33706)

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations and Notice of Public Hearing

Application of Section 6404(g) of the Internal Revenue Code Suspension Provisions

REG-149036-04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9333) relating to the application of section 6404(g) of the Internal Revenue Code (Code) suspension provisions. The regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998, the American Jobs Creation Act of 2004, the Gulf Opportunity Zone Act of 2005, the Tax Relief and Health Care Act of 2006, and the Small Business and Work Opportunity Tax Act of 2007. The regulations provide guidance to individual taxpayers who have participated in listed transactions or undisclosed reportable transactions. The text of those regulations also serve as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by September 19, 2007. Outlines of topics to be discussed at the public hearing scheduled for October 11, 2007, at 10 a.m. must be received by September 20, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-149036-04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-149036-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. or sent electroni-

cally via the Federal eRulemaking Portal at <http://www.regulations.gov>. (IRS REG-149036-04). 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, Stuart Spielman, (202) 622-7950; concerning submissions of comments, the hearing, and to be placed on the building access list to attend the hearing, Richard Hurst, (202) 622-7180 (not toll-free numbers) or Richard.A.Hurst@ircounsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in this issue of the Bulletin amend the Regulations on Procedure and Administration (26 CFR part 301) relating to section 6404(g). The temporary regulations add rules relating to the suspension of interest, penalties, additions to tax, or additional amounts with respect to listed or other reportable transactions. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. A regulatory assessment is therefore 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 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 regulation has been 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 (a signed origi-

nal and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for October 11, 2007, beginning at 10 a.m. in the Auditorium of the 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 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by September 19, 2007, and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 20, 2007. A period of ten 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 author of these regulations is Stuart Spielman of the Office of Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6404-0 is amended as follows:

1. The introductory text is revised.
2. Entries are added for §301.6404-4. The additions read as follows:

§301.6404-0 *Table of contents.*

This section lists the paragraphs contained in §§301.6404-1 through 301.6404-4.

* * * * *

§301.6404-4 *Listed transactions and undisclosed reportable transactions.*

[Reserved]. The text of the entries or this section is the same as the text of the entries in §301.6404T published elsewhere in this issue of the Bulletin.

Par. 3. Section 301.6404-4 is added to read as follows:

§301.6404-4 *Listed transactions and undisclosed reportable transactions.*

(a) through (b)(4) [Reserved].

(b)(5) [The text of proposed §301.6404-4(b)(5) is the same as the text of §301.6404-4T(b)(5) published elsewhere in this issue of the Bulletin].

(c) and (d) [Reserved].

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

(Filed by the Office of the Federal Register on June 20, 2007, 8:53 a.m., and published in the issue of the Federal Register for June 21, 2007, 72 F.R. 34204)

Notice of Proposed Rulemaking and Notice of Public Hearing

Information Reporting and Backup Withholding for Payment Card Transactions

REG-163195-05

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions. The proposed regulations in this document affect payors (and their authorized agents) and payees of certain reportable payments and provide guidance necessary to comply with the law. The proposed regulations are necessary to address implementation and notice furnishing issues that arose after publication of final regulations under section 3406(g) that were published in the **Federal Register** on July 13, 2004 in Treasury decision 9136, 2004-2 C.B. 112 [69 FR 41928]. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 9, 2007. Outlines of topics to be discussed at the public hearing scheduled for November 7, 2007, must be received by October 9, 2007.

Applicability dates: See the proposed effective date's section of the supplementary information.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-163195-05), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-163195-05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or

sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS-REG-163195-05).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael Hara (202) 622-4910; concerning submission of comments, Kelly Banks (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these proposed regulations has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1819. Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by September 11, 2007. Comments are specifically requested concerning the accuracy of the estimated burden associated with the collection of information and suggestions on how the burden may be minimized.

The collection of information is in §31.3406(g)-1(f)(3). This information is necessary to notify a cardholder/payor that a merchant/payee is not a qualified payee for purposes of the regulations, and for cardholders/payors and merchant/payees to consent to receive notices electronically. This information will alert a cardholder/payor that backup withholding under section 3406 may apply for future reportable payments. The collection of information is voluntary to obtain a benefit. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting burden: 37,239,570 hours.

Estimated average annual burden per respondent: 1.19 hours.

Estimated number of respondents: 31,256,000.

Estimated frequency of responses: monthly.

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

Background

This document contains proposed amendments to 26 CFR part 31 relating to backup withholding under section 3406 of the Internal Revenue Code (Code) and proposed amendments to 26 CFR part 301 relating to waivers under Code section 6724 of information reporting penalties under Code sections 6721 and 6722.

Section 6041(a) of the Code requires persons engaged in a trade or business and making payment in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income of \$600 or more in any one taxable year to file information returns with the IRS. Section 6041(d) requires the payor to furnish information statements to payees. Among other items, the payor must include the payee's name and taxpayer identification number (TIN) on the information return and the information statement. Section 6041A of the Code imposes similar requirements with respect to payments of remuneration for services and direct sales.

In general, section 6721(a)(1) imposes a \$50 penalty for each failure to file an information return on or before the required filing date, for any failure to include all of the information required to be shown on the return, or for the inclusion of incorrect information. Section 6722(a)(1) imposes similar penalties with respect to the information statements required to be furnished to payees. Section 6724(a) provides that no penalty will be imposed under section 6721 or section 6722 if it is shown that the failure is due to reasonable cause and not to willful neglect.

Section 3406(a)(1) requires a payor to withhold on any reportable payment (as defined in section 3406(b)(1)) if (1) the payee fails to furnish the payee's TIN to the payor as required or (2) the Secretary notifies the payor that the TIN furnished by the payee is incorrect. Section 3406(a)(1) also requires withholding in certain other situations that are not addressed in these

regulations. Section 3406(i) provides that the Secretary shall prescribe the regulations necessary or appropriate to carry out the purposes of section 3406.

A payment card transaction is a transaction in which a cardholder/payor uses a payment card to purchase goods or services and a merchant agrees to accept a payment card as a means of obtaining payment. A payment card is a card (or an account) that (1) is issued by a payment card organization or one of its members, affiliates, or licensees to a cardholder/payor and (2) represents, upon presentation to a merchant/payee, an agreement of the cardholder to pay the merchant through the payment card organization. A payment card organization is an entity that sets the standards and provides the mechanism, acting directly or indirectly through its members, affiliates, or licensees, for effectuating payment between a purchaser and a merchant in a payment card transaction.

Information reporting compliance is difficult in payment card transactions because an invoice may not be issued, and the employee representing the cardholder/payor in the transaction might not request and obtain the name/TIN combination of the merchant/payee at the time of the transaction. In addition, backup withholding may be difficult because a merchant receives payment from the payment card organization within a few days after the transaction, but the cardholder does not pay the payment card organization until after it receives a payment card monthly billing statement.

2004 Regulations

On July 13, 2004, final regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions effectuated through a Qualified Payment Card Agent (QPCA) were published in the **Federal Register** (T.D. 9136; 69 FR 41938). These regulations (the 2004 QPCA regulations) provide limited exceptions to the backup withholding requirements for payment card transactions. The principal exception in §31.3406(g)-1(f)(1)(i) of the regulations applies if the payment is made through a QPCA and the payee is a qualified payee.

Section 31.3406(g)-1(f)(2)(vi) of the regulations provides that a payee is a qualified payee if, at the time of the payment, the QPCA has validated the payee's TIN through the IRS TIN Matching Program or if the payment is made during the six-month period following the date on which the QPCA first makes a payment to the payee (six-month grace period). Under the regulations, a QPCA must notify a cardholder/payor of any merchant/payees that are not qualified payees.

Section 31.3406(g)-1(f)(1)(ii) of the regulations provides a second exception for payments to persons other than qualified payees. Under this exception, reportable payments made through a QPCA are exempt from backup withholding if the purchase to which the payment relates is made no later than two months after the date by which the QPCA is required to provide notification to the payor that the payee is not a qualified payee.

In addition, the regulations provide in §301.6724-1(e) and (f) that cardholder/payors may establish, based on good faith reliance on a QPCA, that a failure subject to penalty under section 6721 or 6722 is due to reasonable cause.

Other Guidance

On July 14, 2004, the IRS issued Rev. Proc. 2004-42, 2004-2 C.B. 121, which establishes procedures to implement the rules contained in the 2004 QPCA regulations. The revenue procedure provides that a QPCA may act on behalf of a cardholder/payor for purposes of soliciting, collecting, and validating the names/TINs of the merchant/payees and on behalf of a merchant/payee for purposes of furnishing the payee's name and TIN to the cardholder/payor. The revenue procedure also sets forth the requirements that a payment card organization must satisfy to obtain an IRS determination that it is a QPCA. These requirements include requirements that the payment card organization provide certain notifications to cardholder/payors and merchant/payees and obtain the authorization of cardholder/payors and merchant/payees to act on their behalf for certain purposes. See §601.601(d)(2)(ii)(b).

Requests for Changes

Some taxpayers subject to the 2004 QPCA regulations and related procedures

have requested that the regulations in §31.3406(g)-1(f) be amended, and the procedures in Rev. Proc. 2004-42 be modified, to allow a merchant to accept a QPCA's payment card even if the merchant opts out of the QPCA program. Taxpayers subject to the 2004 QPCA regulations and related procedures have also requested that the regulations be amended, and the procedures in Rev. Proc. 2004-42 be modified, to reflect the current electronic business operations of the payment card industry. Specifically, payment card organizations have asked that they be permitted to furnish required notifications electronically, including by posting on a secure website.

Explanation of Provisions

The IRS and the Treasury Department agree that a merchant/payee should be allowed to accept a QPCA's payment card even if the merchant/payee opts out of the QPCA program. The IRS is issuing a proposed revenue procedure providing that a merchant/payee may opt out of the QPCA program by completing and returning a written statement to the payment card organization and that a nonparticipating merchant/payee may continue to accept the organization's payment card. If a merchant/payee opts out of the QPCA program, payments to the merchant/payee made after the six-month grace period are treated under §31.3406(g)-1(f)(2)(vi) of the proposed regulations as payments to a person other than a qualified payee. In addition, the proposed regulations modify the rule permitting cardholders to rely on a QPCA to solicit, validate, and furnish a payee's TIN. Under proposed §301.6724-1(e)(1)(vi)(H), such reliance generally would not be permitted after the cardholder is notified that the merchant is not a participating payee.

These proposed regulations also modify the notification requirements in §31.3406(g)-1(f)(3) by adding notification requirements relating to payments to nonparticipating merchant/payees. Although QPCAs do not act on behalf of nonparticipating payees in furnishing payee data to cardholders, the proposed regulations provide that a QPCA is required to furnish certain information to cardholders that use the QPCA's card to make reportable payments to nonparticipating

payees. Specifically, the QPCA would be required to inform the cardholder that the payee is not a participant in the QPCA program and is not a qualified payee. In addition, the QPCA must advise the cardholder/payor of the cardholder/payor's obligation to solicit the TIN of a nonparticipating merchant/payee to which it makes a reportable payment.

In the preamble to the 2004 QPCA regulations, the IRS and the Treasury Department indicated they were considering whether a QPCA should be allowed to furnish information regarding payee status electronically on a secure website. The IRS and the Treasury Department have concluded that it is appropriate to propose modifications to the QPCA regulations and related procedures to reflect the current electronic business operations of the payment card industry.

This is consistent with the precedent set in the electronic statement regulations issued under Code sections 6041, 6050S, and 6051 on February 18, 2004 (T.D. 9114, 2004-1 C.B. 589). In the electronic statement regulations, the IRS and Treasury Department allowed electronic furnishing of statements on Form W-2, "*Wage and Tax Statement*," Form 1098-T, "*Tuition Statement*," and Form 1098-E, "*Student Loan Interest Statement*," to individuals who consent to receive the statements electronically. The preamble to the electronic statement regulations explains that the regulations are consistent with the general goals of (1) section 2001 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206) to eliminate barriers, provide incentives, and use competitive forces to increase electronic filings and (2) the Electronic Signatures in Global and National Commerce Act (Public Law 106-229) to facilitate voluntary use of electronic records. The electronic statement regulations aimed at striking a balance between furnishers' desires to reduce costs and modernize business processes by furnishing statements electronically and the tax administration concern that individuals have secure access to the information they need to fulfill their Federal tax obligations.

The IRS and the Treasury Department have concluded that a similar balance is appropriate in this context and that payment card organizations should be allowed to furnish notifications of payee status and

participation electronically, including by posting on a secure website, if certain requirements are met to assure consistency with the Electronic Signatures in Global and National Commerce Act. These proposed regulations provide that the notifications of payee status and participation may be furnished electronically if, among other things, the payment card organization (1) obtains certain consents from cardholder/payors and merchant/payees and (2) provides certain disclosures to cardholder/payors and merchant/payees.

Proposed Effective Date

Section 31.3406(g)-1(f)(3)(ii) (relating to electronic furnishing of notifications) is proposed to be effective on the date it is published as a final regulation, and the other amendments to §31.3406(g)-1 are proposed to be applicable to payments made after December 31, 2007. The amendments to §301.6724-1 are proposed to be applicable to information returns and information statements relating to payments made after December 31, 2007.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

When an Agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." (5 U.S.C. §603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

The proposed rule affects merchant/payees and cardholder/payors. The IRS estimates there are 5,200,000 merchant/payees and 26,054,000 cardholders/payors that qualify as small entities. Therefore, the IRS has determined that this proposed rule will have an impact on a substantial number of small entities.

The IRS has determined, however, that the impact on entities affected by the proposed rule will not be significant. The burden on a merchant/payee that opts out of the QPCA program by completing and returning a written statement to the payment card organization is minimal. The burden on cardholders/payees and merchant/payors that consent to electronic furnishing of notices by returning a consent form and confirming the consent electronically is also insignificant.

Although QPCAs have a reporting burden under the proposed rule to furnish certain notices to cardholder/payors, QPCAs are large businesses and do not fall under the definition of small entities.

Based on these facts, the IRS hereby certifies that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

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 businesses. The IRS invites comments from members of the public from members of the public who believe there will be a significant impact either on cardholder/payors or merchant/payees.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 7, 2007 at 10:00 a.m. in the auditorium, Internal Revenue Service 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 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 9, 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 author of these regulations is Michael Hara, Office of Associate Chief Counsel (Procedure and Administration).

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 301 are proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT THE SOURCE

Paragraph 1. The authority citation for part 31 continues to read, in part, as follows:

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

Par. 2. Section 31.3406(g)-1(f) is amended by:

1. Revising paragraphs (f)(2)(vi)(A) and (f)(3).
2. Adding paragraph (f)(2)(vii).

The revisions and addition read as follows:

§31.3406(g)-1 Exceptions for payments to certain payees and certain other payments.

* * * * *

(f) * * *

(2) * * *

(vi) * * *

(A) The payee is a participating payee with respect to the payment and, at the time the QPCA makes the payment, the QPCA has obtained the payee's TIN and the payee's TIN has been validated through the IRS TIN Matching Program; or

* * * * *

(vii) *Participating payee.* For purposes of this section, a payee is a *participating payee* with respect to a reportable payment if—

(A) At the time the QPCA makes the payment, the payee has authorized the payment card organization to act on its behalf in furnishing its name, taxpayer identification number, and corporate status to cardholder/payors under applicable procedures issued under §601.601 of this chapter; or

(B) The payment is made before January 1, 2008.

(3) *Notifications of payee status and participation—(i) In general—(A) Non-qualified payees.* In the case of a payment to a payee other than a qualified payee (as defined in paragraph (f)(2)(vi) of this section) with respect to the payment, the QPCA acting directly or indirectly through its members, affiliates, or licensees must notify the payor that the payee is not a qualified payee. If the notification relates to a payment made after December 31, 2007, the notification must also inform the payor that IRS rules and regulations may require the payor to backup withhold on reportable payments that relate to purchases the payor makes from the payee after a specified date. The specified date to be provided in the notification is the last day of the two-month period described in paragraph (f)(1)(ii) of this section. A notification by the QPCA that a payee is not a qualified payee does not constitute notice by the IRS that the payee's TIN is incorrect for purposes of section 3406(a)(1)(B) and §31.3406(d)-5.

(B) *Nonparticipating payees.* In the case of a payment made after December 31, 2007, to a payee other than a participating payee (as defined in paragraph (f)(2)(vii) of this section), the QPCA acting directly or indirectly through its members, affiliates, or licensees must notify the payor that the payee is not a participating payee. A notification that the payee of a payment is not a participating payee must also inform the payor that IRS rules and regulations require the payor to solicit the

payee's TIN if the payor has made a reportable payment to the payee.

(C) *Due date and format.* The notifications must be furnished during the four-month period beginning on the date on which the QPCA makes the payment. Notifications may be provided in a quarterly or other regular report of payee data to the cardholder/payor and may consist of an asterisk, footnote, or other mark next to the payee's name, with the text of the notifications at the bottom of the page or at the end of the list of payee data.

(ii) *Electronic furnishing of notifications of payee status and participation—(A) In general.* The notifications required under paragraph (f)(3)(i) of this section may be furnished in an electronic format if the requirements of this paragraph (f)(3)(ii) are satisfied.

(B) *Consents—(1) Cardholder/Payor—(i) In general.* The cardholder/payor consent requirement must be satisfied. The cardholder/payor consent requirement is satisfied only if the QPCA has provided the disclosure statement required under paragraph (f)(3)(ii)(C) of this section to the cardholder/payor and, after receiving the disclosure statement, the cardholder/payor has affirmatively consented to receive the notifications in an electronic format. The consent may be provided electronically in any manner that reasonably demonstrates that the cardholder/payor can access the notifications in the electronic format in which they will be furnished. Alternatively, the consent may be provided in a paper document if it is confirmed electronically in a manner that reasonably demonstrates that the cardholder/payor can access the notifications in the electronic format in which they will be furnished.

(ii) *Withdrawal of consent.* The cardholder/payor consent requirement is not satisfied with respect to a notification if the cardholder/payor withdraws the consent and the withdrawal takes effect before the notification is furnished. Only paper notifications may be furnished to the cardholder/payor after the withdrawal takes effect. The QPCA may provide that a withdrawal of consent takes effect at any time up to 30 days after receipt by the QPCA. The QPCA may also provide that a request for paper notifications will be treated as a withdrawal of consent.

(iii) *Change in hardware or software requirements.* If a change in the hardware or software required to access the notifications creates a material risk that the cardholder/payor will not be able to access the notifications, the cardholder/payor consent requirement is not satisfied with respect to notifications furnished after the change unless the cardholder/payor has provided a new consent to receive the notifications in an electronic format. The new consent, whether electronic or by paper document, must be provided or confirmed in a manner that reasonably demonstrates that the cardholder/payor can access the notifications in the revised electronic format in which they will be furnished.

(2) *Merchant/payee—(i) In general.* The merchant/payee consent requirement must be satisfied. The merchant/payee consent requirement is satisfied with respect to notifications regarding a merchant/payee only if the merchant/payee has affirmatively consented to the electronic furnishing of the notifications.

(ii) *Withdrawal of consent.* The merchant/payee consent requirement is not satisfied with respect to a notification regarding a merchant/payee if the merchant/payee withdraws its consent and the withdrawal takes effect before the notification is furnished. The QPCA may provide that a withdrawal of consent takes effect at any time up to 30 days after receipt by the QPCA.

(C) *Required disclosures—(1) In general.* A QPCA requesting a cardholder/payor's consent to receive notifications in electronic format must provide to the cardholder/payor a clear and conspicuous disclosure statement containing each of the disclosures described in this paragraph (f)(3)(ii)(C).

(2) *Paper statement.* The cardholder/payor must be informed that the notifications will be furnished on paper if the cardholder/payor does not consent to receive them electronically.

(3) *Scope and duration of consent.* The cardholder/payor must be informed of the scope and duration of the consent. For example, the cardholder/payor must be informed whether the consent is for a specified term or will remain in effect until it is withdrawn in the manner described in paragraph (f)(3)(ii)(B)(1)(ii) of this section.

(4) *Post-consent request for paper notifications.* The cardholder/payor must be informed of any procedure for obtaining a paper copy of the notifications after giving the consent described in paragraph (f)(3)(ii)(B)(1)(i) of this section and whether a request for paper notifications will be treated as a withdrawal of consent.

(5) *Withdrawal of consent.* The cardholder/payor must be informed that—

(i) The cardholder/payor may withdraw a consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(ii) The QPCA will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(iii) A withdrawal of consent will not apply to a notification that was furnished electronically before the date on which the withdrawal of consent takes effect.

(6) *Notice of termination.* The cardholder/payor must be informed of the conditions under which the QPCA will cease furnishing notifications electronically.

(7) *Updating information.* The cardholder/payor must be informed of the procedures for updating the information needed by the QPCA to contact the cardholder/payor. The QPCA must inform the cardholder/payor of any change in the QPCA's contact information.

(8) *Hardware and software requirements.* The cardholder/payor must be provided with a description of the hardware and software required to access, print, and retain the notifications.

(D) *Notice of availability—(1) In general.* If the notifications to a cardholder/payor are furnished on a website, the QPCA must also furnish a notice of availability to the cardholder/payor within 30 days after posting the notifications. The notice of availability must inform the cardholder/payor that the notifications are available on the website and must specify the date on which the notifications will no longer be available on the website. The notice of availability may be delivered by mail, electronic mail, or in person. The notice of availability must provide instructions on how to access and print the notifications and must include the following statement in capital letters, "IMPORTANT TAX DOCUMENT

AVAILABLE.” If the notice of availability is provided by electronic mail, the foregoing statement must be on the subject line of the electronic mail.

(2) *Undeliverable electronic address.* If an electronic notice of availability is returned as undeliverable, and the correct electronic address cannot be obtained from the furnisher’s records or from the cardholder/payor, then the furnisher must furnish the notice by mail within 30 days after the electronic notice is returned.

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

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

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

Par. 4. Section 301.6724–1 is amended by revising paragraph (e)(1)(vi)(H) to read as follows:

§301.6724–1 *Reasonable cause.*

* * * * *

(e) * * *

(1) * * *

(vi) * * *

(H) In the case of information returns required to be filed, and information returns required to be furnished, after December 31, 2005, the filer—

(1) Satisfies the solicitation requirement of paragraph (e)(1)(i) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee’s TIN;

(2) Satisfies the solicitation requirement of paragraph (e)(1)(ii) of this section with respect to a payment made through a QPCA if the filer relies in good faith on the QPCA to solicit, record, validate, and furnish the payee’s TIN and does not receive notification that the payee is not a participating payee more than 30 days before the last day of the annual solicitation period; and

(3) Satisfies the solicitation requirement of paragraph (e)(1)(iii) of this section with respect to a payment made through a QPCA if, on or before December 31 of the year immediately succeeding the year in which the payment is made, the filer undertakes a solicitation of the payee’s TIN or receives from the QPCA a TIN

that the filer believes in good faith to be the payee’s correct TIN.

* * * * *

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

(Filed by the Office of the Federal Register on July 12, 2007, 8:45 a.m., and published in the issue of the Federal Register for July 13, 2007, 72 F.R. 38534)

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

Announcement 2007–69

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on August 13, 2007, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor.

This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

The Brewer Family Foundation
Orem, UT
Keystone Grants, Inc.
Mesa, AZ
Jeffrey and Lisa Bowen Charitable
Supporting Organization
Greenville, DE
55 Whipple Street Housing
Development Fund Corporation
Brooklyn, NY
The Champions Association, Inc.
Pittsburgh, PA
The Horstone Foundation
Sandy, UT

Suspension of Tax-Exempt Status of an Organization Identified With Terrorism

Announcement 2007–70

I. Purpose

This announcement is a public notice of the suspension under section 501(p) of the Internal Revenue Code of the federal tax exemption of a certain organization that has been designated as supporting or engaging in terrorist activity or supporting terrorism. Contributions made to an organization during the period that the organization’s tax-exempt status is suspended are not deductible for federal tax purposes.

II. Background

The federal government has designated a number of organizations as supporting or engaging in terrorist activity or supporting terrorism under the Immigration and Nationality Act, the International Emergency Economic Powers Act, and the United Nations Participation Act of 1945. Federal law prohibits most contributions to organizations that have been so designated.

Section 501(p) of the Code was enacted as part of the Military Family Tax Relief Act of 2003 (P.L. 108–121), effective November 11, 2003. Section 501(p)(1) suspends the exemption from tax under section 501(a) of any organization described in section 501(p)(2). An organization is described in section 501(p)(2)

if the organization is designated or otherwise individually identified (1) under certain provisions of the Immigration and Nationality Act as a terrorist organization or foreign terrorist organization; (2) in or pursuant to an Executive Order which is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act of 1945 for the purpose of imposing on such organization an economic or other sanction; or (3) in or pursuant to an Executive Order issued under the authority of any federal law, if the organization is designated or otherwise individually identified in or pursuant to the Executive Order as supporting or engaging in terrorist activity (as defined in the Immigration and Nationality Act) or supporting terrorism (as defined in the Foreign Relations Authorization Act) and the Executive Order refers to section 501(p)(2).

Under section 501(p)(3) of the Code, suspension of an organization's tax exemption begins on the date of the first publication of a designation or identification with respect to the organization, as described above, or the date on which section 501(p) was enacted, whichever is later. This suspension continues until all designations and identifications of the organization are rescinded under the law or Executive Order under which such designation or identification was made.

Under section 501(p)(4) of the Code, no deduction is allowed under any provision of the Internal Revenue Code for any contribution to an organization during any period in which the organization's tax exemption is suspended under section 501(p). Thus, for example, no charitable contribution deduction is allowed under section 170 (relating to the income tax), section 545(b)(2) (relating to undistributed personal holding company income), section 556(b)(2) (relating to undistributed foreign personal holding company income), section 642(c) (relating to charitable set asides), section 2055 (relating to the estate tax), section 2106(a)(2) (relating to the estate tax for nonresident aliens) and section 2522 (relating to the gift tax) for contributions made to the organization during the suspension period.

On July 24, 2007, the organization listed below was designated under Executive Order 13224, entitled "Blocking

Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

III. Notice of Suspension and Non-deductibility of Contributions

The organization whose tax exemption has been suspended under section 501(p) and the effective date of such suspension are listed below. Contributions made to this organization during the period of suspension are not deductible for federal tax purposes.

Goodwill Charitable Organization Inc
f/k/a Al-Shahid Social Association
f/k/a Educational Development
Association
Dearborn, MI
Effective date: 7-24-07

IV. Federal Tax Filings

An organization whose exempt status has been suspended under section 501(p) does not file Form 990 and is required to file the appropriate Federal income tax returns for the taxable periods beginning on the date of the suspension. The organization must continue to file all other appropriate federal tax returns, including employment tax returns, and may also have to file federal unemployment tax returns.

V. Contact Information

For additional information regarding the designation or identification of an organization described in section 501(p)(2), contact the Compliance Division at the Office of Foreign Assets Control of the U.S. Treasury Department at 202-622-2490. Additional information is also available for download from the Office's Internet Home Page at www.treas.gov/offices/eotffc/ofac/index.html

For additional information regarding the suspension of the federal tax exemption of an organization under section 501(p), contact Robert Fontenrose at (202) 283-9484 at the Internal Revenue Service.

Mortality Tables for Determining Present Value; Correction

Announcement 2007-71

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to notice of proposed rulemaking (REG-143601-06, 2007-24 I.R.B. 1398) that was published in the Federal Register on Tuesday, May 29, 2007 (72 FR 29456) providing mortality tables to be used in determining present value or making any computation for purposes of applying certain pension funding requirements.

FOR FURTHER INFORMATION CONTACT: Bruce Perlin, Lauson C. Green, or Linda S. F. Marshall at (202) 622-6090.

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG-143601-06) that is the subject of these corrections is under sections 412, 430, and 431 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG-143601-06) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG-143601-06) that was the subject of FR. Doc. 07-2631 is corrected as follows:

1. On page 29457, column 3, in the preamble, line 4 of footnote number 2, the language "XLVII (1995), p. 819. The RP-2000 Mortality Table" is corrected to read "XLVII (1995), p. 819. The RP-2000 Mortality Tables".

2. On page 29460, column 3, in the preamble, second full paragraph of the column, line 7 from the bottom of the paragraph, the language "improvement factor

is equal to (1— ” is corrected to read “im-
provement factor is equal to (1- ”.

“§ 1.430(h)–1(a)(3).” is corrected to
read “§ 1.430(h)(3)–1(a)(3).”

(Filed by the Office of the Federal Register on July 19, 2007,
8:45 a.m., and published in the issue of the Federal Register
for July 20, 2007, 72 F.R. 39770)

§ 1.430(h)(3)–2 [Corrected]

3. On page 29471, § 1.430(h)(3)–
2(d)(4)(i)(E), column 3, last line
of the paragraph, the language

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

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

Announcement 2007-72

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

person to practice before the Internal Rev-
enue Service during a period of suspen-
sion, 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, Of-
fice of Professional Responsibility, will
announce in the Internal Revenue Bulletin

their names, their city and state, their pro-
fessional designation, the effective date
of disciplinary action, and the period of
suspension. This announcement will ap-
pear 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.

Reinstatement To Practice Before the Internal Revenue Service

Under Title 31, Code of Federal Regu-
lations, Part 10, The Director, Office of
Professional Responsibility, may entertain
a petition for reinstatement for any attor-
ney, certified public accountant, enrolled

agent, or enrolled actuary censured, sus-
pended, or disbarred, from practice before
the Internal Revenue Service.

The following individuals' eligibility to
practice before the Internal Revenue Ser-
vice has been restored:

Name	Address	Designation	Date of Reinstatement
Mollo, Charles W.	Anaheim, CA	EA	December 1, 2004
Price, Richard A.	Novato, CA	CPA	April 29, 2005
Reyes, Ruperto D.	Placentia, CA	CPA	December 8, 2005
Schwartz, Kenneth J.	West Hills, CA	Attorney	February 28, 2006
McCarthy III, William P.	Sacramento, CA	EA	March 10, 2006
Deen, Mae T.	Salinas, CA	EA	April 16, 2006
Banks, Jean R.	Van Nuys, CA	EA	December 6, 2006
Eckstein, Matthew	Woodbury, NY	CPA	March 14, 2007
Cunningham, William	Philadelphia, PA	CPA	March 31, 2007

Name	Address	Designation	Date of Reinstatement
Ganz, Sheldon M.	Great Neck, NY	CPA	April 19, 2007
Smith, Sean M.	Kensington, MD	Enrolled Agent	April 27, 2007
Frascella, Russell B.	Pound Ridge, NY	CPA	April 27, 2007
Lamont, Alice	Atlanta, GA	CPA	May 4, 2007
Carroccio, Ronald P.	Staten Island, NY	CPA	May 15, 2007
Cohen, Ronald J.	Cornwall, NY	Attorney	June 21, 2007
Troese, Jr., Henry A.	Clarion, PA	Enrolled Agent	June 25, 2007
Jacob, Robert T.	Tucson, AZ	Enrolled Agent	June 27, 2007
Simontacchi, Joseph F.	Rockaway, NJ	CPA	July 3, 2007
Kimes, Larry W.	Irving, TX	CPA	July 6, 2007

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 prac-

tice 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 en-

rolled 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
Caplan, Howard A.	Ocean, NJ	CPA	Indefinite from April 1, 2007
Tow, Marc R.	Newport Beach, CA	Attorney	Indefinite from April 1, 2007
Pyburn, Richard E.	Downers Grove, IL	CPA	Indefinite from April 9, 2007
Cook, Jack D.	South Haven, MI	CPA	Indefinite from April 17, 2007
Serban, Daniel E.	Roanoke, IN	Attorney	Indefinite from April 19, 2007
Wentz, Debora B.	Newton, NC	CPA	Indefinite from April 19, 2007
Ferguson, Duane F.	Upland, CA	CPA	Indefinite from May 1, 2007

Name	Address	Designation	Date of Suspension
Mulrey, Robert M.	Milton, MA	CPA	Indefinite from May 1, 2007
Colasuonno, Philip V.	New Rochelle, NY	CPA	Indefinite from May 23, 2007
Bankston, David A.	Land O Lakes, FL	CPA	Indefinite from June 1, 2007
Nagy, Robert J.	Charleston, SC	CPA	Indefinite from June 1, 2007
Wallen, David G.	Beckley, WV	CPA	Indefinite from June 15, 2007
Rudick, Josephine M.	Bear Creek, PA	Enrolled Agent	Indefinite from June 25, 2007
Iglesias, Jorge E.	Roswell, GA	CPA	Indefinite from July 1, 2007
Raimer, Russell B.	Brecksville, OH	CPA	Indefinite from July 1, 2007
Stancukas, Stanley J.	Forth Worth, TX	CPA	Indefinite from July 1, 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
Barach, Malcolm J.	Brookline, MA	Attorney	Indefinite from March 9, 2007
Cox, Marlisa R.	Oklahoma City, OK	CPA	Indefinite from April 2, 2007

Name	Address	Designation	Date of Suspension
Artis, Paris A.	Newberry, FL	Attorney	Indefinite from April 13, 2007
Blackadar, Christine M.	Center Harbor, NH	Attorney	Indefinite from April 13, 2007
Brelje, Brian J.	Laguna Beach, CA	CPA	Indefinite from April 13, 2007
Decker, Craig A.	Mesa, AZ	Attorney	Indefinite from April 13, 2007
House, Stephen M.	Nevada City, CA	CPA	Indefinite from April 13, 2007
Laird, James J.	San Ramon, CA	CPA	Indefinite from April 13, 2007
Milner, Dennis V.	Dublin, CA	Attorney	Indefinite from April 13, 2007
Nutt, Jeremy C.	Forth Worth, TX	Attorney	Indefinite from April 13, 2007
Picl, Frank M.	Peoria, IL	Attorney	Indefinite from April 13, 2007
Britt, Jerry U.	Mount Olive, NC	CPA	Indefinite from April 19, 2007
Lee, Janell M.	Oakland, CA	CPA	Indefinite from April 19, 2007
Baker, Sean W.	Elkridge, MD	Attorney	Indefinite from April 30, 2007
Brett, Stephen M.	York Beach, ME	Attorney	Indefinite from April 30, 2007
Donahue, Richard K.	Lowell, MA	CPA	Indefinite from April 30, 2007
Frank, Mack I.	Eunice, LA	Attorney	Indefinite from April 30, 2007

Name	Address	Designation	Date of Suspension
Leung, Elsie Y.	Pasadena, CA	CPA	Indefinite from April 30, 2007
Pearlman, Stephen E.	Dix Hills, NY	Attorney	Indefinite from April 30, 2007
Peer, Jameelah	Waimanalo, HI	Attorney	Indefinite from April 30, 2007
Riskowski, Patrick T.	Omaha, NE	Attorney	Indefinite from April 30, 2007
Schumacher, Mary M.	Dubuque, IA	Attorney	Indefinite from April 30, 2007
DeVaughn, Donald L.	Plainview, MN	Attorney	Indefinite from May 1, 2007
Waggle, Stephen L.	Los Banos, CA	CPA	Indefinite from May 24, 2007
Nefsky, Melvyn I.	Los Angeles, CA	CPA	Indefinite from June 11, 2007
Neuendorf, Louis E.	Sandwich, IL	Attorney	Indefinite from June 11, 2007
Thomas, Scott C.	Parker, CO	Attorney	Indefinite from June 11, 2007
Todd, Donald J.	South Holland, IL	CPA	Indefinite from June 11, 2007
Winrow, Wayne	Emeryville, CA	Attorney	Indefinite from June 11, 2007
Cannon, Todd R.	Florence, CO	Attorney	Indefinite from June 12, 2007
Hester, Karen H.	Overland Park, KS	Attorney	Indefinite from June 25, 2007
Denman, Dwight E.	Dallas, TX	Attorney	Indefinite from June 25, 2007
Korcan, Barry	Loretto, PA	CPA	Indefinite from June 25, 2007

Name	Address	Designation	Date of Suspension
Lloyd, Max C.	South Jordan, UT	CPA	Indefinite from June 25, 2007
White, Lanny R.	Lindon, UT	CPA	Indefinite from June 25, 2007
Bjorklund, Dennis A.	Coralville, IA	Attorney	Indefinite from June 28, 2007
Noel, Robert	Fairfield, CA	Attorney	Indefinite from June 28, 2007
Sanger, Susan L.	Greenwood Village, CO	Attorney	Indefinite from June 28, 2007
Shatzen, Robert S.	Beaverton, OR	Attorney	Indefinite from June 28, 2007
Stevenson, Albert D.	Olive Branch, MS	CPA	Indefinite from June 28, 2007
Van Beek, Andrea	Orange City, IA	Attorney	Indefinite from June 28, 2007
Sojcher, Stuart H.	Winchester, MA	Attorney	Indefinite from July 3, 2007
Estrada, Severo C.	San Jose, CA	CPA	Indefinite from July 3, 2007
Ferguson, Robert E.	Salt Point, NY	Attorney	Indefinite from July 3, 2007
Wickenkamp, Mary C.	Denison, TX	Attorney	Indefinite from July 3, 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 ad-

ministrative law judge, the following individuals have been placed under suspension

from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Cettomai, Joseph W.	Rootstown, OH	CPA	Indefinite from April 19, 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 oppor-

tunity for a proceeding before an administrative law judge, the following individu-

als have been disbarred from practice before the Internal Revenue Service:

Name	Address	Designation	Effective Date
Haynes, Scott Y.	Valdosta, GA	CPA	March 19, 2007

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
Lyons, John K.	Dingmans Ferry, PA	Attorney	April 4, 2007
Bowman, T. Hardie	Corpus Christi, TX	CPA	May 23, 2007
Kofford, Brian T.	Provo, UT	CPA	June 12, 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 In-

ternal 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
Hancock, William H.	Plant City, FL	April 10, 2007

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A

and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance

of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.

ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.

PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List¹

Bulletins 2007–27 through 2007–33

Announcements:

2007-61, 2007-28 I.R.B. 84
2007-62, 2007-29 I.R.B. 115
2007-63, 2007-30 I.R.B. 236
2007-64, 2007-29 I.R.B. 125
2007-65, 2007-30 I.R.B. 236
2007-66, 2007-31 I.R.B. 296
2007-67, 2007-32 I.R.B. 345
2007-68, 2007-32 I.R.B. 348
2007-69, 2007-33 I.R.B. 371
2007-70, 2007-33 I.R.B. 371
2007-71, 2007-33 I.R.B. 372
2007-72, 2007-33 I.R.B. 373

Notices:

2007-54, 2007-27 I.R.B. 12
2007-55, 2007-27 I.R.B. 13
2007-56, 2007-27 I.R.B. 15
2007-57, 2007-29 I.R.B. 87
2007-58, 2007-29 I.R.B. 88
2007-59, 2007-30 I.R.B. 135
2007-61, 2007-30 I.R.B. 140
2007-62, 2007-32 I.R.B. 331
2007-63, 2007-33 I.R.B. 353

Proposed Regulations:

REG-128274-03, 2007-33 I.R.B. 356
REG-114084-04, 2007-33 I.R.B. 359
REG-149036-04, 2007-33 I.R.B. 365
REG-119097-05, 2007-28 I.R.B. 74
REG-147171-05, 2007-32 I.R.B. 334
REG-163195-05, 2007-33 I.R.B. 366
REG-138707-06, 2007-32 I.R.B. 342
REG-144540-06, 2007-31 I.R.B. 296
REG-103842-07, 2007-28 I.R.B. 79

Revenue Procedures:

2007-42, 2007-27 I.R.B. 15
2007-43, 2007-27 I.R.B. 26
2007-44, 2007-28 I.R.B. 54
2007-45, 2007-29 I.R.B. 89
2007-46, 2007-29 I.R.B. 102
2007-47, 2007-29 I.R.B. 108
2007-48, 2007-29 I.R.B. 110
2007-49, 2007-30 I.R.B. 141
2007-50, 2007-31 I.R.B. 244
2007-51, 2007-30 I.R.B. 143
2007-52, 2007-30 I.R.B. 222
2007-53, 2007-30 I.R.B. 233
2007-54, 2007-31 I.R.B. 293
2007-55, 2007-33 I.R.B. 354

Revenue Rulings:

2007-42, 2007-28 I.R.B. 44
2007-43, 2007-28 I.R.B. 45
2007-44, 2007-28 I.R.B. 47
2007-45, 2007-28 I.R.B. 49
2007-46, 2007-30 I.R.B. 126
2007-47, 2007-30 I.R.B. 127
2007-48, 2007-30 I.R.B. 129
2007-49, 2007-31 I.R.B. 237
2007-50, 2007-32 I.R.B. 311

Treasury Decisions:

9326, 2007-31 I.R.B. 242
9327, 2007-28 I.R.B. 50
9328, 2007-27 I.R.B. 1
9329, 2007-32 I.R.B. 312
9330, 2007-31 I.R.B. 239
9331, 2007-32 I.R.B. 298
9332, 2007-32 I.R.B. 300
9333, 2007-33 I.R.B. 350

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2007–1 through 2007–26 is in Internal Revenue Bulletin 2007–26, dated June 25, 2007.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2007–27 through 2007–33

Notices:

2006-43

Modified by
T.D. 9332, 2007-32 I.R.B. 300

2007-26

Modified by
Notice 2007-56, 2007-27 I.R.B. 15

Proposed Regulations:

REG-109367-06

Hearing scheduled by
Ann. 2007-66, 2007-31 I.R.B. 296

REG-143601-06

Corrected by
Ann. 2007-71, 2007-33 I.R.B. 372

Revenue Procedures:

90-27

Superseded by
Rev. Proc. 2007-52, 2007-30 I.R.B. 222

95-28

Superseded by
Rev. Proc. 2007-54, 2007-31 I.R.B. 293

97-14

Modified and superseded by
Rev. Proc. 2007-47, 2007-29 I.R.B. 108

2002-9

Modified and amplified by
Rev. Proc. 2007-48, 2007-29 I.R.B. 110
Rev. Proc. 2007-53, 2007-30 I.R.B. 233

2004-42

Superseded by
Notice 2007-59, 2007-30 I.R.B. 135

2005-16

Modified by
Rev. Proc. 2007-44, 2007-28 I.R.B. 54

2005-66

Clarified, modified, and superseded by
Rev. Proc. 2007-44, 2007-28 I.R.B. 54

2006-25

Superseded by
Rev. Proc. 2007-42, 2007-27 I.R.B. 15

2006-27

Modified by
Rev. Proc. 2007-49, 2007-30 I.R.B. 141

2006-33

Superseded by
Rev. Proc. 2007-51, 2007-30 I.R.B. 143

Revenue Procedures— Continued:

2006-55

Superseded by
Rev. Proc. 2007-43, 2007-27 I.R.B. 26

2007-15

Superseded by
Rev. Proc. 2007-50, 2007-31 I.R.B. 244

Revenue Rulings:

74-299

Amplified by
Rev. Rul. 2007-48, 2007-30 I.R.B. 129

89-96

Amplified by
Rev. Rul. 2007-47, 2007-30 I.R.B. 127

92-17

Modified by
Rev. Rul. 2007-42, 2007-28 I.R.B. 44

2001-48

Modified by
T.D. 9332, 2007-32 I.R.B. 300

Treasury Decisions:

9321

Corrected by
Ann. 2007-68, 2007-32 I.R.B. 348

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2007–1 through 2007–26 is in Internal Revenue Bulletin 2007–26, dated June 25, 2007.



**U.S. GOVERNMENT
PRINTING OFFICE**
KEEPING AMERICA INFORMED

Order Processing Code:
3465

Easy Secure Internet:
bookstore.gpo.gov

Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

Toll Free: 866 512-1800
DC Area: 202 512-2800
Fax: 202 512-2250

Mail: Superintendent of Documents
P.O. Box 371954
Pittsburgh, PA 15250-7954

Publications

Qty.	Stock Number	Title	Price Each	Total Price
	048-004-02467-5	Cum. Bulletin 1999-3	20.40	
	048-004-02462-4	Cum. Bulletin 2001-2 (Jul-Dec)	24.00	
	048-004-02480-2	Cum. Bulletin 2001-3	71.00	
	048-004-02470-5	Cum. Bulletin 2002-2 (Jul-Dec)	28.80	
	048-004-02486-1	Cum. Bulletin 2002-3	54.00	
	048-004-02483-7	Cum. Bulletin 2004-2 (July-Dec)	54.00	
	048-004-02488-8	Cum. Bulletin 2005-2	56.00	
Total for Publications				

Subscriptions

Qty.	List ID	Title	Price Each	Total Price
	IRS	Internal Revenue Bulletin	\$247	
		Optional - Add \$50 to open Deposit Account		
Total for Subscriptions				
Total for Publications and Subscriptions				

NOTE: Price includes regular shipping and handling and is subject to change. International customers please add 40 percent.

Standing Order Service*

To automatically receive future editions of *Internal Revenue Cumulative Bulletins* without having to initiate a new purchase order, sign below for Standing Order Service.

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

I hereby authorize the Superintendent of Documents to charge my account for Standing Order Service:
(enter account information at right)

VISA MasterCard Discover/NOVUS American Express
 Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number (____) _____

SuDocs Deposit Account

A Deposit Account will enable you to use Standing Order Service to receive subsequent volumes quickly and automatically. For an initial deposit of \$50 you can establish your Superintendent of Documents Deposit Account.

YES! Open a SOD Deposit Account for me so I can order future publications quickly and easily.
I am enclosing the \$50 initial deposit.



Check method of payment:

- Check payable to Superintendent of Documents
- SOD Deposit Account —
- VISA MasterCard Discover/Novus American Express

 (expiration date)

Thank you for your Order!

Authorizing signature _____

06/06

Company or personal name _____

(Please type or print)

Additional address/attention line _____

Street address _____

City, State, Zip Code _____

E-mail address _____

Daytime phone including area code _____

Purchase order number (optional) _____

***Standing Order Service**

Just sign the authorization above to charge selected items to your existing Deposit Account, VISA or MasterCard, Discover/NOVUS, or American Express account. Or open a Deposit Account with an initial deposit of \$50 or more. Your account will be charged only as each volume is issued and mailed. Sufficient money must be kept in your account to insure that items are shipped. Service begins with the next issue released of each item you select.

You will receive written acknowledgement for each item you choose to receive by Standing Order Service.

If you wish to cancel your Standing Order Service, please notify the Superintendent of Documents in writing (telephone cancellations are accepted, but must be followed up with a written cancellation within 10 days).

Important: Please include this completed order form with your payment.

INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletin is sold on a yearly subscription basis by the Superintendent of Documents. Current subscribers are notified by the Superintendent of Documents when their subscriptions must be renewed.

CUMULATIVE BULLETINS

The contents of this weekly Bulletin are consolidated semiannually into a permanent, indexed, Cumulative Bulletin. These are sold on a single copy basis and *are not* included as part of the subscription to the Internal Revenue Bulletin. Subscribers to the weekly Bulletin are notified when copies of the Cumulative Bulletin are available. Certain issues of Cumulative Bulletins are out of print and are not available. Persons desiring available Cumulative Bulletins, which are listed on the reverse, may purchase them from the Superintendent of Documents.

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Under information for: select Businesses. Under related topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at www.irs.gov/cdorders (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

HOW TO ORDER

Check the publications and/or subscription(s) desired on the reverse, complete the order blank, enclose the proper remittance, detach entire page, and mail to the Superintendent of Documents, P.O. Box 371954, Pittsburgh PA, 15250-7954. Please allow two to six weeks, plus mailing time, for delivery.

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can e-mail us your suggestions or comments through the IRS Internet Home Page (www.irs.gov) or write to the IRS Bulletin Unit, SE:W:CAR:MP:T:T:SP, Washington, DC 20224

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, \$300