

HIGHLIGHTS OF THIS ISSUE

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

INCOME TAX

Rev. Rul. 2008-17, page 626.

International operation of ships or aircraft; foreign corporation. This ruling assists a foreign corporation engaged in the international operation of ships or aircraft, and its shareholders, in determining whether the foreign corporation is organized in a country that grants an “equivalent exemption” from tax for purposes of section 883(a) and (c) of the Code. The ruling also assists a nonresident alien individual engaged in the international operation of ships or aircraft in determining whether a country grants an equivalent exemption for purposes of section 872(b). The ruling does not, however, provide substantive guidance under section 883. Rev. Ruls. 89-42, 97-31, and 2001-48 modified and superseded.

Notice 2008-33, page 642.

This notice provides procedures for manufacturers to follow to certify both that a particular make, model, and model year of fuel cell motor vehicle meets the requirements of section 30B(a)(1) and (b) of the Code, and the amount of the credit allowable with respect to the vehicle.

Notice 2008-34, page 645.

This notice identifies a transaction in which a tax indifferent party contributes one or more distressed assets with a high basis and low fair market value to a trust or series of trusts and sub-trusts, and a U.S. taxpayer acquires an interest in the trust (and/or series of trusts and/or sub-trusts) for the purpose of shifting a built-in loss from the tax indifferent party to the U.S. taxpayer that has not incurred the economic loss.

Notice 2008-35, page 647.

This notice supersedes Notice 2006-27, 2006-1 C.B. 626, by substantially republishing the guidance contained in that publi-

cation while clarifying the meaning of the terms equivalent rating network, equivalent calculation procedure, and eligible contractor. The notice also clarifies the process for removing software from the list of approved software and provides for the extension of the tax credit through December 31, 2008. Notice 2006-27 clarified and superseded. Announcement 2006-88 clarified and superseded.

Notice 2008-36, page 650.

This notice supersedes Notice 2006-28, 2006-1 C.B. 628, by substantially republishing the guidance contained in that publication while clarifying the meaning of the terms equivalent rating network, equivalent calculation procedure, and eligible contractor. The notice also clarifies the process for removing software from the list of approved software and provides for the extension of the tax credit through December 31, 2008. Notice 2006-28 clarified and superseded. Announcement 2006-88 clarified and superseded.

Rev. Proc. 2008-21, page 657.

This procedure provides that the Service will not challenge the accuracy of 2007 returns filed in compliance with Notice 2008-28, 2008-10 I.R.B. 546, by eligible individuals who enter \$1.00 in adjusted gross income on their 2007 return for the sole purpose of effectuating the electronic filing of their 2007 tax return.

Rev. Proc. 2008-22, page 658.

Automobile owners and lessees. This procedure provides owners and lessees of passenger automobiles (including trucks and vans) with tables detailing the limitations on depreciation deductions for passenger automobiles first placed in service during calendar year 2008 and the amounts to be included in income for passenger automobiles first leased during calendar year 2008.

(Continued on the next page)

Finding Lists begin on page ii.



Rev. Proc. 2008–23, page 664.

This procedure provides an alternative dollar-value last-in, first-out (LIFO) pooling method, the Vehicle-Pool Method, for certain resellers of cars and light-duty trucks and provides procedures for obtaining automatic consent to change to that method. The procedure also provides the permissible method of pooling for crossover vehicles under the Alternative LIFO Method and the Used Vehicle Alternative LIFO Method for those resellers that do not choose to use the Vehicle-Pool Method. Rev. Procs. 97–36 and 2001–23 modified.

EMPLOYEE PLANS

Notice 2008–29, page 637.

Alternative mortality tables; disabled individuals; defined benefit plans. This notice provides which mortality tables are permitted to be used to determine present values with respect to individuals who are entitled to benefits under a qualified defined benefit pension plan on account of disability.

Notice 2008–30, page 638.

Distributions; various issues; Pension Protection Act of 2006 (PPA '06). This notice provides guidance in the form of questions and answers with respect to certain provisions contained in PPA '06 that are effective in 2008 and are primarily related to distributions described in sections 302, 824, and 1004 of PPA '06.

Notice 2008–37, page 654.

Weighted average interest rate update; corporate bond indices; 30-year Treasury securities; segment rates. This notice contains updates for the corporate bond weighted average interest rate for plan years beginning in March 2008; the 24-month average segment rates; the funding transitional segment rates applicable for March 2008; and the minimum present value transitional rates for February 2008.

EXCISE TAX

Rev. Rul. 2008–15, page 633.

Insurance premiums; excise tax consequences. This ruling describes the insurance excise tax consequences (under section 4371 of the Code) of insurance premiums paid by one foreign insurer (foreign insurer) to another (foreign reinsurer). In particular, the ruling addresses the excise tax consequences of such payments where the foreign insurer is eligible for a waiver of the excise tax by income tax treaty but the foreign reinsurer is not. There are two types of insurance excise tax waivers provided by treaty. The ruling addresses both types of waivers. Rev. Rul. 58–612 clarified and amplified.

Announcement 2008–18, page 667.

This announcement sets forth a voluntary compliance initiative that encourages any foreign person who has failed to pay excise taxes due under section 4371 of the Code, or failed to disclose that it has claimed a waiver from the taxes pursuant to an income tax treaty, to become compliant with its obligations. In general, if a taxpayer participates in this initiative in accordance with the terms laid out in this announcement, the IRS will not conduct examinations covering insurance excise tax liabilities arising under the four situations set forth in Rev. Rul. 2008–15 (this Bulletin), or any similar fact pattern, to the extent that premiums are paid or received by the participating taxpayer during any quarterly tax period prior to October 1, 2008.

TAX CONVENTIONS

Rev. Rul. 2008–15, page 633.

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ADMINISTRATIVE**Notice 2008-34, page 645.**

This notice identifies a transaction in which a tax indifferent party contributes one or more distressed assets with a high basis and low fair market value to a trust or series of trusts and sub-trusts, and a U.S. taxpayer acquires an interest in the trust (and/or series of trusts and/or sub-trusts) for the purpose of shifting a built-in loss from the tax indifferent party to the U.S. taxpayer that has not incurred the economic loss.

The IRS Mission

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

the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 872.—Gross Income

A revenue ruling is provided to assist a foreign corporation engaged in the international operation of ships or aircraft, and its shareholders, in determining whether the foreign corporation is organized in a country that grants an “equivalent exemption” from tax for purposes of section 883(a) and (c) of the Internal Revenue Code (Code). This revenue ruling is also intended to assist a nonresident alien individual engaged in the international operation of ships or aircraft in determining whether a country grants an equivalent exemption from tax for purposes of section 872(b) of the Code. See Rev. Rul. 2008-17, page 626.

Section 883.—Exclusions From Gross Income

26 CFR 1.883: Exclusion of income from the international operation of ships or aircraft. (Also Section 872, 894.)

International operation of ships or aircraft; foreign corporation. This ruling assists a foreign corporation engaged in the international operation of ships or aircraft, and its shareholders, in determining whether the foreign corporation is organized in a country that grants an “equivalent exemption” from tax for purposes of section 883(a) and (c) of the Code. The ruling also assists a nonresident alien individual engaged in the international operation of ships or aircraft in determining whether a country grants an equivalent exemption for purposes of section 872(b). The ruling does not, however, provide substantive guidance under section 883. Rev. Ruls. 89-42, 97-31, and 2001-48 modified and superseded.

Rev. Rul. 2008-17

Purpose

The purpose of this revenue ruling is to assist a foreign corporation engaged in the international operation of ships or aircraft, and its shareholders, in determining whether the foreign corporation is organized in a country that grants an “equivalent exemption” from tax for purposes of section 883(a) and (c) of the Internal Revenue Code (Code). This revenue ruling is also intended to assist a nonresident alien

individual engaged in the international operation of ships or aircraft in determining whether a country grants an equivalent exemption from tax for purposes of section 872(b) of the Code. This revenue ruling provides lists of countries that may provide various forms of equivalent exemptions. This revenue ruling does not, however, provide substantive guidance under section 883 of the Code. For detailed guidance, see Treas. Reg. § 1.883-0 through § 1.883-5 (T.D. 9087, 2003-2 C.B. 781, as amended by T.D. 9218, 2005-2 C.B. 503), and Treas. Reg. § 1.883-0T through § 1.883-5T (T.D. 9332, 2007-32 I.R.B. 300).

Background

Section 883(a) of the Code generally provides that gross income derived by a foreign corporation from the international operation of ships or aircraft shall not be included in the gross income of such foreign corporation, and shall be exempt from U.S. taxation, if the country in which the corporation is organized grants an equivalent exemption to corporations organized in the United States (U.S. corporations). Section 883(c)(1) provides that the exemption provided by section 883(a) is not available if 50 percent or more of the value of the stock of the foreign corporation is owned by individuals who are not residents of a country that grants an equivalent exemption to U.S. corporations. Thus, a foreign corporation seeking to avail itself of the exemption from tax under section 883 must determine whether it is organized in a country that provides an equivalent exemption to U.S. corporations and whether its shareholders are organized in, or residents of, a country that provides an equivalent exemption to U.S. corporations. Treasury regulation § 1.883-1(c)(3) also requires a foreign corporation claiming an exemption from tax to provide the applicable authority for an equivalent exemption with its Form 1120-F (*U.S. Income Tax Return of a Foreign Corporation*).

Treasury regulation § 1.883-1(h)(1) provides that an equivalent exemption may exist if a foreign country generally

imposes no tax on income or specifically provides an exemption under domestic law for income derived from the international operation of ships or aircraft. Alternatively, a foreign country may exchange a diplomatic note, or enter into an agreement, with the United States that provides for an equivalent exemption for purposes of section 883. Treas. Reg. § 1.883-1T(h)(1) broadens the definition of equivalent exemption to include an exemption provided by income tax convention, provided the foreign corporation meets certain additional conditions set forth in § 1.883-1T(h)(3).

Table I

Part A of Table I of this revenue ruling provides a list of countries that grant an equivalent exemption as evidenced by a diplomatic note exchanged with the United States.

Part B of Table I provides a list of countries that grant an equivalent exemption to U.S. corporations by statute or decree, or by not imposing tax on income from the international operation of ships or aircraft. The Internal Revenue Service (IRS) generally has made the determinations based upon information submitted by the foreign country regarding its domestic law in effect at the time of the submission. The date of the IRS’s review of the foreign country’s law is reflected in the first column of Part B of Table I. The list of countries included in Part B of Table I is not an exhaustive list of the countries which provide an equivalent exemption under domestic law. Other countries that have not submitted the information necessary for the IRS to make a determination also may grant an equivalent exemption.

Because Part B of Table I does not reflect any changes to a country’s domestic law since the IRS’s review, a foreign corporation and its shareholders should independently verify the accuracy of the information in Part B of Table I as it relates to the relevant taxable year.

Consistent with past practice, the IRS will entertain a request from a foreign government to determine whether the domestic law of the foreign country provides an

equivalent exemption for one or more categories of income that may be exempt from U.S. taxation under section 883. Accordingly, taxpayers may ask the relevant foreign government to contact the IRS for this purpose. The letter from the foreign government official should be addressed to the Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:INTL:Br1. The letter should state the name, citation, and effective date of the statute or decree, and generally describe the application of the country's domestic law to income derived by U.S. persons from the international operation of ships or aircraft and from calling on ports or airports in that country. For example, the letter should discuss whether the law provides an exemption for each category of income described in § 1.883-1(h)(2)(i) through (viii). A copy of the relevant statute or decree as published in an official government publication and a certified English translation of the document, if it was not published in English, should be attached to the letter.

Table II

Table II of this revenue ruling provides a list of countries that have entered into income tax conventions with the United States that include a shipping and air transport article or a gains article. Prior to the issuance of § 1.883-1T(h)(3), a foreign corporation organized in a country that only provided an exemption from tax through an income tax convention with the United States was not considered organized in a country that granted an equivalent exemption for purposes of section 883. For taxable years of foreign corporations beginning on or after June 25, 2007, § 1.883-1T(h)(3)(i) provides that if a foreign corporation is organized in a foreign country that only provides an exemption from tax for profits from the operation of ships or aircraft in international transport or international traffic under the shipping and air transport or gains article of an income tax convention with the United States, then such foreign corporation may treat the exemption from tax provided by the income tax convention as an equivalent exemption for purposes of section 883, but only if: (1) the foreign corporation meets all the conditions for claim-

ing benefits with respect to such profits under the income tax convention, including the limitation on benefits article; and (2) the profits that are exempt from tax pursuant to the income tax convention also fall within a category of income described in § 1.883-1(h)(2)(i) through (viii).

A foreign corporation that relies on an income tax convention as providing an equivalent exemption with respect to a particular category of income under § 1.883-1T(h)(1)(ii) must demonstrate not only that it qualifies for benefits under the income tax convention but also that it meets the requirements of section 883. For example, a corporation that is considered a resident of a foreign country that grants an equivalent exemption because it is managed and controlled in that country will not qualify for an exemption from tax under section 883(a) unless the corporation is also organized in that country. Similarly, a foreign corporation that does not meet one of the stock ownership tests described in § 1.883-1(c)(2) may not claim an exemption from tax under section 883, even if it qualifies for benefits under the limitation on benefits article of the relevant income tax convention.

Table II summarizes the bases for claiming an exemption under each income tax convention, including whether the exemption under the shipping and air transport article is based solely on residence, or, as in the case of certain older income tax conventions, the exemption has an additional requirement of documentation or registration. Table II now also includes limitation on benefits articles as a condition for claiming benefits. Table II does not set forth other benefits relating to a shipping or an air transport business that may be provided under articles covering business profits, rentals and royalties, or other income because such benefits are not relevant for purposes of section 883(a) or (c).

Table I and Table II are intended only as a summary, and the full text of any relevant diplomatic note, foreign law, or income tax convention (including any protocol thereto, any agreement, any diplomatic note accompanying the convention, or the technical explanation of the income tax convention) should be consulted. The IRS and Treasury Department intend to update the tables periodically.

CHANGES TO REV. RUL. 2001-48

In Part A of Table I, Angola, the Cape Verde Islands, Ghana, and the Bailiwick of Jersey have been added to the list of countries that have exchanged diplomatic notes with the United States.

In Part B of Table I, the British Virgin Islands, Croatia, Gibraltar, Kuwait (shipping only), Monaco, Qatar (shipping only), and Uruguay have been added to the list of countries whose domestic law has been determined to provide an equivalent exemption.

In Table II, the following countries have been added to the list of countries that provide an exemption under an income tax convention: Bangladesh and Sri Lanka. The following countries have entered into new income tax conventions or protocols with the United States that contain new shipping and air transport articles that supersede prior income tax conventions reported in Rev. Rul. 2001-48: Australia, Belgium, Japan, and the United Kingdom.

A subheading has been added under the heading *Basis for Exemption* to notify any foreign person, whether it is the corporation seeking an exemption from tax under section 883, or a shareholder of such corporation, that it may not treat an income tax convention as granting an equivalent exemption unless that person qualifies for benefits under the limitation on benefits article, if any, in that income tax convention. Footnote number 35 has also been added to identify those countries that provide an equivalent exemption from tax only through an income tax convention with the United States.

TO CLAIM AN EXEMPTION

Nonresident alien individuals claiming an exemption from U.S. taxation under section 872(b) of the Code must file a return on Form 1040NR (*U.S. Nonresident Alien Income Tax Return*), follow the accompanying instructions, and claim the exemption. Foreign corporations claiming an exemption under section 883 must file a return on Form 1120F (*U.S. Income Tax Return of a Foreign Corporation*), follow the accompanying instructions, and comply with the relevant reporting provisions of Treas. Reg. § 1.883-1(c)(3).

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 89-42, Rev. Rul. 97-31, and Rev. Rul. 2001-48 are modified and superseded.

DRAFTING INFORMATION

The principal author of this revenue ruling is Patricia A. Bray of the Office of Associate Chief Counsel (International). For further information regarding this revenue

ruling, contact Patricia A. Bray at (202) 622-5871 (not a toll-free call).

TABLE I

Countries Granting Equivalent Exemptions For Income From The International Operation of Ships and Aircraft

PART A — EXCHANGE OF NOTES¹

TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED²

| Countries And Territories | Cumulative Bulletin Or Internal Revenue Bulletin Citation | Operating Income | Full Rental (Time or Voyage Charter) | Bareboat Rental | Incidental Container Rental | Cap ³ Gains |
|---------------------------|---|------------------|--------------------------------------|-----------------|-----------------------------|------------------------|
| Angola | 2007-42 I.R.B. 801 | X | X | X | X | X |
| Argentina | 1988-1 C.B. 456 | X | X | X | X | X |
| Bahamas | 1988-1 C.B. 458 | X | X | X | X | - |
| Bahrain | 2000-2 C.B. 475 | X | X | X | X | X |
| Belgium | 1988-1 C.B. 459 | X | X | - | X | - |
| Bolivia ⁴ | 1988-1 C.B. 460 | X | X | X | X | - |
| Cape Verde | 2005-2 C.B. 855 | X | X | X | X | X |
| Chile ⁵ | 1991-1 C.B. 304 | X | X | X ³ | X | - |
| Colombia | 1988-1 C.B. 461 | X | X | X | X | - |
| Cyprus | 1989-2 C.B. 332 | X | X | X | X | - |
| Denmark | 1988-1 C.B. 462 | X | X | X | X | - |
| El Salvador ⁵ | 1988-1 C.B. 463 | X | X | X | X | X |
| Ethiopia | 1999-1 C.B. 1134 | X | X | X | X | X |
| Fiji | 1996-2 C.B. 202 | X | X | X | X | X |
| Finland | 1989-2 C.B. 334 | X | X | X | X | - |
| Ghana | 2002-1 C.B. 725 | X | X | X | X | X |
| Greece | 1988-2 C.B. 366 | X | X | X | X | - |
| Hong Kong ^{6/7} | 1995-1 C.B. 228 | X | X | X | X | X |
| India | 1990-2 C.B. 316 | X | X | X ³ | X | X |
| Isle of Man ⁶ | 1990-2 C.B. 317 | X | X | X | X | X |
| Japan | 1990-2 C.B. 318 | X | X | X | X | - |
| Jersey | 2007-10 I.R.B. 665 | X | X | X | X | X |
| Jordan | 1996-2 C.B. 202 | X | X | X | X | - |
| Liberia | 1988-1 C.B. 463 | X | X | X | X | X |
| Luxembourg | 1996-2 C.B. 203 | X | X | X | X | - |
| Malaysia | 1990-2 C.B. 319 | X | X | X ³ | X | X |
| Malta | 1997-1 C.B. 314 | X | X | X | X | X |

TABLE I—Continued

*Countries Granting Equivalent Exemptions For
Income From The International Operation of
Ships and Aircraft*

*PART A — EXCHANGE OF NOTES¹**TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED²*

| Countries And Territories | Cumulative Bulletin Or Internal Revenue Bulletin Citation | Operating Income | Full Rental (Time or Voyage Charter) | Bareboat Rental | Incidental Container Rental | Cap ³ Gains |
|---------------------------|---|------------------|--------------------------------------|-----------------|-----------------------------|------------------------|
| Marshall Islands | 1990–2 C.B. 321 | X | X | X | X | X |
| Norway | 1991–1 C.B. 304 | X | X | X | X | X |
| Pakistan ⁶ | 1991–1 C.B. 305 | X ⁸ | - | - | - | - |
| Panama | 1988–2 C.B. 366 | X | X | X | X | - |
| Peru ⁶ | 1989–2 C.B. 335 | X | X | X ³ | X | - |
| St. Vincent & Grenadines | 1989–2 C.B. 336 | X | X | X | X | - |
| Saudi Arabia ⁹ | 2000–1 C.B. 1126 | X | X | X | X | X |
| Singapore | 1990–2 C.B. 323 | X | X | X | X | X |
| Sweden | 1988–1 C.B. 466 | X | X | X ³ | X | - |
| Taiwan | 1989–2 C.B. 337 | X | X | X | X | - |
| United Arab Emirates | 1998–2 C.B. 528 | X | X | X | X | X |
| Venezuela | 1988–1 C.B. 467 | X | X | X ³ | X | X |

*PART B — DOMESTIC LAW**TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED²*

| Countries And Territories | Date Foreign Law Reviewed | Operating Income | Full Rental (Time or Voyage Charter) | Bareboat Rental | Incidental Container Rental | Cap ³ Gains |
|--------------------------------|---------------------------|------------------|--------------------------------------|-----------------|-----------------------------|------------------------|
| Antigua & Barbuda ⁶ | NOV 1991 | X | X | X | X | X |
| Aruba | JUNE 1999 | X | X | X | X | - |
| Barbados | OCT 1989 | X | X | X | X | X |
| Bermuda | NOV 1988 | X | X | X | X | X |
| Brazil ¹⁰ | DEC 1988 | X | X | X ³ | X | - |
| British Virgin Islands | MAR 2003 | X | X | - | - | - |
| Bulgaria | FEB 1989 | X | X | X | X | X |
| Cayman Islands ¹¹ | JAN 1987 | X | X | X | X | X |
| Chile ⁶ | OCT 1988 | X | X | X | X | X |
| Croatia | FEB 2007 | X | X | X | X | X |
| Ecuador ^{6/12} | DEC 1989 | X | X | X ³ | X | X |
| Gibraltar | JULY 2006 | X | X | X | X | X |
| Israel | FEB 1991 | X | X | X | X | X |

TABLE I—Continued

*Countries Granting Equivalent Exemptions For
Income From The International Operation of
Ships and Aircraft*

PART B — DOMESTIC LAW—Continued

| Countries And Territories | Date Foreign Law Reviewed | Operating Income | TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED ² | | | | Cap ³ Gains |
|---------------------------------|---------------------------------|---------------------|---|--------------------|-----------------------------------|---|------------------------|
| | | | Full Rental (Time or Voyage Charter) | Bareboat Rental | Incidental Container Rental | | |
| Kuwait ⁶ | APRIL 2007 | X | X | X | X | - | |
| Monaco | JAN 2005 | X | X | X | X | X | |
| Netherlands | OCT 1988 | X | X | X ³ | X | - | |
| Netherlands Antilles | MAY 1988 | X | X | X | X | X | |
| Peru ⁵ | SEPT 1995 | X | X | X | X | X | |
| Portugal ¹⁰ | Ships | JUNE 1989 | X | X | X | - | - |
| | Aircraft | FEB 1989 | X | X | X | - | - |
| Qatar | Ships ⁶ | JAN 1993 | X ⁸ | X | - | - | - |
| | Aircraft ⁵ | AUG 1994 | X ⁸ | - | - | - | - |
| Spain ¹³ | DEC 1988 | X | X | - | X | - | |
| Surinam | NOV 1999 | X | X | X | X | X | |
| Turkey ¹⁴ | JAN 1987 | X | - | - | X | - | |
| Turks & Caicos ¹¹ | FEB 1990 | X | X | X | X | X | |
| Uruguay | JAN 2007 | X ⁸ | - | - | - | - | |
| U.S. Virgin Islands | OCT 1988 | X | X | X | X | X | |
| Vanuatu | MAY 1987 | X | X | X | X | X | |

TABLE II

Countries Granting Exemptions from Tax by Income Tax Convention¹⁵

| Countries And Territories | BASIS FOR EXEMPTION | | | TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED ² | | | | |
|---|-------------------------------|-----------------------------------|------------------------------|---|--|---------------------|-----------------------------------|--------------|
| | Residence Based No Flag | Residence & Flag Reciprocal | LOB ²⁹ Article | Operating Income | Full Rental (Time or Voyage Charter) | Bare-Boat Rental | Incidental Container Rental | Cap Gains |
| Australia ^{19/35} | X | - | X | X | X ¹⁶ | X ³ | X | X |
| Austria ³⁵ | X | - | X | X | X ²⁰ | X ²⁰ | X | X |
| Bangladesh ^{19/35} | X | - | X | X | X ²⁰ | X ²⁰ | X | X |
| Barbados | X | - | X | X | X ²⁰ | X ²⁰ | X | X |
| Belgium ¹⁹ | X | - | X | X | X | X ²⁰ | X | X |
| Canada ³⁵ | X | - | X | X | X | X | X | X |
| China ^{22/35} (People's Republic) | X | - | X | X | X ²⁰ | X ²⁰ | X | X |

TABLE II—Continued

Countries Granting Exemptions from Tax by Income Tax Convention¹⁵

| Countries And Territories | BASIS FOR EXEMPTION | | | TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED ² | | | | |
|---------------------------------|-------------------------------|-----------------------------------|------------------------------|--|--|---------------------|-----------------------------------|--------------|
| | Residence Based No Flag | Residence & Flag Reciprocal | LOB ²⁹ Article | Operating Income | Full Rental (Time or Voyage Charter) | Bare-Boat Rental | Incidental Container Rental | Cap Gains |
| Cyprus | X | - | X | X | X ²⁰ | X ²⁰ | X | X |
| Czech Republic ³⁵ | X | - | X | X | X | X ³ | X | X |
| Denmark | X | - | X | X | X | X ²⁰ | X | X |
| Egypt | X | - | - | X | X ³ | X ³ | X | - |
| Estonia ³⁵ | X | - | X | X | X | X ³ | X | X |
| Finland | X | - | X | X | X ³ | X ³ | X | X |
| France ³⁵ | X | - | X | X | X | X ²⁰ | X | X |
| Germany ^{24/35} | X | - | X | X | X | - | X | X |
| Greece | - | X | - | X ⁸ | - | - | - | - |
| Hungary ³⁵ | X | - | - | X | X ³ | X ³ | X | X |
| Iceland ³⁵ | - | X ²⁵ | - | X | X ³ | X ³ | X | X |
| India | X | - | X | X | X ³ | X ³ | X | X |
| Indonesia ³⁵ | X | - | X | X | X | X ²⁷ | X | X |
| Ireland ³⁵ | X | - | X | X | X | X ²⁰ | X | X |
| Israel | X | - | X | X | X ³ | X ³ | X | X |
| Italy ^{28/29/35} | - | X ²⁵ | X | X | X ³⁰ | X ³ | X | X |
| Jamaica ³⁵ | X | - | X | X | X ²⁰ | X ²⁰ | X | X |
| Japan ^{28/19} | X | - | X | X | X ³ | X | X | X |
| Kazakhstan ³⁵ | X | - | X | X | X | X ²⁰ | X | X |
| Korea ³⁵ | X | - | - | X | X ³² | - | X | - |
| Latvia ³⁵ | X | - | X | X | X | X ¹⁷ | X | X |
| Lithuania ³⁵ | X | - | X | X | X | X ¹⁷ | X | X |
| Luxembourg | X | - | X | X | X | X ²⁰ | X | X |
| Mexico ³⁵ | X | - | X | X | X | X ²³ | X | X |
| Morocco ³⁵ | - | X ²¹ | - | X ⁸ | - | - | - | X |
| Netherlands | X | - | X | X | X ³ | X ³ | - | X |
| New Zealand ³⁵ | X | - | X | X | X | X ³ | X | X |
| Norway ²⁸ | X | - | - | X | X ³² | X ³ | X | X |
| Pakistan ⁵ | - | X | - | X ⁸ | - | - | - | - |
| Philippines ^{6/35} | X | - | - | - | - | - | - | X |
| Poland ³⁵ | - | X ²⁵ | - | X | X ³ | X ³ | X | X |
| Portugal ³⁵ | X | - | X | X | X | X ³ | - | X |
| Romania ³⁵ | - | X | - | X | X ³ | X ³ | X | X |

TABLE II—Continued

Countries Granting Exemptions from Tax by Income Tax Convention¹⁵

| Countries And Territories | BASIS FOR EXEMPTION | | | TYPES OF SHIPPING AND AIRCRAFT INCOME EXEMPTED ² | | | | |
|----------------------------------|-------------------------------|-----------------------------------|------------------------------|--|--|---------------------|-----------------------------------|--------------|
| | Residence Based No Flag | Residence & Flag Reciprocal | LOB ²⁹ Article | Operating Income | Full Rental (Time or Voyage Charter) | Bare-Boat Rental | Incidental Container Rental | Cap Gains |
| Russian Federation ³⁵ | X | - | X | X | X | X ²⁰ | X | X |
| Slovak Republic ³⁵ | X | - | X | X | X | X ³ | X | X |
| Slovenia ³⁵ | X | - | X | X | X | X ²⁰ | X | X |
| South Africa ³⁵ | X | - | X | X | X | X ²⁰ | X | X |
| Spain | X | - | X | X | X | X ³ | X | X |
| Sri Lanka ^{5/19/31/35} | X | - | X | X | X ²⁰ | X ²⁰ | - | - |
| Sweden | X | - | X | X | X | X ³ | X | X |
| Switzerland ³⁵ | X | - | X | X | X ³³ | X ³ | - | X |
| Thailand ³⁵ | X ⁵ | - | X | X | X | X ³ | X | X |
| | X ⁶ | - | X | - | - | - | - | X |
| Trinidad & Tobago ³⁵ | - | X ²⁵ | - | X | X ³ | X ³ | - | X |
| Tunisia ³⁵ | X | - | X | X | X ²⁰ | X ²⁰ | X | X |
| Turkey | X | - | X | X | X | X ³ | X | X |
| Ukraine ³⁵ | X | - | X | X | X | X ²⁰ | X | X |
| USSR/NIS ^{34/35} | - | X | - | X ⁸ | - | - | - | X |
| U.K. ^{19/35} | X | - | X | X | X | X ³ | X | X |
| Venezuela ³⁵ | X | - | X | X | X | X ²⁰ | X | X |

FOOTNOTES TO TABLES

¹ Notes signed prior to the Technical and Miscellaneous Revenue Act of 1988 are interpreted in accordance with the technical corrections enacted by that Act.

² Under the heading "Types of Shipping and Aircraft Income Exempted" unless otherwise footnoted, an "X" indicates full exemption whether or not there is a permanent establishment.

³ The tax exemption is available only if the income is incidental to operating income.

⁴ The note was ratified by the Bolivian Congress and signed by the Bolivian President. The note and exemption officially became effective upon publication in the official Gazette on March 31, 1999, for income earned after that date.

⁵ This exemption applies to aircraft only.

⁶ This exemption applies to shipping only.

⁷ This diplomatic note applies to Hong Kong before July 1, 1997, and pursuant to Notice 97-40, 1997-2 C.B. 287, to the Hong Kong Special Administrative Region of the People's Republic of China on or after July 1, 1997. The note does not apply with respect to the People's Republic of China, which will continue to be treated as a separate country for purposes of the Internal Revenue Code.

⁸ Operating income is not defined.

⁹ The note is effective for all taxable years beginning on or after January 1, 1999, and for all prior open taxable years.

¹⁰ Only corporations are exempt under the Brazilian and Portuguese statutes.

¹¹ The country generally imposes no income tax.

¹² This exemption is generally effective for all open years beginning on or after January 1, 1987.

¹³ The Spanish statute exempts only corporations.

¹⁴ See generally Rev. Rul. 87-18, 1987-1 C.B. 178 (explaining the application of Turkey's domestic-law exemption).

¹⁵ Table II is relevant for determining whether a shareholder of a foreign corporation is a resident of a country that grants an equivalent exemption by means of an income tax convention with the United States. Table II is also relevant for determining whether a foreign corporation itself is eligible to claim an exemption under section 883(a) when it is organized in a country that only provides an exemption by means of an income tax convention.

¹⁶ Lessor must either regularly lease ships or aircraft on a full basis or operate them in international traffic.

- ¹⁷ This exemption applies if the ships or aircraft are operated in international traffic by the lessee, and the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
- ¹⁸ Except to the extent depreciation has been allowed in the other country.
- ¹⁹ The following countries have entered into new income tax conventions or protocols with the United States that contain new Shipping and Air Transport articles that supersede prior income tax conventions reported in Rev. Rul. 2001-48:
- | | |
|--------------------------|-----------------|
| Australia | January 1, 2004 |
| Bangladesh | January 1, 2007 |
| Belgium | January 1, 2008 |
| Japan | January 1, 2005 |
| Sri Lanka | January 1, 2004 |
| United Kingdom | January 1, 2004 |
- ²⁰ This exemption applies if the ships or aircraft are operated in international traffic by the lessee, or the rental income is incidental to the operation of ships or aircraft in international traffic by the lessor.
- ²¹ In the case of aircraft only, the registration may be in the country of residence or in any country with a treaty providing an equivalent exemption between such country and the country of residence.
- ²² Pursuant to Notice 97-40, 1997-2 C.B. 287, the treaty between the United States and the People's Republic of China (China) will continue to apply only to China and will not apply to the Hong Kong Special Administrative Region of the People's Republic of China. The Shipping and Aircraft Agreement between China and the United States was ratified on September 6, 1983. The Shipping and Aircraft Agreement is separate from the income tax treaty with China.
- ²³ The exemption applies except where the containers are used solely between places within the other Contracting State.
- ²⁴ This treaty is effective for the eastern States of Germany (the former East Germany) from January 1, 1991.
- ²⁵ Documentation or registration required for ships or aircraft of United States residents only.
- ²⁶ This treaty exempts gains derived by an enterprise of a Contracting State if the ships or aircraft or containers are owned and operated by the enterprise and the income from them is taxable only in that State.
- ²⁷ Income from the bareboat rental of aircraft used in international traffic is exempt. Income from the bareboat rental of ships also is exempt if the ship is operated in international traffic and if the lessee is not a resident of, or does not have a permanent establishment in, the other Contracting State.
- ²⁸ See also the diplomatic notes or protocol accompanying this treaty.
- ²⁹ Each country identified in this column has entered into an income tax convention with the United States that contains a comprehensive limitation on benefits article. Accordingly, if a foreign corporation or shareholder of a foreign corporation intends to rely on an equivalent exemption provided through such an income tax convention with the United States, that person must be a resident of that country for treaty purposes and satisfy the limitation on benefits article in that convention.
- ³⁰ This exemption applies if the ship or aircraft is operated in international traffic or if the rental income is incidental to income from such international operation.
- ³¹ In connection with the revised U.S. protocol with Sri Lanka, an exchange of notes signed September 20, 2002, provides, "[w]ith respect to Article 8 (Shipping and Air Transport), it is understood that Sri Lanka shall exempt from tax the profits of an enterprise of the United States from sources within Sri Lanka from the operation in international traffic of ships for as long as there remains in force Article 8 of the Convention between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at London on June 21, 1979; Article 8 of the Convention Between the Government of the Polish People's Republic and the Government of the Democratic Socialist Republic of Sri Lanka for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at Colombo on April 25, 1980; or any provision granting the same treatment as accorded under aforesaid provisions to a resident of a third state."
- ³² As a result of correspondence, it was clarified that income from the international operation of ships or aircraft includes this category of income.
- ³³ This exemption applies if the ships or aircraft are used by the lessee in international traffic.
- ³⁴ The U.S. - U.S.S.R. income tax treaty signed June 20, 1973, continues to apply to the New Independent States (NIS) of Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. See Treasury News NB-1763.
- ³⁵ This country only provides an exemption from tax through an income tax convention with the United States. A corporation organized in this country and claiming an exemption under section 883(a) must satisfy the additional requirements set forth in §1.883-1T(h)(3).

Section 894.—Income Affected by Treaty

A revenue ruling is provided to assist a foreign corporation engaged in the international operation of ships or aircraft, and its shareholders, in determining whether the foreign corporation is organized in a country that grants an "equivalent exemption" from tax for purposes of section 883(a) and (c) of the Internal Revenue Code (Code). This revenue ruling is also intended to assist a nonresident alien individual engaged in the international operation of ships or aircraft in determining whether a country grants an equivalent exemption from tax for purposes of section 872(b) of the Code. See Rev. Rul. 2008-17, page 626.

Section 4371.—Imposition of Tax

An announcement describes a voluntary compliance initiative by the Internal Revenue Service (IRS) regarding the foreign insurance excise tax. See Announcement 2008-18, page 667.

(Also: 4372, 4373, and 4374.)

Insurance premiums; excise tax consequences. This ruling describes the insurance excise tax consequences (under section 4371 of the Code) of insurance premiums paid by one foreign insurer (foreign insurer) to another (foreign reinsurer). In particular, the ruling addresses the excise

tax consequences of such payments where the foreign insurer is eligible for a waiver of the excise tax by income tax treaty but the foreign reinsurer is not. There are two types of insurance excise tax waivers provided by treaty. The ruling addresses both types of waivers. Rev. Rul. 58-612 clarified and amplified.

Rev. Rul. 2008-15

ISSUES

1) Whether the reinsurance excise tax imposed by section 4371(3) of the Internal Revenue Code (Code) on policies of reinsurance covering contracts taxable under

paragraph (1), (2) or (3) of section 4371 applies to reinsurance premiums paid by one foreign insurer or reinsurer to another.

2) Whether the insurance excise taxes imposed by section 4371 apply to the extent that a foreign insurer or reinsurer that would otherwise be entitled under an income tax treaty to an exemption from the excise taxes imposed by paragraphs (1), (2) or (3) of section 4371 reinsures the risks covered by such contracts with a foreign reinsurer that is not entitled to an exemption from such excise taxes under an income tax treaty (a nonqualified foreign reinsurer).

FACTS

Situation 1

Foreign Insurer, a foreign corporation incorporated in Country X, issues policies of casualty insurance to U.S. Corporation, a domestic corporation, with respect to hazards, risks, losses, or liabilities wholly or partly within the United States. Foreign Insurer is not engaged in a trade or business in the United States. Country X does not have an income tax treaty with the United States.

Foreign Insurer enters into a reinsurance agreement with Foreign Reinsurer, a foreign corporation incorporated in Country Y, whereby Foreign Reinsurer agrees to indemnify Foreign Insurer against all or part of the loss that Foreign Insurer may sustain under the policies it has issued to U.S. Corporation. Foreign Reinsurer is not engaged in a trade or business in the United States. Country Y has an income tax treaty with the United States that does not exempt insurance premiums from the excise taxes imposed by section 4371.

Situation 2

Foreign Reinsurer A, a foreign corporation incorporated in Country W, issues policies of reinsurance to Domestic Insurer, a U.S. corporation, that cover casualty insurance contracts issued to or for, or in the name of, an insured as defined in section 4372(d). Foreign Reinsurer A enters into a reinsurance agreement with Foreign Reinsurer B, incorporated in Country Y, whereby Foreign Reinsurer B agrees to indemnify Foreign Reinsurer A against all or part of the loss that Foreign Reinsurer

A may sustain under the policies it has issued to Domestic Insurer. Country W and Country Y have income tax treaties with the United States that do not exempt insurance premiums from the excise taxes imposed by section 4371.

Situation 3

The facts are the same as in Situation 1, except that there is an income tax treaty in force between the United States and Country X (the "U.S.-X Treaty"). Foreign Insurer is a resident of Country X for purposes of the U.S.-X Treaty and satisfies the requirements of the limitation on benefits article in that treaty. Article 2 of the U.S.-X Treaty provides, in pertinent part:

The existing taxes to which this Convention shall apply are:

In the case of the United States:

* * *

the Federal excise taxes imposed on insurance premiums paid to foreign insurers...

The Convention shall, however, apply to the Federal excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to the benefits of this or any other convention which provides exemption from these taxes....

* * *

Situation 4

The facts are the same as in Situation 1, except that Foreign Insurer is a resident of Country Z and there is an income tax treaty in force between the United States and Country Z (the "U.S.-Z Treaty") that contains a comprehensive limitation on benefits article. Foreign Insurer satisfies the requirements of the limitation on benefits article in that treaty. Article 2 of the U.S.-Z Treaty provides, in pertinent part:

The existing taxes to which this Convention shall apply are:

In the case of the United States:

* * *

the Federal excise taxes imposed on insurance policies issued by foreign insurers...

The Business Profits article of the Country Z treaty provides in pertinent part:

* * *

The United States excise tax on insurance policies issued by foreign insurers shall not be imposed on insurance or reinsurance policies, the premiums on which are the receipts of a business of insurance carried on by an enterprise of Country Z. However, if such policies are entered into as part of a conduit arrangement, the United States may impose excise tax on those policies, unless the premiums in respect of those policies are, or are part of, the income of a permanent establishment that the enterprise of Country Z has in the United States.

The term "conduit arrangement" is defined to mean a transaction or series of transactions:

which is structured in such a way that a resident of a Contracting State entitled to the benefits of this Convention receives an item of income arising in the other Contracting State but that resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received that item of income direct from the other Contracting State, would not be entitled under a convention for the avoidance of double taxation between the state in which that other person is resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Convention to a resident of a Contracting State; and which has as its main purpose, or one of its main purposes, obtaining such increased benefits as are available under this Convention.

It is assumed for purposes of this revenue ruling that Foreign Insurer has not entered into such policies with U.S. Corporation as part of a conduit arrangement.

LAW AND ANALYSIS

Section 4371 of the Code imposes an excise tax on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer.

Section 4371(1) imposes such excise tax at the rate of 4 cents on each dollar, or fractional part thereof, of the premium paid on the policy of casualty insurance or the indemnity bond, if issued to or for, or in the name of, an insured as defined in section 4372(d).

Section 4371(2) imposes such excise tax at the rate of 1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of life, sickness, or accident insurance, or annuity contract.

Section 4371(3) imposes such excise tax at the rate of 1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of reinsurance covering any of the contracts taxable under paragraph (1) or (2) of section 4371.

Section 4372(a) of the Code, for purposes of Section 4371, defines the term “foreign insurer or reinsurer” as an insurer or reinsurer who is a nonresident alien individual, or a foreign partnership, or a foreign corporation.

Section 4372(d)(1) of the Code defines the term “insured” to include a domestic corporation or partnership, or an individual resident of the United States, that is insured against, or with respect to, hazards, risks, losses, or liabilities wholly or partly within the United States. Section 4372(d)(2) defines the term “insured” to include also a foreign corporation, foreign partnership, or nonresident individual, engaged in a trade or business within the United States, that is insured against, or with respect to, hazards, risks, losses, or liabilities within the United States.

Section 4372(f) of the Code defines the term “policy of reinsurance”, for the purposes of section 4371(3), as any policy or other instrument by whatever name called whereby a contract of reinsurance is made, continued, or renewed against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts taxable under paragraph (1) or (2) of section 4371.

Section 4373(1) of the Code provides an exemption, whereby the tax imposed by section 4371 shall not apply to any amount which is effectively connected with the conduct of a trade or business within the United States unless such amount is exempt from the application of section 882(a) of the Code pursuant to a treaty obligation of the United States.

Section 4374 of the Code provides that any tax imposed by section 4371 shall be paid, on the basis of a return, by any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued or sold.

Revenue Ruling 58-612, 1958-2 C.B. 850, concluded that a policy of reinsurance issued by a foreign insurer covering any of the hazards, risks, losses or liabilities covered by contracts taxable under section 4371(1) and (2) of the Code is subject to the tax imposed on reinsurance policies by section 4371(3) of the Code, regardless of whether the primary insurer was a domestic or foreign insurer.

In *United States v. Northumberland Insurance Co., Ltd.*, 521 F. Supp. 70 (D. N.J. 1981), the court held that the premiums ceded for a reinsurance policy issued by a foreign reinsurer are taxable if the underlying policy is issued to an “insured” as defined in section 4372(d), and there is no requirement that the reinsured qualify as an “insured” to be subject to the excise tax.

In *American Bankers Insurance Company of Florida v. United States*, 265 F.Supp 67 (S. D. Fla. 1967) (aff’d 388 F.2d 304, 5th Cir. 1968), the court held that, for purposes of determining whether the tax imposed by section 4371(3) of the Internal Revenue Code of 1954 applied to contracts of reinsurance issued by foreign insurers to reinsure policies of insurance issued by plaintiffs who were domestic insurers, the phrase “taxable under paragraph (1) or (2)” in section 4371(3) does not require actual taxation. The tax may be imposed if the policies are of the type “covered” or “described in” paragraphs (1) and (2), as such contracts are of the type capable of being taxed.

Treas. Reg. §46.4371-2(c), issued in 1970, incorporating the decision in *American Bankers Insurance Company*, states that “[s]ection 4371(3) imposes a tax upon each policy of reinsurance...if issued- (1) [b]y a nonresident alien individual, a foreign partnership, or a foreign corporation, as reinsurer ...; and (2) [t]o any person against, or with respect to, any of the hazards, risks, losses, or liabilities covered by contracts described in section 4371(1) or (2).” (Emphasis added).

Situation 1

In Situation 1, the premiums paid by U.S. Corporation on the policies of casualty insurance issued by Foreign Insurer are subject to the four-percent excise tax imposed by section 4371(1), because the policies were issued by Foreign Insurer, a foreign corporation, to U.S. Corporation, an “insured” for purposes of section 4372(d). In addition, premiums paid by Foreign Insurer on the policies of reinsurance issued by Foreign Reinsurer with respect to the foregoing insurance policies are subject to the one-percent excise tax imposed by section 4371(3) because section 4371(3) imposes an excise tax on reinsurance policies issued by a foreign reinsurer with respect to risks covered by contracts described in section 4371(1).

Situation 2

In Situation 2, the reinsurance premiums paid by Domestic Insurer to Foreign Reinsurer A covering casualty insurance contracts issued by Domestic Insurer are subject to the one-percent excise tax imposed by section 4371(3), because the policies of reinsurance cover contracts described in section 4371(1). The premiums paid by Foreign Reinsurer A to Foreign Reinsurer B are also subject to the one-percent excise tax imposed by section 4371(3) based on the same analysis.

Situation 3

In Situation 3, the premiums paid by U.S. Corporation on the policies of casualty insurance issued by Foreign Insurer would generally be exempt from the section 4371(1) excise tax under the U.S.-X Treaty. However, the U.S.-X Treaty also provides that such premiums are not exempt to the extent that the risks covered by such premiums are reinsured with a foreign reinsurer not entitled to the benefits of a treaty that provides an exemption from insurance excise taxes. Therefore, because the risks are reinsured with Foreign Reinsurer, who is not entitled to the benefits of a treaty that provides an exemption from insurance excise taxes, the insurance premiums received by Foreign Insurer from U.S. Corporation are subject to the four-percent excise tax as of the date the reinsurance premiums are paid by Foreign Insurer to Foreign Reinsurer. In addition, premiums

paid by Foreign Insurer to Foreign Reinsurer on the policies of reinsurance covering contracts described in section 4371(1) are subject to the one-percent excise tax imposed by section 4371(3), because Foreign Reinsurer is a resident of Country Y, which has an income tax treaty with the United States that does not exempt insurance premiums from the excise taxes imposed by section 4371.

Situation 4

In Situation 4, the insurance premiums paid by U.S. Corporation on the policies of casualty insurance issued by Foreign Insurer are exempt from the section 4371(1) excise tax after application of the U.S.-Z Treaty because Foreign Insurer satisfies the requirements of the limitation on benefits provision of the U.S.-Z Treaty and the policies were not entered into as part of a conduit arrangement. However, the premiums paid by Foreign Insurer to Foreign Reinsurer on the policies of reinsurance issued by Foreign Reinsurer are subject to the one-percent excise tax imposed by section 4371(3), because Foreign Reinsurer is a resident of Country Y, which has an income tax treaty with the United States that does not exempt insurance premiums from the excise taxes imposed by section 4371. The fact that the original insurance premiums paid by U.S. Corporation to Foreign Insurer are exempt from tax after application of the U.S.-Z Treaty does not preclude imposition of the excise tax under section 4371(3) on premiums paid by Foreign Insurer to Foreign Reinsurer. Such reinsurance premiums are paid on policies of reinsurance covering contracts described in and capable of being taxed under section 4371(1).

HOLDINGS

(1) The reinsurance excise tax imposed by section 4371(3) on policies of reinsurance covering contracts described in paragraph (1), (2) or (3) of section 4371 applies to reinsurance premiums paid by one foreign insurer or reinsurer to another foreign reinsurer, unless the second foreign reinsurer issuing the policies is itself entitled to an exemption from the excise tax under an income tax treaty with the United States.

(2) Under the terms of the U.S.-X Treaty in Situation 3, the exemption from the excise taxes imposed by section 4371 provided by the U.S.-X Treaty does not apply where a foreign insurer or reinsurer entitled to the benefits of the U.S.-X Treaty reinsures policies covering contracts described in paragraph (1), (2) or (3) of section 4371 with a foreign reinsurer not entitled to an exemption from excise tax under the U.S.-X Treaty or another income tax treaty (the nonqualified foreign reinsurer). Thus, the premiums on the underlying policies of insurance or reinsurance paid to the foreign insurer become subject to the relevant excise taxes imposed by section 4371 upon the payment of the subsequent premiums to the nonqualified foreign reinsurer. In addition, the reinsurance premiums paid by the foreign insurer or reinsurer to the nonqualified foreign reinsurer are subject to the one-percent excise tax imposed by section 4371(3) when paid.

(3) In contrast, under the terms of the U.S.-Z Treaty in Situation 4, if a foreign insurer or reinsurer entitled to the benefits of the U.S.-Z Treaty reinsures policies covering contracts described in paragraph (1), (2) or (3) of section 4371 with another foreign reinsurer not entitled to an exemption from excise tax under an income tax treaty, the premiums paid on the underlying policies will not become subject to the excise taxes imposed by section 4371, unless such policies were entered into as part of a conduit arrangement, as defined in the U.S.-Z Treaty. Even if there is no conduit arrangement, however, the one-percent excise tax under section 4371(3) still applies when the foreign insurer or reinsurer pays premiums to the nonqualified foreign reinsurer.

EFFECT ON OTHER REVENUE RULING(S)

Rev. Rul. 58-612 is clarified and amplified.

DRAFTING INFORMATION

Various personnel from the Office of the Associate Chief Counsel (International) participated in the development of this revenue ruling. For further informa-

tion regarding this revenue ruling, contact Mr. Willard Yates of the Office of the Associate Chief Counsel (International) at (202) 622-3880 (not a toll-free call).

Section 4372.—Definitions

A revenue ruling discusses whether the reinsurance excise tax imposed by section 4371(3) of the Internal Revenue Code (Code) on policies of reinsurance covering contracts taxable under paragraph (1), (2) or (3) of section 4371 applies to reinsurance premiums paid by one foreign insurer or reinsurer to another. See Rev. Rul. 2008-15, page 633.

An announcement describes a voluntary compliance initiative by the Internal Revenue Service (IRS) regarding the foreign insurance excise tax. See Announcement 2008-18, page 667.

Section 4373.—Exemptions

A revenue ruling discusses whether the reinsurance excise tax imposed by section 4371(3) of the Internal Revenue Code (Code) on policies of reinsurance covering contracts taxable under paragraph (1), (2) or (3) of section 4371 applies to reinsurance premiums paid by one foreign insurer or reinsurer to another. See Rev. Rul. 2008-15, page 633.

An announcement describes a voluntary compliance initiative by the Internal Revenue Service (IRS) regarding the foreign insurance excise tax. See Announcement 2008-18, page 667.

Section 4374.—Liability for Tax

A revenue ruling discusses whether the reinsurance excise tax imposed by section 4371(3) of the Internal Revenue Code (Code) on policies of reinsurance covering contracts taxable under paragraph (1), (2) or (3) of section 4371 applies to reinsurance premiums paid by one foreign insurer or reinsurer to another. See Rev. Rul. 2008-15, page 633.

An announcement describes a voluntary compliance initiative by the Internal Revenue Service (IRS) regarding the foreign insurance excise tax. See Announcement 2008-18, page 667.

Section 7270.—Insurance Policies

An announcement describes a voluntary compliance initiative by the Internal Revenue Service (IRS) regarding the foreign insurance excise tax. See Announcement 2008-18, page 667.

Part III. Administrative, Procedural, and Miscellaneous

Alternative Disability Mortality Tables — Continued Reliance on Revenue Ruling 96-7

Notice 2008-29

This notice provides guidance regarding the mortality tables that are permitted to be used to determine present values with respect to individuals who are entitled to benefits under a qualified defined benefit pension plan on account of disability. This notice reflects changes to the minimum funding requirements made by the Pension Protection Act of 2006, Pub. L. 109-280 (PPA '06).

Background

Pursuant to changes made by PPA '06, § 412 of the Internal Revenue Code provides minimum funding requirements for qualified defined benefit pension plans that generally apply for plan years beginning on or after January 1, 2008. Section 430 specifies the minimum required contribution that must be made for a single employer defined benefit plan under § 412 as modified by PPA '06. Section 431 specifies the amount that must be contributed under § 412 to a multiemployer defined benefit plan to avoid an accumulated funding deficiency in order to satisfy the requirements of § 412 as modified by PPA '06. Prior to these changes, the minimum funding requirements for qualified pension plans were set forth in § 412.

Prior to amendment by PPA '06, § 412(l)(7)(C)(ii) required the use of certain mortality tables to determine a plan's current liability, effective for plan years beginning after December 31, 1994. Section 412(l)(7)(C)(iii)(I) provided that, for purposes of determining current liability for plan years beginning after December 31, 1995, the Secretary was required to establish mortality tables that were permitted to be used, in lieu of the tables under § 412(l)(7)(C)(ii), to determine current liability under § 412(l) for individuals who were entitled to benefits under the plan on account of disability. The Secretary was required to establish separate tables for individuals whose disabilities occurred in plan years beginning before

January 1, 1995, and for individuals whose disabilities occurred in plan years beginning after December 31, 1994. Under § 412(l)(7)(C)(iii)(II), the mortality table for individuals whose disabilities occurred in plan years beginning after December 31, 1994, applied only with respect to individuals who were disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

Rev. Rul. 96-7, 1996-1 C.B. 59, which was effective for plan years beginning after December 31, 1995, set forth the mortality tables that were permitted to be used pursuant to § 412(l)(7)(C)(iii)(I) for disabilities occurring in plan years beginning before January 1, 1995, and for disabilities occurring in plan years beginning after December 31, 1994.

Section 430(h)(3) provides rules regarding the mortality tables to be used in determining present values and making other computations under § 430. Section 430(h)(3)(D) provides that, for purposes of determining any present value or making any computation under § 430 for plan years beginning after December 31, 2007, the Secretary is to establish mortality tables that may be used, in lieu of the tables under § 430(h)(3)(A), for individuals who are entitled to benefits under the plan on account of disability. The Secretary is to establish separate tables for individuals whose disabilities occurred in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning after December 31, 1994. Under § 430(h)(3)(D)(ii), the mortality table for individuals whose disabilities occur in plan years beginning after December 31, 1994, applies only with respect to individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. Thus, the standard for the establishment of mortality tables that are permitted to be used with respect to individuals who are entitled to benefits under the plan on account of disability is the same under § 430(h)(3)(D) as the standard that previously applied under § 412(l)(7)(C)(iii).

Section 431 specifies the minimum funding requirements that apply to multiemployer plans. Under § 431(c)(6)(B),

a plan's full funding limitation cannot be less than the excess (if any) of 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year) over the value of the plan's assets. Section 431(c)(6)(D)(iv), (v), and (vi) provide rules regarding the mortality tables to be used in determining a plan's current liability for this purpose. Section 431(c)(6)(D)(v)(I) provides that, for purposes of determining a plan's current liability, the Secretary is to establish mortality tables that may be used, in lieu of the tables that apply generally under § 431(c)(6)(D)(iv), for individuals who are entitled to benefits under the plan on account of disability. The Secretary is to establish separate tables for individuals whose disabilities occurred in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning after December 31, 1994. Under § 431(c)(6)(D)(v)(II), the mortality table for individuals whose disabilities occur in plan years beginning after December 31, 1994, applies only with respect to individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. Thus, like the standard for the establishment of mortality tables with respect to disabled participants under § 430(h)(3)(D), the standard for the establishment of mortality tables that are permitted to be used with respect to individuals who are entitled to benefits under a plan on account of disability under § 431(c)(6)(D)(v) is the same as the standard that previously applied under § 412(l)(7)(C)(iii).

Continued Use of Revenue Ruling 96-7 Disabled Mortality Tables

Until further guidance is issued, the rules of Rev. Rul. 96-7 (including the mortality tables set forth in Rev. Rul. 96-7 as well as the rules regarding the determination of whether a benefit is payable on account of disability) apply under §§ 430(h)(3)(D) and 431(c)(6)(D)(v). As provided in § 1.430(h)(3)-2(c)(1)(iv) of the proposed Income Tax Regulations, the alternative mortality tables in Rev. Rul. 96-7 are permitted to be applied where

employer-specific substitute mortality tables are used for nondisabled participants, but only if mortality experience with respect to disabled individuals for which those tables are used has been excluded in developing mortality rates for the substitute mortality tables.

Comments Requested

The Service is considering issuing updated mortality tables under §§ 430(h)(3)(D) and 431(c)(6)(D)(v) that could be used with respect to individuals who are entitled to pension plan benefits on account of disability. Comments are requested regarding the construction of these updated mortality tables, including suggestions for sources of updated data regarding mortality experience with respect to disabled pension plan participants. In addition, comments are requested concerning the use of select and ultimate mortality tables under which mortality rates vary depending on the individual's age and the number of years that the individual has been disabled. Written comments should be submitted by June 23, 2008. Send submissions to CC:PA:LPD:DRU (Notice 2008-29), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered between the hours of 8 a.m. and 4 p.m., Monday through Friday, to CC:PA:LPD:DRU (Notice 2008-29), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking portal at <http://www.regulations.gov> (Notice 2008-29). All comments will be available for public inspection.

Drafting Information

The principal author of this notice is David Ziegler of the Tax Exempt and Government Entities Division, Employee Plans. For further information regarding this notice, please contact the Employee Plans taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time, Monday through Friday. Mr. Ziegler can be contacted via e-mail at RetirementPlanQuestions@irs.gov.

Miscellaneous Pension Protection Act Changes

Notice 2008-30

I. PURPOSE AND BACKGROUND

This notice provides guidance in the form of questions and answers with respect to certain distribution-related provisions of the Pension Protection Act of 2006, P.L. 109-280 ("PPA '06"), that are effective in 2008. This notice also provides, in Part V, guidance on amending plans to require that distribution of excess deferrals includes earnings from the end of the taxable year to the date of distribution ("gap-period" earnings).

The sections of PPA '06 addressed in this notice are § 824 (relating to rollovers from eligible retirement plans to Roth IRAs), § 1004 (relating to additional survivor annuity options), and § 302 (relating to interest rate assumptions for lump sum distributions). Notice 2007-7, 2007-5 I.R.B. 395, provides guidance with respect to certain provisions of PPA '06 that are primarily related to distributions and that were effective beginning in 2007 or earlier.

II. SECTION 824 OF PPA '06

Prior to amendment by PPA '06, § 408A of the Code provided that a Roth IRA could only accept a rollover contribution of amounts distributed from another Roth IRA, from a nonRoth IRA (*i.e.*, a traditional or SIMPLE IRA) or from a designated Roth account described in § 402A. These rollover contributions to Roth IRAs are called "qualified rollover contributions." A qualified rollover contribution from a nonRoth IRA to a Roth IRA is called a "conversion." An individual who rolls over an amount from a nonRoth IRA to a Roth IRA must include in gross income any portion of the conversion amount that would be includible in gross income if the amount were distributed without being rolled over. For distributions before 2010, a conversion contribution is permitted only if the IRA owner's adjusted gross income does not exceed certain limits.

Section 824 of PPA '06 amended the definition of qualified rollover contribution in § 408A of the Code to include

additional plans. Under this expansion, in addition to the rollovers described in the preceding paragraph, a Roth IRA can accept rollovers from other eligible retirement plans (as defined in § 402(c)(8)(B)). The amendments made by § 824 of PPA '06 are effective for distributions made after December 31, 2007.

Q-1. Can distributions from a qualified plan described in § 401(a) be rolled over to a Roth IRA?

A-1. Yes. The rollover can be made through a direct rollover from the plan to the Roth IRA or an amount can be distributed from the plan and contributed (rolled over) to the Roth IRA within 60 days. In either case, the amount rolled over must be an eligible rollover distribution (as defined in § 402(c)(4)) and, pursuant to § 408A(d)(3)(A), there is included in gross income any amount that would be includible if the distribution were not rolled over. In addition, for taxable years beginning before January 1, 2010, an individual can not make a qualified rollover contribution from an eligible retirement plan other than a Roth IRA if, for the year the eligible rollover distribution is made, he or she has modified adjusted gross income ("MAGI") exceeding \$100,000 or is married and files a separate return.

Q-2. Can distributions from other types of retirement plans be rolled over to a Roth IRA?

A-2. Subject to the limitations described in the final sentence of A-1 of this notice, the new definition of qualified rollover contribution in § 408A(e) includes distributions from annuity plans described in § 403(a) and (b) and from eligible governmental plans under § 457(b).

Q-3. Does the additional tax under § 72(t) apply to a qualified rollover contribution from an eligible retirement plan other than a Roth IRA?

A-3. No. Pursuant to § 408A(d)(3)(A)(ii), the additional tax under § 72(t) does not apply to rollovers from an eligible retirement plan other than a Roth IRA. However, as with conversions, if a taxable amount rolled into a Roth IRA from an eligible retirement plan other than a Roth IRA is distributed within 5 years, § 72(t) applies to such distribution as if it were includible in gross income. See § 408A(d)(3)(F).

Q-4. Under § 401(a)(31)(A), must a plan permit a distributee of an eligi-

ble rollover distribution to elect a direct rollover to a Roth IRA?

A-4. Yes. Section 401(a)(31) requires that a plan follow a distributee's election to have an eligible rollover distribution paid in a direct rollover to an eligible retirement plan specified by the distributee. Section 1.401(a)(31)-1 of the Income Tax Regulations provides rules for direct rollovers, including exceptions for small amounts and multiple distributions.

Q-5. Is the plan administrator responsible for assuring the distributee is eligible to make a rollover to a Roth IRA?

A-5. No, the plan administrator is not responsible for assuring the distributee is eligible to make a rollover to a Roth IRA. However, a distributee that is ineligible to make a rollover to a Roth IRA may recharacterize the contribution pursuant to § 408A(d)(6).

Q-6. What are the withholding requirements for an eligible rollover distribution that is rolled over to a Roth IRA?

A-6. An eligible rollover distribution paid to an employee or the employee's spouse is subject to 20% mandatory withholding under § 3405(c). Pursuant to § 3405(c)(2), an eligible rollover distribution that a distributee elects, under § 401(a)(31)(A), to have paid directly to an eligible retirement plan (including a Roth IRA) is not subject to mandatory withholding, even if the distribution is includible in gross income. Also, a distribution that is directly rolled over to a Roth IRA by a nonspouse beneficiary pursuant to § 402(c)(11) (see Q&A-7 of this notice) is not subject to mandatory withholding. However, a distributee and a plan administrator or payor are permitted to enter into a voluntary withholding agreement with respect to an eligible rollover distribution that is directly rolled over from an eligible retirement plan to a Roth IRA. See section 3402(p) and the regulations thereunder for rules relating to voluntary withholding.

Q-7. Can beneficiaries make qualified rollover contributions to Roth IRAs?

A-7. Yes. In the case of a distribution from an eligible retirement plan other than a Roth IRA, the MAGI and filing status of the beneficiary are used to determine eligibility to make a qualified rollover contribution to a Roth IRA. Pursuant to § 402(c)(11), a plan may but is not required to permit rollovers by nonspouse beneficiaries and a rollover by a nonspouse

beneficiary must be made by a direct trustee-to-trustee transfer. A nonspouse beneficiary that is ineligible to make a qualified rollover contribution to a Roth IRA may recharacterize the contribution pursuant to § 408A(d)(6). A surviving spouse who makes a rollover to a Roth IRA may elect either to treat the Roth IRA as his or her own or to establish the Roth IRA in the name of the decedent with the surviving spouse as the beneficiary. (See Notice 2007-7, Q&A-13, for a rule on how to title a beneficiary IRA.) A nonspouse beneficiary cannot elect to treat the Roth IRA as his or her own. (See Notice 2007-7, Part V.)

In the case of a rollover where the beneficiary does not treat the Roth IRA as his or her own, required minimum distributions from the Roth IRA are determined in accordance with Notice 2007-7, Q&As -17, -18 and -19.

III. SECTION 1004 OF PPA '06

Section 401(a)(11) of the Code applies to defined benefit plans and to certain defined contribution plans that are subject to the funding standards of § 412 or that do not satisfy certain other requirements to be exempt from § 401(a)(11). Plans that are subject to § 401(a)(11) must provide that accrued benefits are payable, in the case of a vested participant who does not die before the annuity starting date, in the form of a qualified joint and survivor annuity ("QJSA"). Section 417(b) defines a QJSA, for a married participant, as an annuity for the life of a participant with a survivor annuity for the life of the participant's spouse which is not less than 50% and not more than 100% of the amount of the annuity payable during the joint lives of the participant and the spouse. Section 417(a) generally provides that a plan that is subject to § 401(a)(11) must permit a participant to waive the QJSA, with spousal consent, during an applicable election period, and must provide a written explanation to the participant of the terms and conditions of the QJSA.

Section 1004 of PPA '06 amends § 417 to require a plan that is subject to § 401(a)(11) to offer to participants a specified optional form of benefit as an alternative to the QJSA. In particular, a plan that is subject to § 401(a)(11) must provide to a participant who waives the

QJSA an opportunity to elect a qualified optional survivor annuity ("QOSA") during the applicable election period, and must provide a written explanation to participants of the terms and conditions of the QOSA. Section 1004 of PPA '06 defines a QOSA as an annuity for the life of a participant with a survivor annuity for the life of the participant's spouse that is equal to a specified applicable percentage of the amount of the annuity that is payable during the joint lives of the participant and the spouse, and that is the actuarial equivalent of a single life annuity for the life of the participant. A QOSA also includes a distribution option in a form having the effect of such an annuity.

Section 1107 of PPA '06 permits a plan sponsor to delay adopting a plan amendment pursuant to statutory provisions under PPA '06 (or pursuant to any regulation issued under PPA '06) until the last day of the first plan year beginning on or after January 1, 2009 (January 1, 2011, in the case of governmental plans). This amendment deadline applies to both interim and discretionary amendments that are made pursuant to PPA '06 statutory provisions or any regulation issued under PPA '06. If § 1107 of PPA '06 applies to a plan amendment, the plan does not fail to satisfy the requirements of § 411(d)(6) by reason of the amendment except as provided by the Secretary of the Treasury. However, see Q&A-14 of this notice, which provides that § 411(d)(6) relief does not apply to a plan amendment adopted pursuant to § 1004 of PPA '06.

Q-8. What level of spouse survivor annuity must be provided under a QOSA?

A-8. The level of spouse survivor annuity that must be provided under a QOSA depends upon the level of spouse survivor annuity provided under a plan's QJSA (that is, the QJSA form of benefit that is provided to a married participant in the absence of a waiver of such form of benefit). If the QJSA for a married participant provides a survivor annuity for the life of the participant's spouse that is less than 75 percent of the amount of the annuity that is payable during the joint lives of the participant and the participant's spouse, the QOSA must provide a spouse survivor annuity percentage of 75 percent. If the QJSA for a married participant provides a survivor annuity for the life of the participant's spouse that is greater than or equal

to 75 percent of the amount of the annuity that is payable during the joint lives of the participant and the participant's spouse, the QOSA must provide a spouse survivor annuity percentage of 50 percent.

Q-9. If, both before and after the effective date of § 1004 of PPA '06, a plan that is subject to § 401(a)(11) offers, in addition to the QJSA, an optional joint and spouse survivor annuity that is at least actuarially equivalent to the plan's single life annuity form of benefit payable at the same time as the optional joint and spouse survivor annuity and that provides a spouse survivor annuity percentage equal to the spouse survivor annuity percentage required to be provided under a QOSA, must the plan be amended or the plan's administration be changed in order to implement § 1004 of PPA '06?

A-9. No. A plan that is subject to § 401(a)(11) must provide an optional joint and spouse survivor annuity that (i) is at least actuarially equivalent to the plan's single life annuity form of benefit payable at the same time as the optional joint and spouse survivor annuity, and (ii) provides a spouse survivor annuity percentage that is equal to the spouse survivor annuity percentage required to be provided under a QOSA. The plan need not be amended so that the optional joint and spouse survivor annuity is designated as a QOSA, and its administrative procedures need not be revised to designate the optional form of benefit as a QOSA. For example, a plan that, both before and after the effective date of § 1004 of PPA '06, provides a QJSA for a married participant that includes a spouse survivor annuity percentage of 50 percent, and also provides an optional joint and spouse survivor annuity that includes a spouse survivor annuity percentage of 75 percent and is at least actuarially equivalent to the plan's single life annuity form of benefit payable at the same time as the optional joint and spouse survivor annuity, complies with § 1004 of PPA '06 without the need for any amendment or other administrative change.

Q-10. If a plan that is subject to § 401(a)(11) provides a QJSA that is more valuable than the plan's single life annuity form of benefit, must the plan's QOSA be at least actuarially equivalent to the QJSA or need the plan's QOSA only be at least actuarially equivalent to the plan's single

life annuity form of benefit payable at the same time as the QOSA?

A-10. A plan subject to § 401(a)(11) must provide a QOSA that is at least actuarially equivalent to the plan's form of benefit that is a single life annuity for the life of the participant payable at the same time as the QOSA. The QOSA need not be actuarially equivalent to the plan's QJSA.

Q-11. If a participant elects to receive a distribution in the form of a QOSA, must the participant's spouse consent to the participant's election?

A-11. In general, spousal consent is required for a participant to waive a plan's QJSA form of distribution and elect an alternative distribution form. However, § 1.401(a)-20, Q&A-16, provides that a participant may elect out of the QJSA, in favor of an actuarially equivalent alternative joint and survivor annuity that satisfies the conditions to be a QJSA, without spousal consent. Because a QOSA, by definition, satisfies the conditions to be a QJSA, no spousal consent is required if a plan participant elects a QOSA that is actuarially equivalent to the plan's QJSA. If the QOSA is not actuarially equivalent to the QJSA, spousal consent is required for the participant to waive the QJSA and elect the QOSA.

Q-12. How does a plan that is subject to § 401(a)(11) satisfy the requirement in § 417(a)(3)(i), as amended by § 1004 of PPA '06, that the plan provide to a participant a written explanation of the terms and conditions of the QOSA available to the participant?

A-12. A plan that is subject to § 401(a)(11) can satisfy the requirement that it provide to a participant a written explanation of the terms and conditions of the QOSA available to the participant by satisfying the written explanation requirements of § 1.417(a)(3)-1. In satisfying these written explanation requirements, the plan must treat the QOSA as an optional form of benefit presently available to participants under the plan. The written explanation need not designate the optional form of benefit as the plan's QOSA.

Q-13. Must a plan that is subject to § 401(a)(11) offer to participants, as an alternative to a qualified preretirement survivor annuity described in § 417(c), a preretirement survivor annuity that is based on a QOSA?

A-13. No. A plan that is subject to § 401(a)(11) must offer participants a QOSA that is an alternative form of distribution to the QJSA. There is no requirement that the plan offer to participants, as an alternative to a qualified preretirement survivor annuity described in § 417(c), a preretirement survivor annuity that is based on a QOSA.

Q-14. How does § 1107 of PPA '06, which provides certain rules regarding amendments made pursuant to PPA '06, apply to plan amendments adopted pursuant to § 1004 of PPA '06?

A-14. If a plan that is subject to § 401(a)(11) is amended to implement a QOSA within the period established in § 1107(b)(2)(A) of PPA '06, and the plan is operated as if the amendment were in effect during the period from the effective date of the changes made to § 417 by § 1004 of PPA '06 until the date of the amendment, the plan is treated, pursuant to § 1107 of PPA '06, as being operated in accordance with its terms during such period, and the amendment is treated as being adopted on the effective date of such changes made to § 417. However, an amendment that implements a QOSA is not eligible for any relief, pursuant to § 1107 of PPA '06, from the requirements of § 411(d)(6). Thus, for example, a plan amendment that implements a QOSA may eliminate a distribution form or reduce or eliminate a subsidy with respect to a distribution form only to the extent such reduction or elimination is permitted under § 1.411(d)-3.

Q-15. What is the effective date of the changes made to § 417 by § 1004 of PPA '06?

A-15. In general, the changes to § 417 made by § 1004 of PPA '06 apply to distributions from a plan that is subject to § 401(a)(11) with annuity starting dates in plan years beginning after December 31, 2007. However, in the case of a plan that is subject to § 401(a)(11) and that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006 (the date of enactment of PPA '06), the changes to § 417 made by § 1004 of PPA '06 apply to distributions with annuity starting dates during plan years beginning on or after the earlier of (i) January 1, 2008 or, if later, the date on which the last collec-

tive bargaining agreement related to the plan terminates (determined without regard to any extensions to a collective bargaining agreement made after August 17, 2006), or (ii) January 1, 2009. In the event a participant elects a distribution with a retroactive annuity starting date (pursuant to § 1.417(e)-1(b)(3)(iv)) that is before the effective date of § 1004 of PPA '06, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of applying the rules of this paragraph.

IV. SECTION 302 OF PPA '06

Section 417(e)(3) of the Code provides rules for the determination of the present value of plan benefits for purposes of § 417(e). Section 417(e)(3)(A) generally provides that, for purposes of § 417(e)(1) and (e)(2), the present value is not permitted to be less than the present value calculated by using the applicable mortality table and the applicable interest rate as defined in § 417(e)(3)(B) and (C).

For plan years beginning prior to January 1, 2008, § 417(e)(3)(A)(ii)(II) defines the term "applicable interest rate" as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe (the "pre-PPA '06 applicable interest rate"). In addition, for the same plan years, § 417(e)(3)(A)(ii)(I) defines the term "applicable mortality table" as the mortality table prescribed by the Secretary and provides for such table to be based on the prevailing commissioners' standard table (described in § 807(d)(5)(A)) used to determine group reserves for group annuity contracts issued on the date as of which the present value is determined (the "pre-PPA '06 applicable mortality table").

For plan years beginning on or after January 1, 2008, § 302 of PPA '06 changes the present value determination under § 417(e)(3). For such years, § 417(e)(3)(C) defines the term "applicable interest rate" as the adjusted first, second, and third segment rates applied under rules similar to the rules of § 430(h)(2)(C) for the month before the date of the distribution or such other time as the Secretary may by regulations prescribe (the "post-PPA '06 applicable interest rate"). For this purpose,

the adjusted first, second, and third segment rates are determined without regard to the 24-month averaging provided under § 430(h)(2)(D)(i), and § 417(e)(3)(D)(ii) provides a transition rule that phases in the use of the segment rates over 5 years. Also, for such years, § 417(e)(3)(B) defines the term "applicable mortality table" as a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under subparagraph (A) of § 430(h)(3) (without regard to subparagraph (C) or (D) of such section) (the "post-PPA '06 applicable mortality table").

Section 1.401(a)-20, Q&A-16, provides that, in the case of a married participant, the QJSA provided under a plan that is subject to § 401(a)(11) must be at least as valuable as any other optional form of benefit payable under the plan at the same time, and further provides that a plan does not fail to satisfy this requirement merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of § 417(e)(3) is calculated using the applicable interest rate and applicable mortality table under § 417(e)(3).

As noted in Part III above, § 1107 of PPA '06 provides certain rules with respect to plan amendments adopted pursuant to statutory provisions under PPA '06.

Rev. Rul. 2007-67, 2007-48 I.R.B. 1047, provides guidance regarding the implementation of § 302 of PPA '06, including guidance regarding the application of § 1107 of PPA '06 to amendments adopted pursuant to § 302 of PPA '06.

Q-16. If, after § 302 of PPA '06 is effective, a plan is amended, during the period established in § 1107(b)(2)(A) of PPA '06, to provide that the amount payable under an optional form of benefit that is subject to the minimum present value requirement of § 417(e)(3) is calculated as the more favorable to participants of (i) the amount calculated by using the pre-PPA '06 applicable mortality table and pre-PPA '06 applicable interest rate, or (ii) the amount calculated by using the post-PPA '06 applicable mortality table and post-PPA '06 applicable interest rate, will the plan fail to satisfy the requirement that the QJSA for a married participant be at least as valuable as any other form of benefit payable under the plan at the same time?

A-16. A plan does not fail to satisfy the requirement that the QJSA for a married participant be at least as valuable as any other form of benefit payable under the plan at the same time merely because the amount payable under an optional form of benefit that is subject to the minimum present value requirement of § 417(e)(3) is calculated as the more favorable to participants of (i) the amount calculated by using the pre-PPA '06 applicable mortality table and pre-PPA '06 applicable interest rate, or (ii) the amount calculated by using the post-PPA '06 applicable mortality table and post-PPA '06 applicable interest rate. This special treatment for amounts calculated by using the pre-PPA '06 applicable mortality table and pre-PPA '06 applicable interest rate applies only through the end of the period described in § 1107(b)(2)(A) of PPA '06. It is anticipated that § 1.401(a)-20, Q&A-16, will be amended to reflect this special treatment.

Q-17. If a plan is amended as described in Q&A-16 of this notice, but provides that benefits cease to be calculated by using the pre-PPA '06 applicable mortality table and pre-PPA '06 applicable interest rate after a specified period, does relief under § 1107 of PPA '06, as described in Rev. Rul. 2007-67, apply to the amendment?

A-17. In general, relief under § 1107 of PPA '06 applies to an amendment that provides the more favorable to participants of an amount calculated by using the pre-PPA '06 applicable mortality table and pre-PPA '06 applicable interest rate or an amount calculated by using the post-PPA '06 applicable mortality table and post-PPA '06 applicable interest rate, even if the pre-PPA '06 applicable interest rate and/or pre-PPA '06 applicable mortality table apply only for a specified period of time (as long as the amendment is adopted during the period established in § 1107(b)(2)(A) of PPA '06). For example, if a plan is amended to provide that the amount payable under an optional form of benefit that is subject to the minimum present value requirements of § 417(e)(3) is calculated in the manner described in Q&A-16 of this notice (*i.e.*, pursuant to a better-of calculation) for a specified period of time, and thereafter is calculated without reference to the pre-PPA '06 applicable mortality table and pre-PPA '06 applicable interest rate, the plan will

not fail to satisfy the requirements of § 411(d)(6) by reason of the amendment.

However, with respect to a particular plan provision, relief under § 1107 of PPA '06 applies only to the first plan amendment that implements the post-PPA '06 applicable interest rate and/or post-PPA '06 applicable mortality table with respect to the provision, and any subsequent amendment with respect to the provision will not be treated as adopted "pursuant to" statutory provisions under PPA '06, as required for relief under § 1107 of PPA '06. For purposes of determining whether an amendment that implements the post-PPA '06 applicable interest rate and/or post-PPA '06 applicable mortality table with respect to a particular plan provision is the first such amendment, amendments adopted on or before June 30, 2008, are disregarded. Thus, if a plan amendment is adopted that provides that the amount payable under an optional form of benefit that is subject to the minimum present value requirements of § 417(e)(3) is calculated in the manner described in Q&A-16 of this notice, and the plan is subsequently amended (during the period established in § 1107 of PPA '06) so that the amount payable is calculated without reference to the pre-PPA '06 applicable mortality table and pre-PPA '06 applicable interest rate, the relief under § 1107 of PPA '06 will apply with respect to the subsequent amendment only if the initial amendment was adopted on or before June 30, 2008.

Q-18. Does the relief under § 1107 of PPA '06, as described in Rev. Rul. 2007-67 and this notice, apply to a plan amendment that replaces a plan reference to the pre-PPA '06 applicable mortality table and/or pre-PPA '06 applicable interest rate with a reference to the post-PPA '06 applicable mortality table and/or post-PPA '06 applicable interest rate, without regard to whether § 302 of PPA '06 requires such amendment?

A-18. The relief under § 1107 of PPA '06, as described in Rev. Rul. 2007-67 and this notice, applies to an amendment to a plan that is subject to § 401(a)(11) and that replaces a plan reference to the pre-PPA '06 applicable mortality table and/or pre-PPA '06 applicable interest rate with a reference to the post-PPA '06 applicable mortality table and/or post-PPA '06 applicable interest

rate, without regard to whether § 302 of PPA '06 requires such amendment. For example, if a plan calculates the amount of an optional form of benefit that is not subject to the minimum present value requirements of § 417(e)(3) by reference to the pre-PPA '06 applicable mortality table and/or pre-PPA '06 applicable interest rate and the plan is amended, pursuant to an amendment adopted during the period established in § 1107(b)(2)(A) of PPA '06, so that it calculates the amount of the optional form of benefit by reference to the post-PPA '06 applicable mortality table and/or post-PPA '06 applicable interest rate, the plan will not fail to satisfy the requirements of § 411(d)(6) by reason of the amendment.

V. GAP-PERIOD EARNINGS

The final regulations (T.D. 9324, 2007-22 I.R.B. 1302) under § 402(g), published in the Federal Register (72 FR 21103) on April 30, 2007, provide that the gap-period earnings must be included with the distribution of excess deferrals to the extent the employee is or would be credited with an allocable gain or loss on those excess deferrals for the gap period, if the total amount were to be distributed. This gap-period earnings rule applies to both pre-tax excess deferrals and excess deferrals that are designated Roth contributions. The effective date for the rule on gap-period earnings is taxable years beginning on or after January 1, 2007.

Section 5.04 of Rev. Proc. 2007-44, 2007-28 I.R.B. 54, generally requires an interim plan amendment to be adopted by the time described in section 5.05 of the revenue procedure when there is a statutory or regulatory change with respect to plan qualification requirements that will impact provisions of the written plan document.

Q-19. Is a plan restatement submitted to the Service in Cycle B (February 1, 2007, through January 31, 2008) or Cycle C (February 1, 2008, through January 31, 2009) required to provide for the inclusion of gap-period earnings in the distribution of excess deferrals?

A-19. Yes. As described in section 12.03 of Rev. Proc. 2007-44, a restated plan submitted to the Service in Cycle B or Cycle C is required to provide for the distribution of gap-period earnings. A plan

sponsor of a plan submitted before March 24, 2008 that does not provide for the distribution of gap-period earnings will be asked to amend the plan to include the distribution of gap-period earnings in order to receive a determination letter.

Q-20. Is an interim plan amendment to provide for the inclusion of gap-period earnings in the distribution of excess deferrals required to be adopted by the time described in section 5.05 of Rev. Proc. 2007-44?

A-20. No. An interim plan amendment to provide for the inclusion of gap-period earnings in the distribution of excess deferrals will not be required to be adopted until the last day of the first plan year beginning on or after January 1, 2009.

Q-21. Are plans required to include gap-period earnings in the distribution of excess deferrals in accordance with the final regulations under § 402(g)?

A-21. Yes. Although the interim plan amendment requirement has been delayed until 2009, plans must include gap-period earnings in the distribution of excess deferrals, effective for excess deferrals attributable to taxable years beginning on or after January 1, 2007.

DRAFTING INFORMATION

The principal author of this notice is Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1-877-829-5500 (a toll free number) or e-mail Ms. Carrington at RetirementPlanQuestions@irs.gov.

Credit for New Qualified Alternative Motor Vehicles (Qualified Fuel Cell Motor Vehicles)

Notice 2008-33

SECTION 1. PURPOSE

This notice sets forth interim guidance, pending the issuance of regulations, relating to the new fuel cell motor vehicle credit under § 30B(a)(1) and (b) of the Internal Revenue Code. Specifically, this notice

provides procedures for a vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to certify to the Internal Revenue Service (Service) both:

(1) that a vehicle of a particular make, model, and model year meets certain requirements that must be satisfied to claim the new qualified fuel cell motor vehicle credit under § 30B(a)(1) and (b); and

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

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

SECTION 2. BACKGROUND

Section 30B(a)(1) provides for a credit determined under § 30B(b) for certain new qualified fuel cell motor vehicles. The base amount of the new qualified fuel cell motor vehicle credit varies with the gross vehicle weight rating of the vehicle. The base amount of the credit applicable to vehicles having a gross vehicle weight of not more than 8,500 pounds is \$8,000 for vehicles placed in service on or before December 31, 2009, and \$4,000 for vehicles placed in service after that date. The base amount of the credit applicable to heavier vehicles varies from \$10,000 to \$40,000 and is not reduced for vehicles placed in service after December 31, 2009. Passenger automobiles and light trucks, as defined in section 4 of this notice are eligible for an additional fuel economy amount that varies with the rated fuel economy of a qualifying vehicle compared to the 2002

model year city fuel economy for a vehicle in its weight class.

SECTION 3. SCOPE OF NOTICE

.01 *Vehicles Covered.* This notice applies only to fuel cell motor vehicles. This notice applies with respect to a fuel cell motor vehicle whether such vehicle is a passenger automobile, a light truck, or a motor vehicle other than a passenger automobile or light truck.

.02 *Rules Common to All Qualifying Vehicles.* This notice does not address a number of rules that are common to all motor vehicles that qualify for credits under § 30B. These rules include: (1) rules under which lessors may claim the credits allowable under § 30B; (2) the rule preventing the credits from being used to reduce alternative minimum tax liability; and (3) rules relating to recapture of the credit. Certain rules applicable to all motor vehicles that qualify for credits under § 30B are described in Fact Sheet 2007-9 (<http://www.irs.ustreas.gov/newsroom/article/0,,id=165649,00.html>).

SECTION 4. MEANING OF TERMS

The following definitions apply for purposes of this notice:

(1) *Passenger Automobile and Light Truck.* Section 30B provides that the terms "passenger automobile" and "light truck" have the meaning given in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*). Those regulations currently do not include a definition of these terms, but § 30B(b)(2)(B) provides the 2002 model year city fuel economy tables that must be used to determine the amount of the credit for passenger automobiles and light trucks. Those tables do not prescribe the fuel economy for vehicles having a gross vehicle weight of more than 8,500 pounds.

Accordingly, until either the Environmental Protection Agency issues regulations or future guidance issued by the Service provides otherwise (whichever occurs first), any vehicle having a gross vehicle weight of more than 8,500 pounds will not be treated as a passenger automobile or light truck for purposes of this notice.

(2) *City Fuel Economy.* The term "city fuel economy" has the meaning prescribed in 40 CFR § 600.002-85(11). If fuel is stored on board a fuel cell motor vehicle as hydrogen and not in a form that requires reformation prior to use, city fuel economy is determined by reference to the consumption of hydrogen. If fuel is stored on board a fuel cell motor vehicle in a form that requires reformation prior to use, city fuel economy is determined by reference to the consumption of such fuel.

(3) *Gasoline Gallon Equivalent.* In the case of a motor vehicle that does not use gasoline, the 2002 model year city fuel economy is determined on a gasoline-gallon-equivalent basis. If fuel is stored on board a fuel cell motor vehicle as hydrogen and not in a form that requires reformation prior to use, the gasoline gallon equivalent for the 2002 model year city fuel economy is determined by converting miles per gallon of gasoline into miles per kilogram of hydrogen at a conversion ratio of 0.98 mile per kilogram of hydrogen for each mile per gallon of gasoline. Thus, for example, the 2002 model year city fuel economy for a hydrogen-fueled passenger automobile in the 7,000 to 8,500 pounds vehicle inertia weight class is 11.1 miles per kilogram of hydrogen (0.98 x 11.3 (the 2002 model year city fuel economy in miles per gallon of gasoline)). If fuel (other than gasoline) is stored on board a fuel cell motor vehicle in a form that requires reformation prior to use, the gasoline gallon equivalent for the 2002 model year city fuel economy may be obtained from the Environmental Protection Agency, Office of Transportation and Air Quality at the following address:

Mailing Address
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 6401A
Washington, DC 20460

Courier Address
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Room 6502A
Washington, DC 20004

(4) *Vehicle Inertia Weight Class.* The term “vehicle inertia weight class” means, with respect to a motor vehicle, its inertia weight class determined under 40 CFR § 86.129–94. Under 40 CFR § 86.082–2, the inertia weight class is the class (a group of test weights) into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions of 40 CFR part 86.

SECTION 5. MANUFACTURER’S CERTIFICATION

.01 *When Certification Permitted.* A vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) may certify to purchasers that a vehicle of a particular make, model, and model year meets all requirements (other than those listed in section 5.02 of this notice) that must be satisfied to claim the new qualified fuel cell motor vehicle credit, and the amount of the credit allowable under § 30B(a)(1) and (b) with respect to the vehicle, if the following requirements are met:

(1) The manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) has submitted to the Service, in accordance with section 6 of this notice, a certification with respect to the vehicle and the certification satisfies the requirements of section 5.03 of this notice; and

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

.02 *Purchaser’s Reliance.* Except as provided in section 5.05 of this notice, a purchaser of a vehicle may rely on the manufacturer’s (or, in the case of a foreign vehicle manufacturer, its domestic distributor’s) certification concerning the vehicle and the amount of the credit allowable with respect to the vehicle (including cases in which the certification is received after the purchase of the vehicle). The purchaser may claim a credit in the certified amount with respect to the vehicle if the following requirements are satisfied:

(1) The vehicle is placed in service by the taxpayer after December 31, 2005, and is purchased on or before December 31, 2014;

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

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

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

.03 *Content of Certification.*

(1) *All Vehicles.* For all vehicles, the certification must contain the following information:

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

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

(c) A statement that the vehicle is made by a manufacturer;

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

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

(f) A statement that the vehicle is propelled by power derived from one or more cells that convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use;

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

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

(i) A statement that the vehicle complies with the motor vehicle safety provisions of 49 U.S.C. §§ 30101 through 30169; and

(j) A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) in these matters, in the following form:

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

(2) *Passenger Automobiles and Light Trucks.* If the vehicle is a passenger automobile or light truck, the certification must include a copy of the certificate (received on or after August 8, 2005) that the vehicle meets or exceeds the applicable Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under § 202(i) of the Clean Air Act for that make and model year vehicle.

(3) *Additional Fuel Economy Credit.* If the manufacturer (or, in the case of a foreign manufacturer, its domestic distributor) is certifying that a passenger automobile or light truck is eligible for the additional fuel economy credit allowable under § 30B(b)(2), the certification must also contain the following information:

(a) The vehicle inertia weight class of the vehicle; and

(b) The city fuel economy of the vehicle.

.04 *Acknowledgment of Certification.* The Service will review the original signed certification and issue an acknowledgment letter to the vehicle manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) within 30 days of receipt of the request for certification. This acknowledgment letter will state whether purchasers may rely on the certification.

.05 *Effect of Erroneous Certification.* The acknowledgment that the Service provides for a certification is not a determination that a vehicle qualifies for the credit, or that the amount of the credit is correct. The Service may, upon examination (and after any appropriate consultation with the Department of Transportation or the Environmental Protection Agency), determine that the vehicle is not a new qualified fuel cell motor vehicle or that the amount of the credit determined by the manufacturer (or, in the case of a foreign vehicle manufacturer, its domestic distributor) to be allowable with respect to the vehicle is incorrect. In either event, the manufacturer’s (or, in the case of a foreign vehicle manufacturer, its domestic distributor’s) right to provide a certification to future purchasers of new fuel cell motor vehicles will be withdrawn, and purchasers who acquire a vehicle after the date on which the Service publishes an announcement of the withdrawal may not rely on the certification. Purchasers may continue to rely on the certification for vehicles they acquired on or before the date

on which the announcement of the withdrawal is published (including in cases in which the vehicle is not placed in service and the credit is not claimed until after that date), and the Service will not attempt to collect any understatement of tax liability attributable to such reliance. Manufacturers (or, in the case of foreign vehicle manufacturers, their domestic distributors) are reminded that an erroneous certification or an erroneous quarterly report may result in the imposition of penalties—

(1) under § 7206 for fraud and making false statements; and

(2) under § 6701 for aiding and abetting an understatement of tax liability in the amount of \$1,000 (\$10,000 in the case of understatements by corporations) per return on which a credit is claimed in reliance on the certification).

SECTION 6. TIME AND ADDRESS FOR FILING CERTIFICATION

.01 Time for Filing Certification. In order for a certification under section 5 of this notice to be effective for new qualified fuel cell motor vehicles placed in service during a calendar year beginning after December 31, 2007, the certification must be received by the Service not later than December 31st of that calendar year. In order for a certification under section 5 of this notice to be effective for new fuel cell motor vehicles placed in service during 2006 and 2007, the certification must be received by the Service not later than December 31, 2008.

.02 Address for Filing. Certifications under section 5 of this notice must be sent to:

Internal Revenue Service
Industry Director, Large and
Mid-Size Business,
Heavy Manufacturing and
Transportation
Metro Park Office Complex —
LMSB
111 Wood Avenue, South
Iselin, New Jersey 08830

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork

Reduction Act (44 U.S.C. 3507) under control number 1545–2028.

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

The collections of information in this notice are in section 5. This information is required to be collected and retained in order to ensure that vehicles meet the requirements for the new qualified fuel cell motor vehicle credit under § 30B(a)(1) and (b). This information will be used to determine whether the vehicle for which the credit is claimed by a taxpayer is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations and partnerships.

The estimated total annual reporting burden is 200 hours.

The estimated annual burden per respondent varies from 35 hours to 45 hours, depending on individual circumstances, with an estimated average burden of 40 hours to complete the certification required under this notice. The estimated number of respondents is 5.

The estimated annual frequency of responses is on occasion.

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

SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Jaime C. Park of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jaime C. Park at (202) 622–3110 (not a toll-free call).

Distressed Asset Trust (DAT) Transaction

Notice 2008–34

The Internal Revenue Service (Service) and the Treasury Department are aware of a type of transaction, described below, in

which a tax indifferent party, directly or indirectly, contributes one or more distressed assets (for example, a creditor's interest in debt) with a high basis and low fair market value to a trust or series of trusts and sub-trusts, and a U.S. taxpayer acquires an interest in the trust (and/or series of trusts and/or sub-trusts) for the purpose of shifting a built-in loss from the tax indifferent party to the U.S. taxpayer that has not incurred the economic loss. This notice alerts taxpayers and their representatives that this transaction (referred to as a distressed asset trust or DAT transaction) is a tax avoidance transaction and identifies this transaction, and substantially similar transactions, as listed transactions for purposes of § 1.6011–4(b)(2) of the Income Tax Regulations and §§ 6111 and 6112 of the Internal Revenue Code. This notice also alerts persons involved with these transactions to certain responsibilities that may arise from their involvement with these transactions.

BACKGROUND

The Service and Treasury Department are aware that, prior to October 23, 2004, taxpayers used partnerships improperly to engage in variations of the distressed asset transaction described in this notice. The Coordinated Issue Paper, “Distressed Asset/Debt Coordinated Issue Paper,” LMSB–04–0407–031 (Apr. 18, 2007) describes the variation of the distressed asset transaction involving partnerships (DAD). The American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418) (AJCA), amended §§ 704, 734 and 743 effective after October 22, 2004, for contributions of built-in loss property to a partnership, for basis adjustment rules in the case of a distribution for which there is a substantial basis reduction, and for basis adjustment rules in the case of a transfer of a partnership interest for which there is a substantial built-in loss. The revisions to §§ 704, 734 and 743 generally (1) require that a built-in loss may be taken into account only by the contributing partner and not other partners, and (2) make the basis adjustment rules mandatory in cases with a substantial basis reduction or substantial built-in loss. Thus, the statutory changes to §§ 704, 734 and 743 under AJCA prevent taxpayers from shifting a built-in loss from a tax indifferent party

to a U.S. taxpayer through the use of a partnership. The Service and Treasury Department have learned that a variation of the distressed asset transaction using a trust is being promoted in an attempt to avoid these revisions made by AJCA. Consequently, this notice identifies the DAT variation of the transaction as a listed transaction under § 1.6011-4(b)(2) for transactions that are entered into after October 22, 2004.

FACTS

In a DAT transaction, a tax indifferent party creates a trust (Main-Trust) with X as trustee. The tax indifferent party contributes distressed assets directly or indirectly (through a partnership or otherwise) to Main-Trust, and is described as the grantor and beneficiary of Main-Trust.

A U.S. taxpayer (Taxpayer) transfers cash or a note to Main-Trust in exchange for certificates evidencing units of beneficial interest in Main-Trust. The cash or note approximately equals the fair market value of the distressed assets. Under the terms of the Main-Trust agreement, Taxpayer thereby becomes a beneficiary of Main-Trust.

The parties contend that Main-Trust is a trust for tax purposes with the stated purpose of preserving and protecting assets. Thus, the parties contend that Main-Trust is to be taxed as a trust under the Internal Revenue Code, and not as a business entity described in § 301.7701-2 of the Procedure and Administration Regulations. As a result, the parties contend that under § 1015(b), Main-Trust's basis in the distressed assets is the same as the grantor's basis in the distressed assets (in this case, the tax indifferent party's basis).

Under the Main-Trust agreement, X, the trustee, is permitted to establish one or more sub-trusts of Main-Trust, each for a separate beneficiary of Main-Trust who will then be the sole beneficiary of that sub-trust. The Main-Trust agreement further provides that each sub-trust for a beneficiary constitutes a separate and distinct sub-trust of Main-Trust with beneficial interest certificates issued and separate records maintained for each sub-trust.

As permitted under the Main-Trust agreement, the trustee creates a separate sub-trust (Sub-Trust), transfers certificates evidencing units of beneficial interest in

Sub-Trust (Sub-Trust Certificates) to Taxpayer, and allocates the distressed assets to Sub-Trust for the sole benefit of the beneficiary of the Sub-Trust. The Main-Trust agreement entitles the holder of Sub-Trust Certificates to various rights including the right to direct the trustee to vest the holder's ratable share of the corpus or the income of Sub-Trust in the holder. The Taxpayer contends that the existence of these rights causes the Taxpayer to be considered the owner of Sub-Trust under § 678, and that Sub-Trust is a grantor trust. As a result of being treated as the owner of Sub-Trust, the Taxpayer takes into account those items of income, deductions, and credits against tax, which are attributable to Sub-Trust, to the extent that such items would be taken into account in computing taxable income or credits against the tax of an individual. Section 671. The Taxpayer contends that Sub-Trust's basis in the distressed assets is the same as the grantor's basis in the distressed assets (in this case Main-Trust's basis). Section 1015(b). Within a short period of time, the distressed assets held by the Sub-Trust are written off as wholly worthless under § 166. Alternatively, the distressed assets are sold, and Taxpayer claims a deduction under § 165.

DISCUSSION

The transaction described in this notice attempts to shift built-in losses from a tax indifferent party to a U.S. taxpayer who has not incurred an economic loss so that the U.S. taxpayer may claim a deduction of the built-in losses from the distressed assets. The built-in loss purportedly transferred to Main-Trust and Sub-Trust and improperly shifted to the Taxpayer is not an allowable loss for the Taxpayer. The Service may assert one or more arguments that may include, but are not limited to, asserting that the Taxpayer's transfer of cash or a note to Main-Trust in exchange for certificates of beneficial interest is a transfer of the distressed assets under § 1001; asserting that Main-Trust does not meet the trust requirements of § 301.7701-4; asserting that Main-Trust is not a taxable trust; asserting that one or more of the entities is properly classified for Federal tax purposes as a partnership subject to §§ 704(c)(1)(C), 734(b) and 743; asserting that the claimed loss deduction under § 165

was not incurred in a transaction undertaken for profit; asserting the judicial doctrines, including substance over form, lack of economic substance, and step transaction; and asserting that, in the case of distressed debt, the distressed debt was worthless under § 166 at the time of contribution to Main-Trust and Sub-Trust.

Transactions that are the same as, or substantially similar to, the transaction described in this notice that are entered into after October 22, 2004, are identified as "listed transactions" for purposes of § 1.6011-4(b)(2) and §§ 6111 and 6112 effective February 27, 2008, the date this notice was released to the public. Independent of their classification as listed transactions, transactions that are the same as, or substantially similar to, the transaction described in this notice may already be subject to the requirements of § 6011, § 6111, § 6112, or the regulations thereunder. However, the variations of this transaction described in the Coordinated Issue Paper, "Distressed Asset/Debt Coordinated Issue Paper," LMSB-04-0407-031 (Apr. 18, 2007), that are subject to the AJCA changes to §§ 704, 734 and 743 are not being identified as "listed transactions" for purposes of this notice, § 1.6011-4(b)(2), § 6111 and § 6112.

Persons required to disclose these transactions under § 1.6011-4 who fail to do so may be subject to the penalty under § 6707A, which applies to returns and statements due after October 22, 2004. Persons required to disclose these transactions under § 1.6011-4 who fail to do so may be subject to an extended period of limitations under § 6501(c)(10). Persons required to disclose these transactions under § 6111 who fail to do so may be subject to the penalty under § 6707(a). Persons required to maintain lists of investors under § 6112 who fail to do so (or who fail to provide such lists when requested by the Service) may be subject to the penalty under § 6708(a). In addition, the Service may impose other penalties on persons involved in these transactions or substantially similar transactions, including the accuracy-related penalty under § 6662 or § 6662A.

A person that is a tax-exempt entity within the meaning of § 4965(c), or an entity manager within the meaning of § 4965(d), may be subject to excise

tax, disclosure, filing or payment obligations under § 4965, § 6033(a)(2), § 6011, and § 6071. Some taxable entities may be subject to disclosure obligations under § 6011(g), that apply to “prohibited tax shelter transactions” as defined by § 4965(e) (including listed transactions).

The Service and Treasury recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the type of transaction described in this notice. These taxpayers should take appropriate corrective action and ensure that their transactions are disclosed properly.

DRAFTING INFORMATION

The principal author of this notice is Eric Ingala of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Ingala at (202) 622-3070 (not a toll-free call).

Amplification of Notice 2006-27 Certification of Energy Efficient Home Credit Notice 2008-35

SECTION 1. PURPOSE

This notice clarifies and supersedes Notice 2006-27, 2006-1 C.B. 626, as updated by Announcement 2006-88, 2006-2 C.B. 910. Notice 2006-27, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a dwelling unit (other than a manufactured home) for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006-27 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to manufactured homes is provided in Notice 2008-36.

This notice supersedes Notice 2006-27 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor, and permits calculation procedures other than those identified in Notice 2006-27 to be used to calculate energy consumption.

Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008.

SECTION 2. BACKGROUND

.01 *In General.* Section 45L provides a credit to an eligible contractor who constructs a qualified energy efficient home. For qualified energy efficient homes (other than manufactured homes), the amount of the credit is \$2,000. A dwelling unit qualifies for the credit if—

- (1) It is located in the United States;
- (2) Its construction is substantially completed after August 8, 2005;
- (3) It meets the energy saving requirements of § 45L(c)(1); and
- (4) It is acquired from the eligible contractor after December 31, 2005, and before January 1, 2009, for use as a residence.

.02 *Energy Saving Requirements.* To meet the energy saving requirements of § 45L(c)(1), a dwelling unit must be certified to provide a level of heating and cooling energy consumption that is at least 50 percent below that of a reference dwelling unit constructed in accordance with the standards of § 404 of the 2004 Supplement to the 2003 International Energy Conservation Code (2004 IECC Supplement), and to have building envelope component improvements that provide for a level of heating and cooling energy consumption that is at least 10 percent below that of a reference dwelling unit.

.03 *Calculation Procedures.* For purposes of section 2.02 of this notice, heating and cooling energy consumption must be calculated in accordance with the procedures prescribed in Residential Energy Services Network (RESNET) Publication No. 05-001 (Nov. 17, 2005) or No. 06-001 (June 1, 2006) or in accordance with an equivalent calculation procedure.

.04 *Acquired from Eligible Contractor.* A qualified energy efficient home is acquired from an eligible contractor for use as a residence if the person that constructed the home sells or leases the home to another person for use as a residence. A qualified energy efficient home is not acquired from an eligible contractor if the person that constructed the home retains the home for use as a residence. For example, a

qualified energy efficient home is acquired from an eligible contractor in the following situations:

(1) A person constructs a qualified energy efficient home and then sells the home to the homeowner.

(2) A person constructs a qualified energy efficient home and then leases the home to the lessee or tenant.

(3) A person hires a third party contractor to construct a qualified energy efficient home and then sells the home to the homeowner. (See section 4.01(5) of this notice for guidance regarding the person treated as the eligible contractor in this case.)

SECTION 3. CERTIFICATION

An eligible contractor must obtain the certification required under § 45L(c)(1) with respect to a dwelling unit (other than a manufactured home) from an eligible certifier before claiming the energy efficient home credit with respect to the dwelling unit. An eligible contractor is not required to file the certification with the return on which the credit is claimed. However, § 1.6001-1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, an eligible contractor claiming a \$2,000 credit under § 45L should retain the certification as part of the eligible contractor's records to satisfy this requirement. The certification will be treated as satisfying the requirements of § 45L(c)(1) if all construction has been performed in a manner consistent with the design specifications provided to the eligible certifier and the certification contains all of the following:

.01 The name, address, and telephone number of the eligible certifier.

.02 The address of the dwelling unit.

.03 A statement by the eligible certifier that—

(1) The dwelling unit has a projected level of annual heating and cooling energy consumption that is at least 50 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone;

(2) Building envelope component improvements alone account for a level of annual heating and cooling energy consumption that is at least 10 percent below the

annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone; and

(3) Heating and cooling energy consumption have been calculated in the manner prescribed in section 2.03 of this notice.

.04 A statement by the eligible certifier that field inspections of the dwelling unit (or of other dwelling units under the sampling protocol described below) performed by the eligible certifier during and after the completion of construction have confirmed that all features of the home affecting such heating and cooling energy consumption comply with the design specifications provided to the eligible certifier. With respect to builders who build at least 85 homes during a twelve-month period or build subdivisions with the same floor plan using the same subcontractors, the eligible certifier may use the sampling protocol found in the current ENERGY STAR[®] for Homes Sampling Protocol Guidelines instead of inspecting all of the homes. The sampling protocols can be found at the following web address: http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_sampling.

.05 A list identifying—

(1) The dwelling unit's energy efficient building envelope components and their respective energy performance ratings as required by § 401.3 of the 2004 IECC Supplement; and

(2) The energy efficient heating and cooling equipment installed in the dwelling unit and the energy efficiency performance of such equipment as rated under applicable Department of Energy Appliance Standards test procedures.

.06 Identification of the listed software program used to calculate energy consumption (see section 5 of this notice).

.07 A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the eligible certifier in these matters, in the following form:

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

SECTION 4. DEFINITIONS

.01 The following definitions apply for purposes of this notice:

(1) Building envelope components are basement walls, exterior walls, floor, roof, and any other building element that encloses conditioned space, including any boundary between conditioned space and unconditioned space.

(2) A climate zone is a geographical area within which all locations have similar long-term climate conditions as defined in Chapter 3 of the 2004 IECC Supplement.

(3) A dwelling unit is a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, within a building that is not more than three stories above grade in height.

(4) An eligible certifier is a person that is not related (within the meaning of § 45(e)(4)) to the eligible contractor and has been accredited or otherwise authorized by RESNET (or an equivalent rating network) to use energy performance measurement methods approved by RESNET (or the equivalent rating network). An employee or other representative of a utility or local building regulatory authority qualifies as an eligible certifier if the employee or representative has been accredited or otherwise authorized by RESNET (or an equivalent rating network) to use the approved energy performance measurement methods.

(5) An eligible contractor is the person that constructed a qualified energy efficient home. A person must own and have a basis in the qualified energy efficient home during its construction to qualify as an eligible contractor with respect to the home. For example, in the situation described in section 2.04(3) of this notice, if the person that hires the third party contractor to construct the home owns and has the basis in the home during its construction, the person that hires the third party contractor is the eligible contractor and the third party contractor is not an eligible contractor.

(6) An equivalent calculation procedure is a procedure that produces results comparable to the results obtained under the procedures prescribed in Residential Energy Services Network (RESNET) Publi-

cation No. 05–001 (Nov. 17, 2005) or No. 06–001 (June 1, 2006).

(7) An equivalent rating network includes, in a state that has established energy efficiency standards under which a dwelling unit is required to achieve a specified aggregate level of heating and cooling energy consumption for any purpose (including compliance with building codes or eligibility for a state grant or tax credit), the state agency administering those standards. Thus, if the agency has accredited or otherwise authorized a person to use energy performance measurement methods approved by the agency for use in determining whether the state's energy efficiency standards are satisfied, the person so accredited or authorized qualifies as an eligible certifier.

(8) A manufactured home is a dwelling unit constructed in accordance with the Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

(9) A qualified energy efficient home is a dwelling unit that qualifies for the credit under § 45L. See section 2.01 of this notice for the requirements that a dwelling unit must satisfy to qualify for the credit.

(10) A reference dwelling unit is a dwelling unit that is similar in technical specifications and design to the dwelling unit constructed by the eligible contractor except that—

(a) The reference dwelling unit is constructed in accordance with the minimum standards of Chapter 4 of the 2004 IECC Supplement;

(b) The reference dwelling unit's air conditioners have a Seasonal Energy Efficiency Ratio (SEER) of 13, measured in accordance with 10 C.F.R. 430.23(m); and

(c) The reference dwelling unit's heat pumps have a SEER of 13 and a Heating Seasonal Performance Factor (HSPF) of 7.7, measured in accordance with 10 C.F.R. 430.23(m).

SECTION 5. SOFTWARE PROGRAMS

.01 *In General.* The Internal Revenue Service will create and maintain a public list of software programs that may be used to calculate energy consumption for purposes of providing a certification under section 3 of this notice. This list of approved software may be found

at: <http://www.irs.gov/businesses/small/industries/article/0,,id=155445,00.html>.

.02 *Requirements for Software Programs To Be Included on the Internal Revenue Service List.* A software program will be included on the list created by the Internal Revenue Service if the software developer submits the following information to the Service and RESNET:

(1) The name, address, and telephone number of the software developer,

(2) The name or other identifier of the program as it will appear on the list,

(3) The test results, test runs, and the software program with which the test was conducted, and

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

(i) Has satisfied all tests required to conform to the software accreditation process prescribed in Residential Energy Services Network (RESNET) Publication No. 05-001 (Nov. 17, 2005) or No. 06-001 (June 1, 2006); or

(ii) Has satisfied all tests necessary to permit a determination that the software program is sufficiently accurate to justify its use in calculating energy consumption for purposes of providing a certification under section 3 of this notice.

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

Submissions to the Service submitted by U.S. mail:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:6, Room 5114
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions to the Service submitted by a private delivery service:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:6, Room 5114
1111 Constitution Ave., N.W.
Washington, DC 20224

Submissions to RESNET:

Residential Energy Services Network
P.O. Box 4561
Oceanside, CA 92052-4561

.04 *Original and Updated Lists.* A software program was included on the original list if the software developer's submission was received before March 1, 2006. The list will be updated as necessary to reflect additions resulting from submissions received after February 28, 2006, and deletions resulting from removal of software from the list under section 5.05 of this notice.

.05 *Removal from Published List.* The Service may, upon examination (and after appropriate consultation with the Department of Energy), determine that a software program is not sufficiently accurate to justify its use in calculating energy consumption for purposes of providing a certification under section 3 of this notice and remove the software program from the published list. The Service may undertake an examination on its own initiative or in response to a public request supported by appropriate analysis of the software program's deficiencies.

.06 *Effect of Removal from Published List.* A software program may not be used to calculate energy consumption for purposes of providing a certification that satisfies the requirements of § 45L after the effective date of removal of the software from the published list. The removal will not affect the validity of any certification provided with respect to a dwelling unit on or before the effective date of removal from the published list. Generally, notice that software is being removed from the published list will be provided at the site specified in section 5.01 of this notice at least sixty (60) days before the effective date of the removal.

.07 *Public Availability of Information.* RESNET may make available for public review any information provided to it under section 5.02 of this notice.

SECTION 6. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1995.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the

collection of information displays a valid OMB control number.

The collections of information in this notice are in sections 3 and 5. This information is required to be collected and retained in order to ensure that a dwelling unit (other than a manufactured home) meets the requirements for the energy efficient home credit under § 45L. This information will be used to determine whether property for which certifications are provided is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations, partnerships, and individuals.

The estimated total annual reporting burden is 180 hours.

The estimated annual burden per respondent varies from 2.5 hours to 4 hours, depending on individual circumstances, with an estimated average burden of 3 hours to complete the certification required under this notice. The estimated number of respondents is 45.

The estimated annual frequency of responses is on occasion.

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

SECTION 7. EFFECT ON OTHER DOCUMENTS

Notice 2006-27, as updated by Announcement 2006-88, is clarified and superseded. Announcement 2006-88 is also clarified and superseded.

SECTION 8. EFFECTIVE DATE

This notice applies with respect to certifications provided after February 29, 2008. Taxpayers may apply the provisions of this notice with respect to certifications provided on or before February 29, 2008.

SECTION 9. DRAFTING INFORMATION

The principal author of this notice is Jennifer Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact

Amplification of Notice 2006-28 Energy Efficient Home Credit; Manufactured Homes

Notice 2008-36

SECTION 1. PURPOSE

This notice clarifies and supersedes Notice 2006-28, 2006-1 C.B. 628, as updated by Announcement 2006-88, 2006-2 C.B. 910. Notice 2006-28, as updated, provided guidance regarding the calculation of heating and cooling energy consumption for purposes of determining the eligibility of a manufactured home for the New Energy Efficient Home Credit under Internal Revenue Code § 45L. Notice 2006-28 also provided guidance relating to the public list of software programs that may be used to calculate energy consumption. Guidance relating to dwelling units other than manufactured homes is provided in Notice 2008-35.

This notice supersedes Notice 2006-28 by substantially republishing the guidance contained in that publication. This notice clarifies the meaning of the terms equivalent rating network and eligible contractor, and permits calculation procedures other than those identified in Notice 2006-28 to be used to calculate energy consumption. Finally, this notice clarifies the process for removing software from the list of approved software and reflects the extension of the tax credit through December 31, 2008.

SECTION 2. BACKGROUND

.01 *In General.* Section 45L provides a credit to an eligible contractor who constructs a qualified energy efficient home. For qualified energy efficient homes that are manufactured homes, the amount of the credit is \$1,000 or \$2,000, depending on the energy savings that are achieved. A manufactured home qualifies for the credit if:

- (1) It is located in the United States;
- (2) Its construction is substantially completed after August 8, 2005;

(3) It meets the energy saving requirements of § 45L(c)(2) or (3); and

(4) It is acquired, directly or indirectly, from the eligible contractor after December 31, 2005, and before January 1, 2009, for use as a residence.

.02 *Energy Saving Requirements.* To meet the energy saving requirements of § 45L(c)(2) or (3), a manufactured home must meet one of the following standards:

(1) To meet the energy saving requirements of § 45L(c)(2) and qualify for the \$2,000 credit, a manufactured home must be certified to provide a level of heating and cooling energy consumption that is at least 50 percent below that of a reference dwelling unit constructed in accordance with the standards of § 404 of the 2004 Supplement to the 2003 International Energy Conservation Code (2004 IECC Supplement), and to have building envelope component improvements that provide for a level of heating and cooling energy consumption that is at least 10 percent below that of a reference dwelling unit (see section 3 of this notice).

(2) To meet the energy saving requirements of § 45L(c)(3) and qualify for the \$1,000 credit, a manufactured home must either—

(a) be certified to provide a level of heating and cooling energy consumption that is at least 30 percent below that of a reference dwelling unit constructed in accordance with the standards of § 404 of the 2004 IECC Supplement, and to have building envelope component improvements that provide for a level of heating and cooling energy consumption that is at least 10 percent below that of a reference dwelling unit; or

(b) meet the current requirements established by the Administrator of the Environmental Protection Agency under the ENERGY STAR[®] Labeled Homes Program in effect on the date construction is substantially completed (see section 4 of this notice).

.03 *Calculation Procedures.* For purposes of section 2.02 of this notice, heating and cooling energy consumption must be calculated in accordance with the procedures prescribed in Residential Energy Services Network (RESNET) Publication No. 05-001 (Nov. 17, 2005) or No. 06-001 (June 1, 2006) or in accordance with an equivalent calculation procedure.

.04 *Acquired from Eligible Contractor.* A qualified energy efficient manufactured home is acquired directly from an eligible contractor for use as a residence if the person that produced the manufactured home sells or leases the manufactured home to another person for use as a residence. A qualified energy efficient manufactured home is acquired indirectly from an eligible contractor for use as a residence if the person that produced the manufactured home sells the manufactured home to an intermediary and the intermediary (or the last of multiple intermediaries) sells or leases the manufactured home to another person for use as a residence. A qualified energy efficient manufactured home is not acquired from an eligible contractor if the person that produced the manufactured home retains the manufactured home for use as a residence. For example, a qualified energy efficient manufactured home is acquired from an eligible contractor in the following situations:

(1) A person produces a qualified energy efficient manufactured home and then sells the manufactured home to the homeowner.

(2) A person produces a qualified energy efficient manufactured home and then leases the manufactured home to the lessee or tenant.

(3) A person hires a third party contractor to produce a qualified energy efficient manufactured home and then sells the manufactured home to the homeowner. (See section 5.01(5) of this notice for guidance regarding the person treated as the eligible contractor in this case.)

(4) A person that produces a manufactured home sells the home to a dealer of manufactured homes and the dealer sells the manufactured home to another person for use as a residence. (See section 7.01 of this notice for a rule permitting an eligible contractor to rely on a dealer's statement concerning a sale by the dealer.)

SECTION 3. REQUIREMENTS TO CLAIM THE \$2,000 CREDIT

An eligible contractor must obtain the certification required under § 45L(c)(2) with respect to a manufactured home from an eligible certifier before claiming the \$2,000 energy efficient home credit with respect to the manufactured home. An eligible contractor is not required to file the

certification with the return on which the credit is claimed. However, § 1.6001-1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, an eligible contractor claiming a \$2,000 credit under § 45L should retain the certification as part of the eligible contractor's records to satisfy this requirement. The certification will be treated as satisfying the requirements of § 45L(c)(2) if all construction has been performed in a manner consistent with the design specifications provided to the eligible certifier and the certification contains all of the following:

.01 The name, address, and telephone number of the eligible certifier.

.02 The manufactured home's serial or other identification number.

.03 A statement by the eligible certifier that—

(1) The manufactured home has a projected level of annual heating and cooling energy consumption that is at least 50 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone;

(2) Building envelope component improvements alone account for a level of annual heating and cooling energy consumption that is at least 10 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone; and

(3) Heating and cooling energy consumption have been calculated in the manner prescribed in section 2.03 of this notice.

.04 A statement by the eligible certifier that inspections of the manufactured home (or of other manufactured homes under the sampling protocol described below) performed by the eligible certifier after installation on the permanent site have confirmed that such heating and cooling energy consumption complies with the design specifications provided to the eligible certifier. With respect to manufacturers that produce at least 85 homes during a twelve-month period, the eligible certifier may use the sampling protocol found in the current standards of the ENERGY STAR[®] Qualified Manufactured Homes — Design, Manufacturing, Installation, and Certification Procedures, located at the following web address: http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_builder_manufactured.

[energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_builder_manufactured](http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_builder_manufactured).

.05 A list identifying—

(1) The manufactured home's energy efficient building envelope components and their respective energy performance rating as required by § 401.3 of the 2004 IECC Supplement; and

(2) The energy efficient heating and cooling equipment installed in the manufactured home and the energy efficiency performance of such equipment as rated under applicable Department of Energy Appliance Standards test procedures.

.06 Identification of the listed software program used to calculate energy consumption (see section 6 of this notice).

.07 A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the eligible certifier in these matters, in the following form:

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

SECTION 4. REQUIREMENTS TO CLAIM THE \$1,000 CREDIT

.01 *Certified Homes.* Except as provided in section 4.02 of this notice, an eligible contractor must obtain the certification required under § 45L(c)(3)(A) with respect to a manufactured home from an eligible certifier before claiming the \$1,000 energy efficient home credit with respect to the manufactured home. An eligible contractor is not required to attach the certification to the return on which the credit is claimed. However, § 1.6001-1(a) requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, an eligible contractor claiming a \$1,000 credit under § 45L should retain the certification as part of the eligible contractor's records to satisfy this requirement. The certification will be treated as satisfying the requirements of § 45L(c)(3)(A) if all construction has been performed in a manner consistent with the design specifications provided to the eligible certifier and the certification contains all of the following:

(1) The name, address, and telephone number of the eligible certifier.

(2) The manufactured home's serial or other identification number.

(3) A statement by the eligible certifier that—

(a) The manufactured home has a projected level of annual heating and cooling energy consumption that is at least 30 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone;

(b) Building envelope component improvements alone account for a level of annual heating and cooling energy consumption that is at least 10 percent below the annual level of heating and cooling energy consumption of a reference dwelling unit in the same climate zone; and

(c) Heating and cooling energy consumption have been calculated in the manner prescribed in section 2.03 of this notice.

(4) A statement by the eligible certifier that field inspections of the manufactured home (or of other manufactured homes under the sampling protocol described below) performed by the eligible certifier after installation on the permanent site have confirmed that such heating and cooling energy consumption complies with the design specifications provided to the eligible certifier. With respect to manufacturers that produce at least 85 homes during a twelve-month period, the certifier may use the sampling protocol found in the current standards of the current ENERGY STAR[®] Qualified Manufactured Homes: Guide for Retailers, located at the following web address: http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_builder_manufactured.

(5) A list identifying—

(a) The manufactured home's energy efficient building envelope components and their respective energy performance rating as required by § 401.3 of the 2004 IECC Supplement; and

(b) The energy efficient heating and cooling equipment installed in the manufactured home and the energy efficiency performance of such equipment as rated under applicable Department of Energy Appliance Standards test procedures.

(6) Identification of the listed software program used to calculate energy consumption (see section 6 of this notice).

(7) A declaration, applicable to the certification and any accompanying documents, signed by a person currently authorized to bind the eligible certifier in these matters, in the following form:

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

.02 *Energy Star Homes*. An eligible contractor may claim the \$1,000 energy efficient home credit with respect to a manufactured home by meeting the applicable certification requirements established by the Administrator of the Environmental Protection Agency under the ENERGY STAR® Labeled Homes Program in effect on the date construction is substantially completed.

SECTION 5. DEFINITIONS

.01 The following definitions apply for purposes of this notice:

(1) Building envelope components are basement walls, exterior walls, floor, roof, and any other building element that encloses conditioned space, including any boundary between conditioned space and unconditioned space.

(2) A climate zone is a geographical area within which all locations have similar long-term climate conditions as defined in Chapter 3 of the 2004 IECC Supplement.

(3) A dwelling unit is a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation, within a building that is not more than three stories above grade in height.

(4) An eligible certifier is a person that is not related (within the meaning of § 45(e)(4)) to the eligible contractor and has been accredited or otherwise authorized by RESNET (or an equivalent rating network) to use energy performance measurement methods approved by RESNET (or the equivalent rating network). An employee or other representative of a utility or local building regulatory authority qualifies as an eligible certifier if the employee or representative has been accredited or otherwise authorized by RESNET (or an

equivalent rating network) to use the approved energy performance measurement methods.

(5) An eligible contractor, in the case of a qualified energy efficient home that is a manufactured home, is the person that produced the manufactured home. A person must own and have a basis in the qualified energy efficient manufactured home during its production to qualify as an eligible contractor with respect to the manufactured home. For example, in the situation described in section 2.04(3) of this notice, if the person that hires the third party contractor to produce the manufactured home owns and has the basis in the home during its construction, the person that hires the third party contractor is the eligible contractor and the third party contractor is not an eligible contractor.

(6) An equivalent calculation procedure is a procedure that produces results comparable to the results obtained under the procedures prescribed in Residential Energy Services Network (RESNET) Publication No. 05-001 (Nov. 17, 2005) or No. 06-001 (June 1, 2006).

(7) An equivalent rating network includes, in a state that has established energy efficiency standards under which a dwelling unit is required to achieve a specified aggregate level of heating and cooling energy consumption for any purpose (including compliance with building codes or eligibility for a state grant or tax credit), the state agency administering those standards. Thus, if the agency has accredited or otherwise authorized a person to use energy performance measurement methods approved by the agency for use in determining whether the state's energy efficiency standards are satisfied, the person so accredited or authorized qualifies as an eligible certifier.

(8) A manufactured home is a dwelling unit constructed in accordance with the Federal Manufactured Home Construction and Safety Standards (24 C.F.R. 3280).

(9) A qualified energy efficient manufactured home is a dwelling unit that qualifies for the credit under section 45L. See section 2.01 of this notice for the requirements that a dwelling unit must satisfy to qualify for the credit.

(10) A reference dwelling unit is a dwelling unit that is similar in technical specifications and design to the manu-

factured home produced by the eligible contractor except that—

(a) The reference dwelling unit is constructed in accordance with the minimum standards of Chapter 4 of the 2004 IECC Supplement;

(b) The reference dwelling unit's air conditioners have a Seasonal Energy Efficiency Ratio (SEER) of 13, measured in accordance with 10 C.F.R. 430.23(m); and

(c) The reference dwelling unit's heat pumps have a SEER of 13 and a Heating Seasonal Performance Factor (HSPF) of 7.7, measured in accordance with 10 C.F.R. 430.23(m).

SECTION 6. SOFTWARE PROGRAMS

.01 *In General*. The Internal Revenue Service will create and maintain a public list of software programs that may be used to calculate energy consumption for purposes of providing certifications under sections 3 and 4 of this notice. This list of approved software may be found at: <http://www.irs.gov/businesses/small/industries/article/0,,id=155445,00.html>.

.02 *Requirements for Software Programs To Be Included on the Internal Revenue Service List*. A software program will be included on the list created by the Internal Revenue Service if the software developer submits the following information to the Service and RESNET:

(1) The name, address, and telephone number of the software developer;

(2) The name or other identifier of the program as it will appear on the list;

(3) The test results, test runs, and the software program with which the test was conducted; and

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

(i) Has satisfied all tests required to conform to the software accreditation process prescribed in Residential Energy Services Network (RESNET) Publication No. 05-001 (Nov. 17, 2005) or No. 06-001 (June 1, 2006); or

(ii) Has satisfied all tests necessary to permit a determination that the software program is sufficiently accurate to justify its use in calculating energy consumption for purposes of providing certifications under sections 3 and 4 of this notice.

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

Submissions to the Service submitted by U.S. mail:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:6, Room 5114
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions to the Service submitted by a private delivery service:

Internal Revenue Service
Attn: Program Administrator
CC:PSI:6, Room 5114
1111 Constitution Ave., N.W.
Washington, DC 20224

Submissions to RESNET:

Residential Energy Services Network
P.O. Box 4561
Oceanside, CA 92052-4561

.04 *Original and Updated Lists*. A software program was included on the original list if the software developer's submission was received before March 1, 2006. The list will be updated as necessary to reflect additions resulting from submissions received after February 28, 2006, and deletions resulting from removal of software from the list under section 6.05 of this notice.

.05 *Removal from Published List*. The Service may, upon examination (and after appropriate consultation with the Department of Energy), determine that a software program is not sufficiently accurate to justify its use in calculating energy consumption for purposes of providing a certification under sections 3 and 4 of this notice and remove the software program from the published list. The Service may undertake an examination on its own initiative or in response to a public request supported by appropriate analysis of the software program's deficiencies.

.06 *Effect of Removal from Published List*. A software program may not be used to calculate energy consumption for purposes of providing a certification that satisfies the requirements of § 45L after the effective date of removal of the software from the published list. The removal will

not affect the validity of any certification provided with respect to a manufactured home on or before the effective date of removal from the published list. Generally, notice that software is being removed from the published list will be provided at the site specified in section 6.01 of this notice at least sixty (60) days before the effective date of the removal.

.07 *Public Availability of Information*. RESNET may make available for public review any information provided to it under section 6.02 of this notice.

SECTION 7. SALES TO DEALERS

.01 *In General*. In the case of a manufactured home sold by an eligible contractor to a dealer of manufactured homes, the eligible contractor may rely on a statement by the dealer to establish the date on which a manufactured home is acquired, that it is located in the United States, and that it is acquired for use as a residence. An eligible contractor is not required to file the statement with the return on which the credit is claimed. However, § 1.6001-1(a) of the Income Tax Regulations requires that taxpayers maintain such books and records as are sufficient to establish the entitlement to, and amount of, any credit claimed by the taxpayer. Accordingly, an eligible contractor claiming a credit under § 45L should retain the statement as part of its records to satisfy this requirement, and is not entitled to rely on the statement unless the statement is so retained.

.02 *Content of Statement*. The eligible contractor may not rely on the statement by the dealer unless the statement specifies the date of the retail sale of the manufactured home, that the dealer delivered the manufactured home to the purchaser at an address in the United States, and that the dealer has no knowledge of any information suggesting that the purchaser will use the manufactured home other than as a residence. The statement must also contain the following information:

(1) The name, address, and telephone number of the dealer.

(2) A declaration, applicable to the statement made by the dealer and any accompanying documents, signed by a person currently authorized to bind the dealer in such matters, in the following form:

"Under penalties of perjury, I declare that, to the best of my knowledge and belief, the facts presented with respect to this sale transaction are true, correct, and complete."

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1994.

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

The collections of information in this notice are in sections 3, 4, 6, and 7. This information is required to be collected and retained in order to ensure that a manufactured home meets the requirements for the energy efficient home credit under § 45L. This information will be used to determine whether property for which certifications are provided is property that qualifies for the credit. The collection of information is required to obtain a benefit. The likely respondents are corporations, partnerships, and individuals.

The estimated total annual reporting burden is 75 hours.

The estimated annual burden per respondent varies from 3.5 hours to 5 hours, depending on individual circumstances, with an estimated average burden of 4 hours to complete the certification required under this notice. The estimated number of respondents is 15.

The estimated annual frequency of responses is on occasion.

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

SECTION 9. EFFECT ON OTHER DOCUMENTS

Notice 2006-28, as updated by Announcement 2006-88, is clarified and

superseded. Announcement 2006–88 is also clarified and superseded.

SECTION 10. EFFECTIVE DATE

This notice applies with respect to certifications provided after February 29, 2008. Taxpayers may apply the provisions of this notice with respect to certifications provided on or before February 29, 2008.

SECTION 11. DRAFTING INFORMATION

The principal author of this notice is Jennifer Bernardini of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Jennifer Bernardini at (202) 622–3110 (not a toll-free call).

Update for Weighted Average Interest Rates, Yield Curves, and Segment Rates

Notice 2008–37

This notice provides guidance as to the corporate bond weighted average interest

rate and the permissible range of interest rates specified under § 412(b)(5)(B)(ii)(II) of the Internal Revenue Code as in effect for plan years beginning before 2008. It also provides guidance on the corporate bond monthly yield curve (and the corresponding spot segment rates), the 24-month average segment rates, and the funding transitional segment rates under § 430(h)(2). In addition, this notice provides guidance as to the interest rate on 30-year Treasury securities under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning before 2008, and the minimum present value segment rates under § 417(e)(3)(D) as in effect for plan years beginning after 2007.

CORPORATE BOND WEIGHTED AVERAGE INTEREST RATE

Sections 412(b)(5)(B)(ii) and 412(l)(7)(C)(i), as amended by the Pension Funding Equity Act of 2004 and by the Pension Protection Act of 2006 (PPA), provide that the interest rates used to calculate current liability and to determine the required contribution under § 412(l) for plan years beginning 2007 must be within a permissible range based on the weighted

average of the rates of interest on amounts invested conservatively in long term investment grade corporate bonds during the 4-year period ending on the last day before the beginning of the plan year.

Notice 2004–34, 2004–1 C.B. 848, provides guidelines for determining the corporate bond weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability. That notice establishes that the corporate bond weighted average is based on the monthly composite corporate bond rate derived from designated corporate bond indices. The methodology for determining the monthly composite corporate bond rate as set forth in Notice 2004–34 continues to apply in determining that rate. See Notice 2006–75, 2006–2 C.B. 366.

The composite corporate bond rate for February 2008 is 6.36 percent. Pursuant to Notice 2004–34, the Service has determined this rate as the average of the monthly yields for the included corporate bond indices for that month.

The following corporate bond weighted average interest rate was determined for plan years beginning in the month shown below.

| For Plan Years Beginning in | | Corporate Bond Weighted Average | Permissible Range | |
|-----------------------------|-------------|---------------------------------|-------------------|------|
| <i>Month</i> | <i>Year</i> | | 90% | 100% |
| March | 2008 | 5.96 | 5.36 | 5.96 |

YIELD CURVE AND SEGMENT RATES

Generally for plan years beginning after 2007 (except for delayed effective dates for certain plans under sections 104, 105, and 106 of PPA), § 430 of the Code specifies the minimum funding requirements that apply to single employer plans pursuant to § 412. Section 430(h)(2) specifies the interest rates that must be used to determine a plan’s target normal cost and funding target. Under this provision, present value is generally determined using three 24-month average interest rates

(“segment rates”), each of which applies to cash flows during specified periods. However, an election may be made under § 430(h)(2)(D)(ii) to use the monthly yield curve in place of the segment rates. For plan years beginning in 2008 and 2009, a transitional rule under § 430(h)(2)(G) provides that the segment rates are blended with the corporate bond weighted average as specified above. An election may be made under § 430(h)(2)(G)(iv) to use the segment rates without applying the transitional rule.

Notice 2007–81, 2007–44 I.R.B. 899, provides guidelines for determining the

monthly corporate bond yield curve, the 24-month average corporate bond segment rates, and the funding transitional segment rates used to compute the target normal cost and the funding target. Pursuant to Notice 2007–81, the monthly corporate bond yield curve derived from February 2008 data is in Table I at the end of this notice. The spot first, second, and third segment rates for the month of February 2008 are, respectively, 4.11, 6.18, and 7.05. The three 24-month average corporate bond segment rates applicable for March 2008 under the election of § 430(h)(2)(G)(iv) are as follows:

| First Segment | Second Segment | Third Segment |
|---------------|----------------|---------------|
| 5.24 | 5.97 | 6.49 |

The transitional segment rates under § 430(h)(2)(G) applicable for March 2008, taking into account the corporate bond

weighted average of 5.96 stated above, are as follows:

| For Plan Years Beginning in | First Segment | Second Segment | Third Segment |
|--------------------------------|------------------|-------------------|------------------|
| 2008 | 5.72 | 5.96 | 6.14 |

30-YEAR TREASURY SECURITIES INTEREST RATES

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

for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin.

The rate of interest on 30-year Treasury securities for February 2008 is 4.52 percent. The Service has determined this rate as the average of the yield on the 30-year Treasury bond maturing in May 2037 determined each day through February 6, 2007, and the yield on the 30-year Treasury bond maturing in February 2038 determined each day for the balance of the month.

Generally for plan years beginning after 2007, § 431 specifies the minimum funding requirements that apply to multiemployer plans pursuant to § 412. Section 431(c)(6)(B) specifies a minimum amount

for the full-funding limitation described in § 431(c)(6)(A), based on the plan's current liability. Section 431(c)(6)(E)(ii)(I) provides that the interest rate used to calculate current liability for this purpose must be no more than 5 percent above and no more than 10 percent below the weighted average of the rates of interest on 30-year Treasury securities during the four-year period ending on the last day before the beginning of the plan year. Notice 88-73, 1988-2 C.B. 383, provides guidelines for determining the weighted average interest rate. The following rates were determined for plan years beginning in the months shown below.

| For Plan Years Beginning in | | 30-Year Treasury Weighted Average | Permissible Range | |
|--------------------------------|-------------|--|-------------------|---------|
| <i>Month</i> | <i>Year</i> | | 90% | to 105% |
| January | 2008 | 4.81 | 4.33 | 5.06 |
| February | 2008 | 4.80 | 4.32 | 5.04 |
| March | 2008 | 4.79 | 4.31 | 5.03 |

MINIMUM PRESENT VALUE SEGMENT RATES

Generally for plan years beginning after December 31, 2007, the applicable interest rates under § 417(e)(3)(D) are segment rates computed without regard to a

24-month average. For plan years beginning in 2008 through 2011, the applicable interest rate is the monthly spot segment rate blended with the applicable rate under § 417(e)(3)(A)(ii)(II) as in effect for plan years beginning in 2007. Notice 2007-81 provides guidelines for determin-

ing the minimum present value segment rates. Pursuant to that notice, the minimum present value transitional segment rates determined for February 2008, taking into account the February 2008 30-year Treasury rate of 4.52 stated above, are as follows:

| For Plan Years Beginning in | First Segment | Second Segment | Third Segment |
|--------------------------------|------------------|-------------------|------------------|
| 2008 | 4.44 | 4.85 | 5.03 |

DRAFTING INFORMATION

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Table I

Monthly Yield Curve for February 2008

| <i>Maturity</i> | <i>Yield</i> | <i>Maturity</i> | <i>Yield</i> | <i>Maturity</i> | <i>Yield</i> | <i>Maturity</i> | <i>Yield</i> | <i>Maturity</i> | <i>Yield</i> |
|-----------------|--------------|-----------------|--------------|-----------------|--------------|-----------------|--------------|-----------------|--------------|
| 0.5 | 3.37 | 20.5 | 6.76 | 40.5 | 7.09 | 60.5 | 7.20 | 80.5 | 7.26 |
| 1.0 | 3.51 | 21.0 | 6.78 | 41.0 | 7.09 | 61.0 | 7.20 | 81.0 | 7.26 |
| 1.5 | 3.66 | 21.5 | 6.79 | 41.5 | 7.10 | 61.5 | 7.20 | 81.5 | 7.26 |
| 2.0 | 3.82 | 22.0 | 6.81 | 42.0 | 7.10 | 62.0 | 7.21 | 82.0 | 7.26 |
| 2.5 | 4.00 | 22.5 | 6.82 | 42.5 | 7.11 | 62.5 | 7.21 | 82.5 | 7.26 |
| 3.0 | 4.18 | 23.0 | 6.83 | 43.0 | 7.11 | 63.0 | 7.21 | 83.0 | 7.26 |
| 3.5 | 4.37 | 23.5 | 6.85 | 43.5 | 7.11 | 63.5 | 7.21 | 83.5 | 7.26 |
| 4.0 | 4.55 | 24.0 | 6.86 | 44.0 | 7.12 | 64.0 | 7.21 | 84.0 | 7.26 |
| 4.5 | 4.73 | 24.5 | 6.87 | 44.5 | 7.12 | 64.5 | 7.22 | 84.5 | 7.27 |
| 5.0 | 4.89 | 25.0 | 6.88 | 45.0 | 7.12 | 65.0 | 7.22 | 85.0 | 7.27 |
| 5.5 | 5.04 | 25.5 | 6.89 | 45.5 | 7.13 | 65.5 | 7.22 | 85.5 | 7.27 |
| 6.0 | 5.19 | 26.0 | 6.90 | 46.0 | 7.13 | 66.0 | 7.22 | 86.0 | 7.27 |
| 6.5 | 5.32 | 26.5 | 6.91 | 46.5 | 7.13 | 66.5 | 7.22 | 86.5 | 7.27 |
| 7.0 | 5.44 | 27.0 | 6.92 | 47.0 | 7.14 | 67.0 | 7.22 | 87.0 | 7.27 |
| 7.5 | 5.55 | 27.5 | 6.93 | 47.5 | 7.14 | 67.5 | 7.22 | 87.5 | 7.27 |
| 8.0 | 5.66 | 28.0 | 6.94 | 48.0 | 7.14 | 68.0 | 7.23 | 88.0 | 7.27 |
| 8.5 | 5.76 | 28.5 | 6.95 | 48.5 | 7.15 | 68.5 | 7.23 | 88.5 | 7.27 |
| 9.0 | 5.85 | 29.0 | 6.96 | 49.0 | 7.15 | 69.0 | 7.23 | 89.0 | 7.27 |
| 9.5 | 5.93 | 29.5 | 6.96 | 49.5 | 7.15 | 69.5 | 7.23 | 89.5 | 7.27 |
| 10.0 | 6.01 | 30.0 | 6.97 | 50.0 | 7.15 | 70.0 | 7.23 | 90.0 | 7.28 |
| 10.5 | 6.08 | 30.5 | 6.98 | 50.5 | 7.16 | 70.5 | 7.23 | 90.5 | 7.28 |
| 11.0 | 6.15 | 31.0 | 6.99 | 51.0 | 7.16 | 71.0 | 7.23 | 91.0 | 7.28 |
| 11.5 | 6.21 | 31.5 | 6.99 | 51.5 | 7.16 | 71.5 | 7.24 | 91.5 | 7.28 |
| 12.0 | 6.26 | 32.0 | 7.00 | 52.0 | 7.16 | 72.0 | 7.24 | 92.0 | 7.28 |
| 12.5 | 6.31 | 32.5 | 7.01 | 52.5 | 7.17 | 72.5 | 7.24 | 92.5 | 7.28 |
| 13.0 | 6.36 | 33.0 | 7.01 | 53.0 | 7.17 | 73.0 | 7.24 | 93.0 | 7.28 |
| 13.5 | 6.40 | 33.5 | 7.02 | 53.5 | 7.17 | 73.5 | 7.24 | 93.5 | 7.28 |
| 14.0 | 6.44 | 34.0 | 7.02 | 54.0 | 7.17 | 74.0 | 7.24 | 94.0 | 7.28 |
| 14.5 | 6.48 | 34.5 | 7.03 | 54.5 | 7.18 | 74.5 | 7.24 | 94.5 | 7.28 |
| 15.0 | 6.52 | 35.0 | 7.04 | 55.0 | 7.18 | 75.0 | 7.25 | 95.0 | 7.28 |
| 15.5 | 6.55 | 35.5 | 7.04 | 55.5 | 7.18 | 75.5 | 7.25 | 95.5 | 7.28 |
| 16.0 | 6.58 | 36.0 | 7.05 | 56.0 | 7.18 | 76.0 | 7.25 | 96.0 | 7.29 |
| 16.5 | 6.60 | 36.5 | 7.05 | 56.5 | 7.19 | 76.5 | 7.25 | 96.5 | 7.29 |
| 17.0 | 6.63 | 37.0 | 7.06 | 57.0 | 7.19 | 77.0 | 7.25 | 97.0 | 7.29 |
| 17.5 | 6.65 | 37.5 | 7.06 | 57.5 | 7.19 | 77.5 | 7.25 | 97.5 | 7.29 |
| 18.0 | 6.67 | 38.0 | 7.07 | 58.0 | 7.19 | 78.0 | 7.25 | 98.0 | 7.29 |
| 18.5 | 6.69 | 38.5 | 7.07 | 58.5 | 7.19 | 78.5 | 7.25 | 98.5 | 7.29 |
| 19.0 | 6.71 | 39.0 | 7.08 | 59.0 | 7.20 | 79.0 | 7.25 | 99.0 | 7.29 |
| 19.5 | 6.73 | 39.5 | 7.08 | 59.5 | 7.20 | 79.5 | 7.26 | 99.5 | 7.29 |
| 20.0 | 6.75 | 40.0 | 7.09 | 60.0 | 7.20 | 80.0 | 7.26 | 100.0 | 7.29 |

Rev. Proc. 2008-21

SECTION 1. PURPOSE

This revenue procedure provides that the Internal Revenue Service will not challenge the accuracy of income tax returns filed in compliance with Notice 2008-28, 2008-10 I.R.B. 546, by eligible individuals who enter \$1.00 in adjusted gross income solely for purposes of effectuating the electronic filing of the return.

SECTION 2. BACKGROUND

.01 The Economic Stimulus Act of 2008 amended section 6428 of the Internal Revenue Code to provide economic stimulus payments to eligible individuals. For this purpose, an eligible individual is any individual other than a nonresident alien, an estate or trust, or an individual who can be claimed as dependent under section 151 for the taxable year. *See* section 6428(e)(3). In general, the amount of the economic stimulus payment is the lesser of (1) the individual's net income tax liability, or (2) \$600 (\$1,200 in the case of a joint return). *See* section 6428(a).

.02 As provided in section 6428(b), individuals with at least \$3,000 of "qualifying income" may receive a minimum payment of \$300 (\$600 in the case of a joint return), even though the individual has no net income tax liability. Qualifying income as defined in section 6428(e)(1) means: earned income as defined in section 32(c)(2) that is includible in gross income for federal income tax purposes (including, if elected, certain combat zone compensation of members of the Armed Forces); social security benefits (including monthly retirement, survivor and disability benefits, but not including supplemental security income (SSI) payments) and Tier I railroad retirement benefits described in section 86(d); and disability compensation, disability pension and survivors' benefits from the Department of Veterans' Affairs (VA) pursuant to Chapters 11, 13, or 15 of Title 38 of the United States Code.

.03 Section 6012(a) requires every individual who (1) has gross income for the

taxable year which equals or exceeds the sum of the exemption amount plus the applicable standard deduction, or (2) has received advance payment of earned income credit under section 3507 to file an income tax return for that taxable year. In addition, section 6017 requires an individual to file an income tax return with respect to self-employment tax on net earnings from self-employment of \$400 or more.

In order to receive an economic stimulus payment to be advanced in 2008, a taxpayer must file an income tax return for 2007. *See* section 6428(g)(2). No advance payments of economic stimulus amounts shall be made or allowed after December 31, 2008. *See* section 6428(g)(3). Most taxpayers who are eligible for the economic stimulus payment are already required by sections 6012 or 6017 to file a return. Additionally, some taxpayers who are not required to file a return nevertheless file to obtain refunds of withholding or estimated tax payments.

.04 In the case of a taxpayer required by sections 6012 or 6017 to file an income tax return, eligibility for a stimulus payment in 2008, and the amount of that payment, is based on information reported on the taxpayer's filed income tax return for 2007. *See* section 6428(g)(2). These taxpayers will not need to file any extra forms or call the IRS to request the payment. However, eligible individuals with qualifying income not already reported on the 2007 income tax return (*e.g.*, certain disability or survivor benefits from the VA) may need to file an amended return in some situations to receive a larger stimulus payment.

.05 Similarly, for a taxpayer who does not have a filing requirement under sections 6012 or 6017, but who files an income tax return to receive a refund of withheld tax (for example, tax withheld on wages under section 31), the IRS will determine eligibility and the amount of the 2008 stimulus payment based on the information reported on the taxpayer's filed income tax return for 2007.

.06 Many individuals who have low earned income, or only social security benefits, railroad retirement benefits, or certain disability or survivors' benefits from the VA would not be required by sections 6012 or 6017 to file an income tax return and would be due no refund of tax other than the economic stimulus amount. Notice 2008-28 informs these individuals of

the minimum filing necessary to obtain the stimulus payment. Notice 2008-28 advises these individuals to complete only certain lines on the income tax return that are necessary to identify the individual and report the amount of qualifying income. Thus, in many cases, such as where an individual's qualifying income consists only of social security benefits, the income tax return will show no adjusted gross income, even though the individual has minimal amounts of nonqualifying income, such as interest or dividend income.

.07 To effectuate electronic filing, a return must include at least \$1.00 of adjusted gross income.

SECTION 3. SCOPE

This revenue procedure applies to eligible individuals who are not required by sections 6012 or 6017 to file an income tax return, but who file a return as provided in Notice 2008-28 solely for the purpose of obtaining a stimulus payment.

SECTION 4. PROCEDURE

.01 An individual, within the scope of this revenue procedure, who wishes to electronically file an income tax return may enter \$1.00 of income in the Income section of the return and at least \$1.00 of adjusted gross income even though the return prepared as instructed in Notice 2008-28 would otherwise show no adjusted gross income.

.02 The IRS will not challenge the accuracy of the entry of \$1.00 of adjusted gross income on the return for any eligible individual who follows the procedures in Notice 2008-28 and in this revenue procedure and who has no filing requirement under sections 6012 or 6017.

.03 However, the IRS may challenge and assert any applicable penalties if the return contains inaccuracies not related to this procedure for electronically filing a return solely to claim an economic stimulus payment. For example, failure to report actual adjusted gross income (in excess of the \$1.00) as required would continue to be subject to applicable penalties.

SECTION 5. EXAMPLE

A, an unmarried individual, receives \$200 of interest income, \$100 of dividend income and \$7,000 of social security retirement benefits during the year

2007. Under section 86, no portion of A's social security benefits is includible in A's gross income for 2007. Because A's gross income does not exceed the sum of the exemption amount plus the basic standard deduction applicable to an unmarried individual, A is not required by sections 6012 or 6017 to file an income tax return for 2007. In accordance with the procedures provided in Notice 2008-28, A enters the amount of his social security benefits on line 14a of Form 1040A, but does not enter the amount of his interest income or dividend income on Form 1040A. A seeks to file his return electronically. In order to effectuate the electronic filing of A's return, A may include \$1.00 in the adjusted gross income reported on his electronically filed return.

*26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.
(Also: Part I, §§ 280F; 1.280F-7.)*

Rev. Proc. 2008-22

SECTION 1. PURPOSE

.01 This revenue procedure provides: (1) limitations on depreciation deductions for owners of passenger automobiles first placed in service by the taxpayer during calendar year 2008, including a separate table of limitations on depreciation deductions for trucks and vans; and (2) the amounts to be included in income by lessees of passenger automobiles first leased by the taxpayer during calendar year 2008, including a separate table of inclusion amounts for lessees of trucks and vans.

.02 The tables detailing these depreciation limitations and lessee inclusion amounts reflect the automobile price inflation adjustments required by § 280F(d)(7) of the Internal Revenue Code.

SECTION 2. BACKGROUND

.01 For owners of passenger automobiles, § 280F(a) imposes dollar limitations on the depreciation deduction for the year that the passenger automobile is placed in service by the taxpayer and each succeeding year. Section 280F(d)(7) requires the amounts allowable as depreciation deductions to be increased by a price inflation adjustment amount for passenger automobiles placed in service after 1988. The method of calculating this price inflation amount for trucks and vans placed in service in or after calendar year 2003 uses a different CPI "automobile component"

(the "new trucks" component) than that used in the price inflation amount calculation for other passenger automobiles (the "new cars" component), resulting in somewhat higher depreciation deductions for trucks and vans. This change reflects the higher rate of price inflation that trucks and vans have been subject to since 1988.

.02 Section 103 of the Economic Stimulus Act of 2008, Pub. L. No. 110-185, 122 Stat. 613 (Feb. 13, 2008), amended § 168(k). As amended, § 168(k)(1)(A) provides a 50-percent additional first year depreciation deduction for certain new property acquired by the taxpayer after December 31, 2007, and before January 1, 2009, so long as no written binding contract for the acquisition of the property existed prior to January 1, 2008. The Act also amended § 168(k)(2)(F)(i) to increase the first year depreciation allowed under § 280F(a)(1)(A) by \$8,000 for passenger automobiles to which the 50-percent additional first year depreciation deduction applies.

.03 Section 168(k)(2)(D)(i) provides that the 50-percent additional first year depreciation deduction does not apply to any property required to be depreciated under the alternative depreciation system of section 168(g), including property described in section 280F(b)(1). Further, section 168(k)(2)(D)(iii) permits a taxpayer to elect not to claim the 50-percent additional first year depreciation deduction for any class of property. Accordingly, this revenue procedure provides tables for passenger automobiles for which the 50-percent additional depreciation deduction applies and tables for passenger automobiles for which the 50-percent additional first year depreciation deduction does not apply, including passenger automobiles in a class of property for which the taxpayer "elects out" of the 50-percent additional first year depreciation deduction.

.04 For leased passenger automobiles, § 280F(c) requires a reduction in the deduction allowed to the lessee of the passenger automobile. The reduction must be substantially equivalent to the limitations on the depreciation deductions imposed on owners of passenger automobiles. Under § 1.280F-7(a) of the Income Tax Regulations, this reduction requires the lessees to include in gross income an inclusion amount determined by applying a formula to the amount obtained from a table. There

is a table for lessees of trucks and vans and a table for all other passenger automobiles. Each table shows inclusion amounts for a range of fair market values for each taxable year after the passenger automobile is first leased.

SECTION 3. SCOPE

.01 The limitations on depreciation deductions in section 4.02(2) of this revenue procedure apply to passenger automobiles (other than leased passenger automobiles) that are placed in service by the taxpayer in calendar year 2008, and continue to apply for each taxable year that the passenger automobile remains in service.

.02 The tables in section 4.03 of this revenue procedure apply to leased passenger automobiles for which the lease term begins during calendar year 2008. Lessees of such passenger automobiles must use these tables to determine the inclusion amount for each taxable year during which the passenger automobile is leased. See Rev. Proc. 2002-14, 2002-1 C.B. 450, for passenger automobiles first leased before January 1, 2003, Rev. Proc. 2003-75, 2003-2 C.B. 1018, for passenger automobiles first leased during calendar year 2003, Rev. Proc. 2004-20, 2004-1 C.B. 642, for passenger automobiles first leased during calendar year 2004, Rev. Proc. 2005-13, 2005-1 C.B. 759, for passenger automobiles first leased during calendar year 2005, Rev. Proc. 2006-18, 2006-1 C.B. 645, for passenger automobiles first leased during calendar year 2006, and Rev. Proc. 2007-30, 2007-18 I.R.B. 1104, for passenger automobiles first leased during calendar year 2007.

SECTION 4. APPLICATION

.01 *In General.*

(1) *Limitations on Depreciation Deductions for Certain Automobiles.* The limitations on depreciation deductions for passenger automobiles placed in service by the taxpayer for the first time during calendar year 2008 are found in Tables 1 through 4 in section 4.02(2) of this revenue procedure. Table 1 of this revenue procedure provides limitations on depreciation deductions for a passenger automobile (other than a truck or van) for which the 50-percent additional first year depreciation deduction does not apply, including a pas-

passenger automobile (other than a truck or van) in a class of property for which the taxpayer elects out of the 50-percent additional first year depreciation deduction. Table 2 of this revenue procedure provides limitations on depreciation deductions for a passenger automobile (other than a truck or van) for which the 50-percent additional first year depreciation deduction applies. Table 3 of this revenue procedure provides limitations on depreciation deductions for a truck or van for which the 50-percent additional first year depreciation deduction does not apply, including a truck or van in a class of property for which the taxpayer elects out of the 50-percent additional first year depreciation deduction. Table 4 of this revenue procedure provides limitations on depreciation deductions for a truck or van for which the 50-percent additional first year depreciation deduction applies.

(2) *Inclusions in Income of Lessees of Passenger Automobiles.* A taxpayer first leasing a passenger automobile during calendar year 2008 must determine the inclusion amount that is added to gross income using the tables in section 4.03 of this revenue procedure. The inclusion amount is determined using Table 5 in the case of a passenger automobile (other than a truck or van), and Table 6 in the case of a truck or van. In addition, the procedures of § 1.280F-7(a) must be followed.

.02 Limitations on Depreciation Deductions for Certain Automobiles.

(1) *Amount of the Inflation Adjustment.* Under § 280F(d)(7)(B)(i), the automobile price inflation adjustment for any calendar year is the percentage (if any) by which the CPI automobile component for October of

the preceding calendar year exceeds the CPI automobile component for October 1987. The term “CPI automobile component” is defined in § 280F(d)(7)(B)(ii) as the “automobile component” of the Consumer Price Index for all Urban Consumers published by the Department of Labor (the CPI). The new car component of the CPI was 115.2 for October 1987 and 135.169 for October 2007. The October 2007 index exceeded the October 1987 index by 19.969. The Internal Revenue Service has, therefore, determined that the automobile price inflation adjustment for 2008 for passenger automobiles (other than trucks and vans) is 17.33 percent ($19.969/115.2 \times 100\%$). This adjustment is applicable to all passenger automobiles (other than trucks and vans) that are first placed in service in calendar year 2008. The dollar limitations in § 280F(a) must therefore be multiplied by a factor of 0.1733, and the resulting increases, after rounding to the nearest \$100, are added to the 1988 limitations to give the depreciation limitations applicable to passenger automobiles (other than trucks and vans) for calendar year 2008. To determine the dollar limitations applicable to trucks and vans first placed in service during calendar year 2008, the new truck component of the CPI is used instead of the new car component. The new truck component of the CPI was 112.4 for October 1987 and 139.513 for October 2007. The October 2007 index exceeded the October 1987 index by 27.113. The Service has, therefore, determined that the automobile price inflation adjustment for 2008 for trucks and vans is 24.12 percent ($27.113/112.4 \times 100\%$). This adjustment is applicable to

all trucks and vans that are first placed in service in calendar year 2008. The dollar limitations in § 280F(a) must therefore be multiplied by a factor of 0.2412, and the resulting increases, after rounding to the nearest \$100, are added to the 1988 limitations to give the depreciation limitations applicable to trucks and vans.

(2) *Amount of the Limitation.* For passenger automobiles placed in service by the taxpayer in calendar year 2008, Tables 1 through 4 contain the dollar amount of the depreciation limitation for each taxable year. Use Table 1 for a passenger automobile (other than a truck or van) placed in service by the taxpayer in calendar year 2008, for which the 50-percent additional first year depreciation deduction does not apply, including a passenger automobile (other than a truck or van) in a class of property for which the taxpayer elects out of the 50-percent additional first year depreciation deduction. Use Table 2 for a passenger automobile (other than a truck or van) placed in service by the taxpayer in calendar year 2008, for which the 50-percent additional first year depreciation deduction applies. Use Table 3 for a truck or van placed in service by the taxpayer in calendar year 2008, for which the 50-percent additional first year depreciation deduction does not apply, including a truck or van in a class of property for which the taxpayer elects out of the 50-percent additional first year depreciation deduction. Use Table 4 for a truck or van placed in service by the taxpayer in calendar year 2008, for which the 50-percent additional first year depreciation deduction applies.

REV. PROC. 2008-22 TABLE 1

DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES
(THAT ARE NOT TRUCKS OR VANS) PLACED IN SERVICE BY THE TAXPAYER IN
CALENDAR YEAR 2008, FOR WHICH THE 50-PERCENT ADDITIONAL FIRST YEAR
DEPRECIATION DEDUCTION DOES NOT APPLY

| <i>Tax Year</i> | <i>Amount</i> |
|----------------------|---------------|
| 1st Tax Year | \$2,960 |
| 2nd Tax Year | \$4,800 |
| 3rd Tax Year | \$2,850 |
| Each Succeeding Year | \$1,775 |

REV. PROC. 2008-22 TABLE 2

DEPRECIATION LIMITATIONS FOR PASSENGER AUTOMOBILES
(THAT ARE NOT TRUCKS OR VANS) PLACED IN SERVICE BY THE TAXPAYER IN
CALENDAR YEAR 2008, FOR WHICH THE 50-PERCENT ADDITIONAL FIRST YEAR
DEPRECIATION DEDUCTION APPLIES

| <i>Tax Year</i> | <i>Amount</i> |
|----------------------|---------------|
| 1st Tax Year | \$10,960 |
| 2nd Tax Year | \$4,800 |
| 3rd Tax Year | \$2,850 |
| Each Succeeding Year | \$1,775 |

REV. PROC. 2008-22 TABLE 3

DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE BY
THE TAXPAYER IN CALENDAR YEAR 2008, FOR WHICH THE 50-PERCENT
ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION DOES NOT APPLY

| <i>Tax Year</i> | <i>Amount</i> |
|----------------------|---------------|
| 1st Tax Year | \$3,160 |
| 2nd Tax Year | \$5,100 |
| 3rd Tax Year | \$3,050 |
| Each Succeeding Year | \$1,875 |

REV. PROC. 2008-22 TABLE 4

DEPRECIATION LIMITATIONS FOR TRUCKS AND VANS PLACED IN SERVICE BY
THE TAXPAYER IN CALENDAR YEAR 2008, FOR WHICH THE 50-PERCENT
ADDITIONAL FIRST YEAR DEPRECIATION DEDUCTION APPLIES

| <i>Tax Year</i> | <i>Amount</i> |
|----------------------|---------------|
| 1st Tax Year | \$11,160 |
| 2nd Tax Year | \$5,100 |
| 3rd Tax Year | \$3,050 |
| Each Succeeding Year | \$1,875 |

.03 *Inclusions in Income of Lessees of Passenger Automobiles.*

The inclusion amounts for passenger automobiles first leased in calendar year

2008 are calculated under the procedures described in § 1.280F-7(a). Lessees of passenger automobiles other than trucks and vans should use Table 5 of this revenue

procedure in applying these procedures, while lessees of trucks and vans should use Table 6 of this revenue procedure.

REV. PROC. 2008-22 TABLE 5

DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES
(THAT ARE NOT TRUCKS OR VANS)
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2008

| Fair Market Value of Passenger Automobile | | Tax Year During Lease | | | | |
|---|----------|-----------------------|-----|-----|-----|-------------|
| | | 1st | 2nd | 3rd | 4th | 5th & Later |
| Over | Not Over | | | | | |
| \$18,500 | \$19,000 | 20 | 42 | 62 | 73 | 84 |
| 19,000 | 19,500 | 22 | 47 | 71 | 83 | 94 |
| 19,500 | 20,000 | 25 | 53 | 78 | 93 | 106 |
| 20,000 | 20,500 | 27 | 58 | 87 | 102 | 117 |
| 20,500 | 21,000 | 30 | 63 | 95 | 112 | 128 |
| 21,000 | 21,500 | 32 | 69 | 103 | 122 | 139 |

REV. PROC. 2008-22 TABLE 5—Continued

DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES
(THAT ARE NOT TRUCKS OR VANS)
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2008

| Fair Market Value of Passenger Automobile | | Tax Year During Lease | | | | |
|---|----------|-----------------------|-----|-------|-------|-------------|
| | | 1st | 2nd | 3rd | 4th | 5th & Later |
| Over | Not Over | | | | | |
| 21,500 | 22,000 | 34 | 75 | 111 | 131 | 151 |
| 22,000 | 23,000 | 38 | 83 | 123 | 146 | 167 |
| 23,000 | 24,000 | 43 | 94 | 139 | 165 | 190 |
| 24,000 | 25,000 | 48 | 105 | 155 | 185 | 212 |
| 25,000 | 26,000 | 53 | 115 | 172 | 204 | 235 |
| 26,000 | 27,000 | 58 | 126 | 188 | 223 | 257 |
| 27,000 | 28,000 | 63 | 137 | 204 | 243 | 279 |
| 28,000 | 29,000 | 68 | 148 | 220 | 262 | 302 |
| 29,000 | 30,000 | 73 | 159 | 236 | 282 | 324 |
| 30,000 | 31,000 | 78 | 170 | 252 | 301 | 347 |
| 31,000 | 32,000 | 83 | 181 | 268 | 321 | 368 |
| 32,000 | 33,000 | 88 | 192 | 284 | 340 | 391 |
| 33,000 | 34,000 | 93 | 202 | 301 | 359 | 414 |
| 34,000 | 35,000 | 98 | 213 | 317 | 379 | 436 |
| 35,000 | 36,000 | 103 | 224 | 333 | 398 | 459 |
| 36,000 | 37,000 | 108 | 235 | 349 | 418 | 481 |
| 37,000 | 38,000 | 113 | 246 | 365 | 437 | 503 |
| 38,000 | 39,000 | 118 | 257 | 381 | 457 | 525 |
| 39,000 | 40,000 | 123 | 268 | 397 | 476 | 548 |
| 40,000 | 41,000 | 128 | 279 | 413 | 495 | 571 |
| 41,000 | 42,000 | 133 | 289 | 430 | 515 | 593 |
| 42,000 | 43,000 | 137 | 301 | 446 | 534 | 615 |
| 43,000 | 44,000 | 142 | 312 | 462 | 553 | 638 |
| 44,000 | 45,000 | 147 | 323 | 478 | 573 | 659 |
| 45,000 | 46,000 | 152 | 333 | 495 | 592 | 682 |
| 46,000 | 47,000 | 157 | 344 | 511 | 611 | 705 |
| 47,000 | 48,000 | 162 | 355 | 527 | 631 | 727 |
| 48,000 | 49,000 | 167 | 366 | 543 | 650 | 750 |
| 49,000 | 50,000 | 172 | 377 | 559 | 670 | 772 |
| 50,000 | 51,000 | 177 | 388 | 575 | 689 | 794 |
| 51,000 | 52,000 | 182 | 399 | 591 | 709 | 816 |
| 52,000 | 53,000 | 187 | 410 | 607 | 728 | 839 |
| 53,000 | 54,000 | 192 | 420 | 624 | 747 | 862 |
| 54,000 | 55,000 | 197 | 431 | 640 | 767 | 884 |
| 55,000 | 56,000 | 202 | 442 | 657 | 785 | 906 |
| 56,000 | 57,000 | 207 | 453 | 673 | 805 | 928 |
| 57,000 | 58,000 | 212 | 464 | 689 | 824 | 951 |
| 58,000 | 59,000 | 217 | 475 | 705 | 844 | 973 |
| 59,000 | 60,000 | 222 | 486 | 721 | 863 | 996 |
| 60,000 | 62,000 | 229 | 502 | 746 | 892 | 1,029 |
| 62,000 | 64,000 | 239 | 524 | 778 | 931 | 1,074 |
| 64,000 | 66,000 | 249 | 546 | 810 | 970 | 1,118 |
| 66,000 | 68,000 | 259 | 567 | 843 | 1,008 | 1,164 |
| 68,000 | 70,000 | 269 | 589 | 875 | 1,047 | 1,209 |
| 70,000 | 72,000 | 279 | 611 | 907 | 1,086 | 1,253 |
| 72,000 | 74,000 | 289 | 633 | 939 | 1,125 | 1,298 |
| 74,000 | 76,000 | 299 | 654 | 972 | 1,164 | 1,342 |
| 76,000 | 78,000 | 309 | 676 | 1,004 | 1,203 | 1,387 |
| 78,000 | 80,000 | 319 | 698 | 1,036 | 1,242 | 1,432 |
| 80,000 | 85,000 | 336 | 736 | 1,093 | 1,309 | 1,511 |
| 85,000 | 90,000 | 361 | 791 | 1,173 | 1,406 | 1,623 |
| 90,000 | 95,000 | 386 | 845 | 1,255 | 1,503 | 1,734 |
| 95,000 | 100,000 | 410 | 900 | 1,335 | 1,600 | 1,846 |
| 100,000 | 110,000 | 448 | 981 | 1,457 | 1,745 | 2,014 |

REV. PROC. 2008-22 TABLE 5—Continued

DOLLAR AMOUNTS FOR PASSENGER AUTOMOBILES
(THAT ARE NOT TRUCKS OR VANS)
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2008

| Fair Market Value of Passenger Automobile | | Tax Year During Lease | | | | |
|---|----------|-----------------------|-------|-------|-------|-------------|
| | | 1st | 2nd | 3rd | 4th | 5th & Later |
| Over | Not Over | | | | | |
| 110,000 | 120,000 | 497 | 1,090 | 1,619 | 1,939 | 2,238 |
| 120,000 | 130,000 | 547 | 1,199 | 1,780 | 2,133 | 2,462 |
| 130,000 | 140,000 | 597 | 1,308 | 1,942 | 2,327 | 2,685 |
| 140,000 | 150,000 | 646 | 1,417 | 2,103 | 2,521 | 2,910 |
| 150,000 | 160,000 | 696 | 1,526 | 2,265 | 2,715 | 3,133 |
| 160,000 | 170,000 | 745 | 1,635 | 2,427 | 2,908 | 3,357 |
| 170,000 | 180,000 | 795 | 1,744 | 2,588 | 3,103 | 3,581 |
| 180,000 | 190,000 | 845 | 1,853 | 2,750 | 3,296 | 3,805 |
| 190,000 | 200,000 | 894 | 1,962 | 2,912 | 3,490 | 4,028 |
| 200,000 | 210,000 | 944 | 2,071 | 3,073 | 3,684 | 4,252 |
| 210,000 | 220,000 | 994 | 2,179 | 3,235 | 3,878 | 4,476 |
| 220,000 | 230,000 | 1,043 | 2,289 | 3,396 | 4,072 | 4,700 |
| 230,000 | 240,000 | 1,093 | 2,397 | 3,559 | 4,265 | 4,924 |
| 240,000 | and up | 1,142 | 2,507 | 3,720 | 4,459 | 5,148 |

REV. PROC. 2008-22 TABLE 6

DOLLAR AMOUNTS FOR TRUCKS AND VANS
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2008

| Fair Market Value of Truck or Van | | Tax Year During Lease | | | | |
|-----------------------------------|----------|-----------------------|-----|-----|-----|-------------|
| | | 1st | 2nd | 3rd | 4th | 5th & later |
| Over | Not Over | | | | | |
| \$19,000 | \$19,500 | 17 | 37 | 54 | 65 | 73 |
| 19,500 | 20,000 | 20 | 42 | 63 | 73 | 85 |
| 20,000 | 20,500 | 22 | 48 | 70 | 84 | 96 |
| 20,500 | 21,000 | 25 | 53 | 79 | 93 | 107 |
| 21,000 | 21,500 | 27 | 59 | 86 | 103 | 118 |
| 21,500 | 22,000 | 30 | 64 | 95 | 112 | 130 |
| 22,000 | 23,000 | 33 | 72 | 107 | 128 | 146 |
| 23,000 | 24,000 | 38 | 83 | 123 | 147 | 168 |
| 24,000 | 25,000 | 43 | 94 | 139 | 166 | 191 |
| 25,000 | 26,000 | 48 | 105 | 155 | 186 | 213 |
| 26,000 | 27,000 | 53 | 116 | 171 | 205 | 236 |
| 27,000 | 28,000 | 58 | 127 | 187 | 225 | 258 |
| 28,000 | 29,000 | 63 | 138 | 204 | 243 | 280 |
| 29,000 | 30,000 | 68 | 148 | 221 | 263 | 302 |
| 30,000 | 31,000 | 73 | 159 | 237 | 282 | 325 |
| 31,000 | 32,000 | 78 | 170 | 253 | 301 | 348 |
| 32,000 | 33,000 | 83 | 181 | 269 | 321 | 370 |
| 33,000 | 34,000 | 88 | 192 | 285 | 340 | 393 |
| 34,000 | 35,000 | 93 | 203 | 301 | 360 | 414 |
| 35,000 | 36,000 | 98 | 214 | 317 | 379 | 437 |
| 36,000 | 37,000 | 103 | 225 | 333 | 399 | 459 |
| 37,000 | 38,000 | 108 | 235 | 350 | 418 | 482 |
| 38,000 | 39,000 | 113 | 246 | 366 | 437 | 505 |
| 39,000 | 40,000 | 118 | 257 | 382 | 457 | 526 |
| 40,000 | 41,000 | 123 | 268 | 398 | 476 | 549 |
| 41,000 | 42,000 | 128 | 279 | 414 | 496 | 571 |
| 42,000 | 43,000 | 133 | 290 | 430 | 515 | 594 |
| 43,000 | 44,000 | 137 | 301 | 447 | 534 | 616 |
| 44,000 | 45,000 | 142 | 312 | 463 | 553 | 639 |
| 45,000 | 46,000 | 147 | 323 | 479 | 573 | 661 |

REV. PROC. 2008-22 TABLE 6—Continued

DOLLAR AMOUNTS FOR TRUCKS AND VANS
WITH A LEASE TERM BEGINNING IN CALENDAR YEAR 2008

| Fair Market Value of Truck or Van | | Tax Year During Lease | | | | |
|-----------------------------------|----------|-----------------------|-------|-------|-------|-------------|
| Over | Not Over | 1st | 2nd | 3rd | 4th | 5th & later |
| 46,000 | 47,000 | 152 | 334 | 495 | 592 | 684 |
| 47,000 | 48,000 | 157 | 345 | 511 | 612 | 705 |
| 48,000 | 49,000 | 162 | 356 | 527 | 631 | 728 |
| 49,000 | 50,000 | 167 | 366 | 544 | 651 | 750 |
| 50,000 | 51,000 | 172 | 377 | 560 | 670 | 773 |
| 51,000 | 52,000 | 177 | 388 | 576 | 689 | 796 |
| 52,000 | 53,000 | 182 | 399 | 592 | 709 | 817 |
| 53,000 | 54,000 | 187 | 410 | 608 | 728 | 840 |
| 54,000 | 55,000 | 192 | 421 | 624 | 748 | 862 |
| 55,000 | 56,000 | 197 | 432 | 640 | 767 | 885 |
| 56,000 | 57,000 | 202 | 443 | 656 | 787 | 907 |
| 57,000 | 58,000 | 207 | 453 | 673 | 806 | 929 |
| 58,000 | 59,000 | 212 | 464 | 689 | 825 | 952 |
| 59,000 | 60,000 | 217 | 475 | 705 | 845 | 974 |
| 60,000 | 62,000 | 224 | 492 | 729 | 874 | 1,008 |
| 62,000 | 64,000 | 234 | 513 | 762 | 913 | 1,052 |
| 64,000 | 66,000 | 244 | 535 | 794 | 951 | 1,098 |
| 66,000 | 68,000 | 254 | 557 | 826 | 990 | 1,142 |
| 68,000 | 70,000 | 264 | 579 | 858 | 1,029 | 1,187 |
| 70,000 | 72,000 | 274 | 600 | 892 | 1,067 | 1,232 |
| 72,000 | 74,000 | 284 | 622 | 924 | 1,106 | 1,276 |
| 74,000 | 76,000 | 294 | 644 | 956 | 1,145 | 1,321 |
| 76,000 | 78,000 | 304 | 666 | 988 | 1,184 | 1,366 |
| 78,000 | 80,000 | 314 | 687 | 1,021 | 1,222 | 1,411 |
| 80,000 | 85,000 | 331 | 726 | 1,077 | 1,290 | 1,489 |
| 85,000 | 90,000 | 356 | 780 | 1,158 | 1,387 | 1,601 |
| 90,000 | 95,000 | 381 | 835 | 1,238 | 1,484 | 1,713 |
| 95,000 | 100,000 | 405 | 889 | 1,320 | 1,581 | 1,825 |
| 100,000 | 110,000 | 443 | 971 | 1,440 | 1,727 | 1,993 |
| 110,000 | 120,000 | 492 | 1,080 | 1,602 | 1,921 | 2,216 |
| 120,000 | 130,000 | 542 | 1,189 | 1,764 | 2,114 | 2,440 |
| 130,000 | 140,000 | 592 | 1,297 | 1,926 | 2,308 | 2,665 |
| 140,000 | 150,000 | 641 | 1,407 | 2,087 | 2,502 | 2,888 |
| 150,000 | 160,000 | 691 | 1,515 | 2,249 | 2,696 | 3,112 |
| 160,000 | 170,000 | 740 | 1,625 | 2,410 | 2,890 | 3,336 |
| 170,000 | 180,000 | 790 | 1,733 | 2,573 | 3,083 | 3,560 |
| 180,000 | 190,000 | 840 | 1,842 | 2,734 | 3,278 | 3,783 |
| 190,000 | 200,000 | 889 | 1,951 | 2,896 | 3,472 | 4,007 |
| 200,000 | 210,000 | 939 | 2,060 | 3,058 | 3,665 | 4,231 |
| 210,000 | 220,000 | 989 | 2,169 | 3,219 | 3,859 | 4,455 |
| 220,000 | 230,000 | 1,038 | 2,278 | 3,381 | 4,053 | 4,678 |
| 230,000 | 240,000 | 1,088 | 2,387 | 3,542 | 4,247 | 4,903 |
| 240,000 | and up | 1,137 | 2,496 | 3,704 | 4,441 | 5,126 |

SECTION 5. EFFECTIVE DATE

This revenue procedure applies to passenger automobiles (other than leased passenger automobiles) that are first placed in service by the taxpayer during calendar year 2008, and to leased passenger automobiles that are first leased by the taxpayer during calendar year 2008.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is Bernard P. Harvey of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding the depreciation limitations and lessee inclusion amounts in this rev-

enue procedure, contact Bernard P. Harvey at (202) 622-4930 (not a toll-free call).

26 CFR 601.204: Changes in accounting periods and in methods of accounting. (Also Part I, §§ 446; 472; 1.446-1; 1.472-1; 1.472-8.)

Rev. Proc. 2008-23

SECTION 1. PURPOSE

This revenue procedure provides an alternative dollar-value last-in, first-out (LIFO) pooling method, the Vehicle-Pool Method, for retail dealers and wholesale distributors (collectively, “resellers”) of cars and light-duty trucks. This revenue procedure also provides the exclusive procedures for obtaining automatic consent to change to the Vehicle-Pool Method. In addition, this revenue procedure modifies Rev. Proc. 97-36, 1997-2 C.B. 450, and Rev. Proc. 2001-23, 2001-1 C.B. 784, as modified by Announcement 2004-16, 2004-1 C.B. 668, to provide the permissible method of pooling for crossover vehicles for resellers of cars and light-duty trucks that do not use the Vehicle-Pool Method.

SECTION 2. BACKGROUND

.01 Section 472(a) of the Internal Revenue Code provides generally that a taxpayer may use the LIFO method of inventorying goods if, among other requirements, the change to, and use of, the method is in accordance with such regulations as the Secretary may prescribe as necessary in order that the use of the method may clearly reflect income.

.02 Section 1.472-8(a) of the Income Tax Regulations provides that any taxpayer may elect to determine the cost of its LIFO inventories under the dollar-value LIFO method of accounting, provided such method is used consistently and clearly reflects income in accordance with the rules of § 1.472-8.

.03 Section 1.472-8(b)(1) requires manufacturers and processors to establish one pool for each natural business unit unless the taxpayer elects under § 1.472-8(b)(3) to establish multiple pools. In addition, § 1.472-8(b)(1) requires that where the manufacturer or processor is also engaged in the wholesaling or retailing of goods purchased from others, any pooling of the LIFO inventory of such purchased goods for the

wholesaling or retailing operations shall be determined in accordance with the rules of § 1.472-8(c) (concerning pools of resellers).

.04 Section 1.472-8(c)(1) requires, in relevant part, a reseller to establish dollar-value pools based on major lines, types, or classes of goods.

.05 Section 1.472-8(g)(1) provides that any change in method of pooling authorized by § 1.472-8 and used in computing the taxpayer’s LIFO inventories under the dollar-value LIFO method shall be treated as a change in method of accounting. Any method of pooling that is authorized by § 1.472-8 shall be used for the year of adoption and for all subsequent taxable years unless a change is required by the Commissioner in order to clearly reflect income, or unless permission to change is granted by the Commissioner as provided in § 1.446-1(e). If the taxpayer changes from one method of pooling to another method of pooling, the ending LIFO inventory for the taxable year preceding the year of change shall be restated under the new method of pooling.

.06 Section 1.472-8(g)(2)(i) provides, in relevant part, that a taxpayer who has been using the dollar-value LIFO method and who is permitted or required to change its method of pooling shall combine or separate the LIFO value of its inventory for the base year and each yearly layer of increment in order to conform to the new pool or pools. The combination or separation of the LIFO value of the taxpayer’s inventory for the base year and each yearly layer of increment shall be made in accordance with the appropriate method in § 1.472-8(g)(2), unless the use of a different method is approved by the Commissioner. Section 1.472-8(g)(2)(ii) provides rules that a taxpayer must apply when separating a pool. Sections 1.472-8(g)(2)(iii) and (iv) provide alternative rules that a taxpayer must apply when combining pools. These sections also contain examples showing the application of the rules for taxpayers that use double-extension LIFO.

.07 A taxpayer generally may obtain automatic consent under § 446(e) and § 1.446-1(e)(2)(i) to change to a method of accounting listed in the APPENDIX of Rev. Proc. 2002-9, 2002-1 C.B. 327, as modified and clarified by Announcement 2002-17, 2002-1 C.B. 561, as modified

and amplified by Rev. Proc. 2002-19, 2002-1 C.B. 696, and as amplified, clarified and modified by Rev. Proc. 2002-54, 2002-2 C.B. 432.

.08 Under the “Alternative LIFO Method” provided in Rev. Proc. 97-36 and listed in section 10.03 of the APPENDIX of Rev. Proc. 2002-9, a retail dealer of new cars or new trucks (“automobile dealer”) must establish one pool for all new cars and a separate pool for all new light-duty trucks (two-pools rule). For this purpose, “light-duty truck” means a truck with a gross vehicle weight that does not exceed 14,000 pounds. These light-duty trucks sometimes are referred to as “class 1,” “class 2,” and “class 3” trucks.

.09 Under the “Used Vehicle Alternative LIFO Method” provided in Rev. Proc. 2001-23, 2001-1 C.B. 784, as modified by Announcement 2004-16, 2004-1 C.B. 668, and listed in section 10.04 of the APPENDIX of Rev. Proc. 2002-9, a reseller of used cars or used light-duty trucks (“used vehicle dealer”) must establish one pool for all used cars and a separate pool for all used light-duty trucks (two-pools rule). Again, “light-duty truck” means a truck with a gross vehicle weight that does not exceed 14,000 pounds (*i.e.*, class 1, class 2, or class 3 truck). Furthermore, “used car” and “used light-duty truck” mean previously titled vehicles, excluding demonstrator vehicles. A taxpayer may choose to assign a used sport-utility vehicle (“SUV”) or a used “hybrid” vehicle (*e.g.*, van and minivan) to either its used car pool or its used light-duty truck pool. Once the taxpayer has assigned one used SUV or one used hybrid vehicle to a pool, the taxpayer must assign all used SUVs and all used hybrid vehicles to that same pool in subsequent years.

.10 The two-pools rule found in both Rev. Proc. 97-36 and Rev. Proc. 2001-23 is based on the opinions in *Fox Chevrolet, Inc. Maryland v. Commissioner*, 76 T.C. 708 (1981), *acq.*, 1984-2 C.B. 1, in which tax years from 1972 through 1974 were at issue, and *Richardson Investments, Inc., and Subsidiaries v. Commissioner*, 76 T.C. 736 (1981), in which tax years 1971, 1972, and 1974 were at issue. After acknowledging the similarities of cars and trucks, the court in *Fox Chevrolet* focused on their differences in deciding that cars and trucks do not constitute a single class of goods under § 1.472-8(c)(1). First, the court noted that

cars and trucks appeal to different types of purchasers. “The market for [cars] is comprised in the main of persons among the general public who desire to acquire a means of transporting themselves between locations, usually within their community and occasionally on extended outings to more distant locales. Trucks, on the other hand, are more often bought for business use. They are used principally for transporting property.” 76 T.C. at 725. Second, the court observed that the nature of the operation of trucks is quite different from that of cars. “Due to their size, weight, and in some instances mechanical complexity, greater experience or training is occasionally required to operate trucks designed to haul property. Furthermore, the evidence in this case reveals that trucks are a more expensive investment than is the average [car]. The registration and other legal requirements for the operation of trucks also tend to be much more stringent than those for [cars].” 76 T.C. at 725. Finally, the court rejected the argument that light-duty trucks are acquired by the same class of consumers and are used interchangeably for the same purposes as cars. “While economy and light-duty trucks are certainly closer to automobiles than are heavy-duty trucks, and it is always difficult to draw a fine line, we believe that smaller trucks have more in common with other types of trucks than they do with [cars]. In any event, if light-duty trucks are a hybrid, they are far from fully interchangeable with [cars]. The line is difficult to draw, but is more appropriately drawn between trucks and cars than between different classes of trucks.” 76 T.C. at 726. In *Richardson Investments*, the Tax Court, citing *Fox Chevrolet* as controlling authority, rejected a Ford dealer’s argument that it may assign cars and trucks to a single “transportation” pool. Noting that this taxpayer did not include used vehicles and recreational vehicles in the same pool, the court also noted that Ford Motor Company’s advertising campaign distinguished between the commercial nature of Ford trucks (“built tough”) and the personal nature of Ford Granadas (“look and ride like a Mercedes”).

.11 The Treasury Department and the Internal Revenue Service recognize that the distinctions between cars and light-duty trucks have diminished significantly since *Fox Chevrolet* and *Richardson*

Investments were decided. For example, during the 1970s, most cars were purchased to transport people for personal purposes, and most trucks were purchased to transport property for business purposes. Today, however, manufacturers advertise that their light-duty trucks offer the ride, handling, and amenities of cars plus the additional seating and cargo capacity that larger families need to transport themselves and their personal-use property. Furthermore, people do not need a special operator’s license to drive light-duty trucks on highways. Moreover, the distinctions between cars and light-duty trucks that existed during the 1970s have been reduced significantly by the creation of “crossover” vehicles, which share some characteristics of both cars and light-duty trucks (e.g., SUVs, minivans, and similar vehicles, formerly denoted as “hybrid”). Because of these changes, sales of light-duty trucks have greatly increased relative to sales of cars. Also, today federal regulators treat cars and light-duty trucks with greater similarity in regulations promulgated under both the Energy Policy and Conservation Act of 1975 (49 U.S.C. 32902), which sets fuel economy standards, and the Clean Air Act (42 U.S.C. 7521), which sets emissions standards.

SECTION 3. SCOPE

Any reseller of cars or light-duty trucks that is subject to the dollar-value LIFO pooling rules of § 1.472-8(c)(1), Rev. Proc. 97-36, or Rev. Proc. 2001-23 may use the Vehicle-Pool Method, as described section 4.01(1) of this revenue procedure. Also, any reseller of cars or light duty trucks that has crossover vehicles and that uses the Alternative LIFO Method under Rev. Proc. 97-36 or the Used Vehicle Alternative LIFO Method under Rev. Proc. 2001-23 must use the method of pooling for crossover vehicles under Rev. Proc. 97-36 or Rev. Proc. 2001-23, as described in section 4.02(1) of this revenue procedure if the reseller does not choose to use the Vehicle-Pool Method described in section 4.01(1) of this revenue procedure.

SECTION 4. APPLICATION

.01 *Vehicle-Pool Method.*

(1) *Description.* Under the Vehicle-Pool Method, a reseller with new vehicles (i.e., new cars, new light-duty trucks, and new crossover vehicles, including SUVs, vans, minivans, and other similar vehicles) may establish a New Vehicle pool for all new vehicles. In addition, under this method, a reseller with used vehicles (i.e., used cars, used light-duty trucks, and used crossover vehicles, including SUVs, vans, minivans, and other similar vehicles) may establish a Used Vehicle pool for all used vehicles. No pool established under this revenue procedure may include a vehicle with a gross vehicle weight that exceeds 14,000 pounds.

(2) *Change to the Vehicle-Pool Method.*

(a) Pursuant to section 6.01 of Rev. Proc. 2002-9 (or successor), a reseller within the scope of this revenue procedure and Rev. Proc. 2002-9, as modified by this revenue procedure, is granted the Commissioner’s consent to change to the Vehicle-Pool Method described in section 4.01(1) of this revenue procedure, provided the reseller follows the provisions of Rev. Proc. 2002-9, with the following modifications:

(i) The scope limitation in section 4.02(6) of Rev. Proc. 2002-9 does not apply for the reseller’s first taxable year ending on or after December 31, 2007; and

(ii) The designated automatic accounting method change number for a change in method of accounting to the Vehicle-Pool Method made pursuant to this revenue procedure is “112.” A reseller also concurrently changing to the Alternative LIFO Method under Rev. Proc. 97-36 or the Used Vehicle Alternative LIFO Method under Rev. Proc. 2001-23 should file a single Form 3115, *Application for Change in Accounting Method*, for both changes and enter both designated numbers on its Form 3115. For example, a reseller concurrently changing to the Alternative LIFO Method and the Vehicle-Pool Method should enter both “58 and 112” on its Form 3115.

(b) A reseller that changes its pooling method under this revenue procedure must make the change on a cut-off basis (see section 2.06 of Rev. Proc. 2002-9) and must comply with § 1.472-8(g). Instead of using the earliest taxable year for which the reseller adopted the LIFO method for any items in a pool, the reseller must use the year of change as the base year when

determining the LIFO value of that pool for the year of change and subsequent taxable years (*i.e.*, the cumulative index at the beginning of the year of change will be 1.00). The reseller must restate the base-year cost of all layers of increment in a pool at the beginning of the year of change in terms of new base-year cost. For an example of establishing a new base year, see § 1.472-8(e)(3)(iv)(B)(I)(ii).

.02 *Method of Pooling for Crossover Vehicles under Rev. Proc. 97-36 and Rev. Proc. 2001-23.*

(1) *Description.* A reseller of cars and light duty trucks that uses the Alternative LIFO Method under Rev. Proc. 97-36 or the Used Vehicle Alternative LIFO Method under Rev. Proc. 2001-23 and that maintains separate new car and new truck pools or separate used car and used truck pools, or both, (in lieu of the Vehicle Pool Method described in section 4.01(1) of this revenue procedure) must assign new crossover vehicles to either the new car pool or the new truck pool, whichever is more reasonable under all the facts and circumstances, and must assign used crossover vehicles to either the used car pool or the used truck pool, whichever is more reasonable under all the facts and circumstances.

(2) *Change to the method of pooling for crossover vehicles under Rev. Proc. 97-36 and Rev. Proc. 2001-23.* A reseller within the scope of this revenue procedure that wants to change to the method of pooling for crossover vehicles under Rev. Proc. 97-36 and Rev. Proc. 2001-23, as provided in section 4.02(1) of this revenue procedure, must use the provisions of Rev. Proc. 97-27, 1997-1 C.B. 680, as modified and amplified by Rev. Proc. 2002-19,

2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and as modified by Rev. Proc. 2007-67, 2007-48 I.R.B 1072.

SECTION 5. AUDIT PROTECTION

A reseller's use of the Vehicle-Pool Method in accordance with section 4.01(1) of this revenue procedure on a federal income tax return filed before March 7, 2008, will not be raised as an issue by the Service. In addition, if a reseller's use of the Vehicle-Pool Method in accordance with section 4.01(1) of this revenue procedure on a federal income tax return filed before March 7, 2008, is an issue under consideration in an examination, in an appeals office, or before the Tax Court, the issue will not be further pursued by the Service. However, the audit protection granted by this section 5 extends only to the question of whether the reseller has established the appropriate number of pools under § 1.472-8(c)(1). Thus, this section 5 does not prohibit the Service from raising or pursuing other inventory-related issues in an examination, in an appeals office, and before the Tax Court.

SECTION 6. EFFECT ON OTHER DOCUMENTS

.01. *Changes to Rev. Proc. 97-36.*

(1) Rev. Proc. 97-36 is modified to permit an automobile dealer to establish a New Vehicle pool for inventories of new cars, new crossover vehicles, and new light-duty trucks.

(2) Rev. Proc. 97-36 is modified to require an automobile dealer that maintains separate new car and new truck pools un-

der section 4.02(1) of Rev. Proc. 97-36 to assign new crossover vehicles to either the new car pool or the new truck pool, whichever is more reasonable under all the facts and circumstances.

.02. *Changes to Rev. Proc. 2001-23.*

(1) Rev. Proc. 2001-23 is modified to permit a used vehicle dealer to establish a Used Vehicle pool for inventories of used cars, used crossover vehicles, and used light-duty trucks.

(2) Section 4.02(3) of Rev. Proc. 2001-23 is modified to require a used vehicle dealer that maintains separate used car and used truck pools to assign used crossover vehicles to either the used car pool or the used truck pool, whichever is more reasonable under all the facts and circumstances.

SECTION 7. EFFECTIVE DATE

In general, this revenue procedure is effective for taxable years ending on or after December 31, 2007. However, sections 4.02, 6.01(2) and 6.02(2) of this revenue procedure are effective for taxable years ending on or after March 7, 2008.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Leo F. Nolan II of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Leo F. Nolan II at (202) 622-4970 (not a toll-free call).

Part IV. Items of General Interest

Voluntary Compliance Initiative Covering Policies of Insurance and Reinsurance Issued by Foreign Insurers and Foreign Reinsurers

Announcement 2008–18

Section 1. Overview and Purpose of the Voluntary Compliance Initiative.

This announcement describes a voluntary compliance initiative by the Internal Revenue Service (IRS) regarding the foreign insurance excise tax. The purpose of this voluntary compliance initiative is to encourage foreign insurers, reinsurers, and other agents, solicitors and brokers to comply with their obligations under section 4371 through 4374 of the Internal Revenue Code (the Code), and in particular, with their obligations described in Revenue Ruling 2008–15, 2008–12 I.R.B. 633.

Revenue Ruling 2008–15 generally clarifies the foreign insurance excise tax consequences under section 4371 *et seq.* of the Code with respect to premiums paid by one foreign insurer or reinsurer to another, including the consequences where the first-mentioned foreign insurer or reinsurer qualifies for an exemption from the foreign insurance excise tax under an income tax treaty with the United States and the second foreign insurer or reinsurer does not qualify for such an exemption.

In order to ensure that all participants in the industry are aware of these tax consequences and their associated reporting and record-keeping obligations, and have a reasonable period of time to come into compliance with them, the IRS is announcing herein that, unless otherwise noted, it will not examine issues arising under the situations set forth in Rev. Rul. 2008–15 in respect of reinsurance premiums paid by one foreign insurer or reinsurer to another prior to October 1, 2008, the first day of the quarterly excise tax period beginning six months after this announcement is published in the Internal Revenue Bulletin. The specific terms of this voluntary compliance initiative are as follows.

Section 2. Eligibility for the Voluntary Compliance Initiative.

.01 Eligible Foreign Person. Any foreign insurer or reinsurer, as defined in section 4372(a), or any other foreign person liable for the tax imposed by section 4371 of the Code (“eligible foreign person”), is eligible to participate if such person has failed to file timely one or more Form 720 returns (*Quarterly Federal Excise Tax Return*) and pay or remit any foreign insurance excise taxes due with respect to premiums paid or received during any quarterly tax period ending prior to October 1, 2008. An eligible foreign person also includes any foreign insurer or reinsurer that has failed to satisfy the treaty-based return disclosure requirements of Treas. Reg. § 301.6114–1(c)(viii), if applicable, with respect to claiming an exemption from foreign insurance excise tax under a U.S. income tax treaty during any such period.

.02 Ineligible Failures to File. Notwithstanding that a foreign insurer or reinsurer is an eligible foreign person, certain failures by that person to file a Form 720 return and pay excise tax will not fall within the scope of the initiative. Accordingly, such failures to file and pay occurring during any quarterly tax period ending prior to October 1, 2008, will not be protected from examination as described in Section 5 below, regardless of whether the foreign insurer or reinsurer is a participating taxpayer, as described in Section 3 below, in this voluntary compliance initiative. The failures to file that are not covered by this initiative include:

a. In the case of a foreign insurer or reinsurer that has entered into a closing agreement with the IRS based on Appendix A of Rev. Proc. 2003–78, 2003–2 C.B. 1029, or any predecessor revenue procedure, any failure to pay foreign insurance excise tax with respect to premiums received on policies issued by that foreign insurer or reinsurer that do not qualify for an exemption from tax under the income tax treaty with the country in which it is resident because that foreign insurer or reinsurer has reinsured, in whole or in part, a policy of reinsurance with a foreign reinsurer not entitled to an exemption from tax under that treaty or any other treaty; and

b. In the case of a foreign insurer or reinsurer that has entered into a closing agreement with the IRS based on Appendix B of Rev. Proc. 2003–78, 2003–2 C.B. 1029, any failure to pay foreign insurance excise tax with respect to premiums received on policies issued by that foreign insurer or reinsurer where, as part of a conduit arrangement, the foreign insurer or reinsurer reinsures, in whole or in part, a policy of insurance or reinsurance with any person not entitled to an exemption from tax under that treaty or any other treaty.

Section 3. Participation Requirements.

.01 Participating Taxpayers. A participating taxpayer under this voluntary compliance initiative is any eligible foreign person that timely files the applicable Form 720 return or returns and pays any foreign insurance excise taxes due with respect to premiums paid or received on or after October 1, 2008, or, if applicable, who timely discloses in accordance with section 6114 of the Code its treaty-based return position that it is entitled to an exemption under an income tax treaty with the United States with respect to such premiums. If a participating taxpayer does not make any premium payment for policies of reinsurance covering contracts described in section 4371 of the Code during the quarterly tax period beginning on October 1, 2008, and is not otherwise obligated to file a Form 720 return to disclose a treaty-based return position, it may still participate in this compliance initiative if it timely files a blank Form 720 return with the notation described in Section 4 below.

.02 Recordkeeping Requirements. A taxpayer will not be considered a participating taxpayer, however, if it does not also comply with the record-keeping requirements in Treas. Reg. § 46.4371–4 with respect to premiums paid or received on or after October 1, 2008, which includes maintaining the appropriate records “for at least 3 years from the date any part of the tax became due or the date any part of the tax is paid, whichever is later, in such manner as to be readily accessible to authorized internal revenue officers or employees”.

.03 Determination of Date of Receipt. For purposes of determining whether for-

foreign insurance excise taxes are due with respect to premiums received by a foreign insurer or reinsurer, a premium will be treated as received on or after October 1, 2008, if the date on which the liability for the foreign insurance excise tax attaches, within the meaning of Treas. Reg. §46.4374-1(b), occurs on or after October 1, 2008. For example, if an insured pays to a participating taxpayer, prior to October 1, 2008, a premium on a covered policy that is exempt from foreign insurance excise tax under section 4371 of the Code by reason of an income tax treaty, and the participating taxpayer makes a premium payment reinsuring the risk covered by such policy with a person not entitled to the benefits of an income tax treaty on or after October 1, 2008, liability for the foreign insurance excise tax with respect to the premium paid to the participating taxpayer will generally attach as of the date that the second premium is paid by the participating taxpayer, and will, therefore, be treated as received by the participating taxpayer on or after October 1, 2008.

Section 4. Notification Procedures for Participating Taxpayers.

A participating taxpayer under this voluntary compliance initiative must file its Form 720 return described in Section 3 above with the Cincinnati Service Center at the following address:

Department of Treasury
Internal Revenue Service Center
Cincinnati, OH 45999-0009

In addition to filing its Form 720 return with the Cincinnati Service Center, a participating taxpayer must also notify the IRS of its election to participate by including a notation, as described below, on the Form 720 return.

A participating taxpayer must notate in red print at the top of the Form 720 return the following statement:

Election to participate in FET Voluntary Compliance Initiative pursuant to Announcement 2008-18.

Section 5. Terms for Participating Taxpayers.

Except as provided in Section 2.02, the IRS agrees not to examine any participating taxpayer (whether a foreign insurer, reinsurer, agent, solicitor or broker) with respect to tax liabilities arising under the four situations set forth in Rev. Rul. 2008-15, or any similar fact pattern, to the extent that premiums are paid or received by the participating taxpayer during any quarterly tax period prior to October 1, 2008.

Section 6. Non-participating Taxpayers.

A non-participating taxpayer under this voluntary compliance initiative is defined

as an eligible foreign person who is not a participating taxpayer.

The IRS may: (a) conduct examinations of a non-participating taxpayer covering *any and all* excise taxes due under section 4371 of the Code for any open tax periods, including tax periods beginning prior to October 1, 2008; and, (b) determine and assess the correct excise taxes due under section 4371 of the Code, including interest, additions to tax, and, if applicable, penalties under section 6712 of the Code for failure to disclose a treaty-based return position under section 6114 of the Code and the regulations thereunder, and penalties under section 7270 of the Code for failure to comply with section 4374 of the Code.

Section 7. Contact Information.

Various personnel from the Office of Large and Mid-Sized Business Unit, the Office of Small Business/Self Employed Business Unit, and the Office of the Associate Chief Counsel (International), participated in drafting this announcement. For further information regarding this announcement, contact Charles E. Jenkins with the Office of Large and Mid-Sized Business Unit (Pre-Filing and Technical Guidance) via e-mail at charles.e.jenkins@irs.gov, or Jody Angelo with the Office of Small Business/Self Employed Business Unit (Excise Policy) via e-mail at jody.j.angelo@irs.gov.

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 2008–1 through 2008–12

Announcements:

2008-1, 2008-1 I.R.B. 246
2008-2, 2008-3 I.R.B. 307
2008-3, 2008-2 I.R.B. 269
2008-4, 2008-2 I.R.B. 269
2008-5, 2008-4 I.R.B. 333
2008-6, 2008-5 I.R.B. 378
2008-7, 2008-5 I.R.B. 379
2008-8, 2008-6 I.R.B. 403
2008-9, 2008-7 I.R.B. 444
2008-10, 2008-7 I.R.B. 445
2008-11, 2008-7 I.R.B. 445
2008-12, 2008-7 I.R.B. 446
2008-13, 2008-8 I.R.B. 480
2008-14, 2008-8 I.R.B. 481
2008-15, 2008-9 I.R.B. 511
2008-16, 2008-9 I.R.B. 511
2008-17, 2008-9 I.R.B. 512
2008-18, 2008-12 I.R.B. 667
2008-19, 2008-11 I.R.B. 624
2008-20, 2008-11 I.R.B. 625

Notices:

2008-1, 2008-2 I.R.B. 251
2008-2, 2008-2 I.R.B. 252
2008-3, 2008-2 I.R.B. 253
2008-4, 2008-2 I.R.B. 253
2008-5, 2008-2 I.R.B. 256
2008-6, 2008-3 I.R.B. 275
2008-7, 2008-3 I.R.B. 276
2008-8, 2008-3 I.R.B. 276
2008-9, 2008-3 I.R.B. 277
2008-10, 2008-3 I.R.B. 277
2008-11, 2008-3 I.R.B. 279
2008-12, 2008-3 I.R.B. 280
2008-13, 2008-3 I.R.B. 282
2008-14, 2008-4 I.R.B. 310
2008-15, 2008-4 I.R.B. 313
2008-16, 2008-4 I.R.B. 315
2008-17, 2008-4 I.R.B. 316
2008-18, 2008-5 I.R.B. 363
2008-19, 2008-5 I.R.B. 366
2008-20, 2008-6 I.R.B. 406
2008-21, 2008-7 I.R.B. 431
2008-22, 2008-8 I.R.B. 465
2008-23, 2008-7 I.R.B. 433
2008-24, 2008-8 I.R.B. 466
2008-25, 2008-9 I.R.B. 484
2008-26, 2008-9 I.R.B. 487
2008-27, 2008-10 I.R.B. 543
2008-28, 2008-10 I.R.B. 546
2008-29, 2008-12 I.R.B. 637

Notices— Continued:

2008-30, 2008-12 I.R.B. 638
2008-31, 2008-11 I.R.B. 592
2008-32, 2008-11 I.R.B. 593
2008-33, 2008-12 I.R.B. 642
2008-34, 2008-12 I.R.B. 645
2008-35, 2008-12 I.R.B. 647
2008-36, 2008-12 I.R.B. 650
2008-37, 2008-12 I.R.B. 654

Proposed Regulations:

REG-147290-05, 2008-10 I.R.B. 576
REG-104713-07, 2008-6 I.R.B. 409
REG-104946-07, 2008-11 I.R.B. 596
REG-111583-07, 2008-4 I.R.B. 319
REG-114126-07, 2008-6 I.R.B. 410
REG-136701-07, 2008-11 I.R.B. 616
REG-139236-07, 2008-9 I.R.B. 491
REG-141399-07, 2008-8 I.R.B. 470
REG-147832-07, 2008-8 I.R.B. 472
REG-149475-07, 2008-9 I.R.B. 510

Revenue Procedures:

2008-1, 2008-1 I.R.B. 1
2008-2, 2008-1 I.R.B. 90
2008-3, 2008-1 I.R.B. 110
2008-4, 2008-1 I.R.B. 121
2008-5, 2008-1 I.R.B. 164
2008-6, 2008-1 I.R.B. 192
2008-7, 2008-1 I.R.B. 229
2008-8, 2008-1 I.R.B. 233
2008-9, 2008-2 I.R.B. 258
2008-10, 2008-3 I.R.B. 290
2008-11, 2008-3 I.R.B. 301
2008-12, 2008-5 I.R.B. 368
2008-13, 2008-6 I.R.B. 407
2008-14, 2008-7 I.R.B. 435
2008-15, 2008-9 I.R.B. 489
2008-16, 2008-10 I.R.B. 547
2008-17, 2008-10 I.R.B. 549
2008-18, 2008-10 I.R.B. 573
2008-19, 2008-11 I.R.B. 594
2008-21, 2008-12 I.R.B. 657
2008-22, 2008-12 I.R.B. 658
2008-23, 2008-12 I.R.B. 664

Revenue Rulings:

2008-1, 2008-2 I.R.B. 248
2008-2, 2008-2 I.R.B. 247
2008-3, 2008-2 I.R.B. 249
2008-4, 2008-3 I.R.B. 272
2008-5, 2008-3 I.R.B. 271
2008-6, 2008-3 I.R.B. 271
2008-7, 2008-7 I.R.B. 419
2008-8, 2008-5 I.R.B. 340
2008-9, 2008-5 I.R.B. 342

Revenue Rulings— Continued:

2008-11, 2008-10 I.R.B. 541
2008-12, 2008-10 I.R.B. 520
2008-13, 2008-10 I.R.B. 518
2008-14, 2008-11 I.R.B. 578
2008-15, 2008-12 I.R.B. 633
2008-16, 2008-11 I.R.B. 585
2008-17, 2008-12 I.R.B. 626

Tax Conventions:

2008-8, 2008-6 I.R.B. 403

Treasury Decisions:

9368, 2008-6 I.R.B. 382
9369, 2008-6 I.R.B. 394
9370, 2008-7 I.R.B. 428
9371, 2008-8 I.R.B. 447
9372, 2008-8 I.R.B. 462
9373, 2008-8 I.R.B. 463
9374, 2008-10 I.R.B. 521
9375, 2008-5 I.R.B. 344
9376, 2008-11 I.R.B. 587
9377, 2008-11 I.R.B. 578
9382, 2008-9 I.R.B. 482

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2007–27 through 2007–52 is in Internal Revenue Bulletin 2007–52, dated December 26, 2007.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2008–1 through 2008–12

Announcements:

2006-88

Clarified and superseded by
Notice 2008-35, 2008-12 I.R.B. 647
Notice 2008-36, 2008-12 I.R.B. 650

2008-6

Superseded by
Ann. 2008-19, 2008-11 I.R.B. 624

Notices:

2001-16

Modified by
Notice 2008-20, 2008-6 I.R.B. 406

2001-60

Modified and superseded by
Notice 2008-31, 2008-11 I.R.B. 592

2006-27

Clarified and superseded by
Notice 2008-35, 2008-12 I.R.B. 647

2006-28

Clarified and superseded by
Notice 2008-36, 2008-12 I.R.B. 650

2006-77

Clarified and amplified by
Notice 2008-25, 2008-9 I.R.B. 484

2006-107

Modified by
Notice 2008-7, 2008-3 I.R.B. 276

2007-30

Modified and superseded by
Notice 2008-14, 2008-4 I.R.B. 310

2007-54

Clarified by
Notice 2008-11, 2008-3 I.R.B. 279

Proposed Regulations:

REG-209020-86

Corrected by
Ann. 2008-11, 2008-7 I.R.B. 445

REG-113891-07

Hearing scheduled by
Ann. 2008-4, 2008-2 I.R.B. 269

Revenue Procedures:

97-36

Modified by
Rev. Proc. 2008-23, 2008-12 I.R.B. 664

Revenue Procedures— Continued:

2001-23

Modified by
Rev. Proc. 2008-23, 2008-12 I.R.B. 664

2002-9

Modified by
Rev. Proc. 2008-18, 2008-10 I.R.B. 573

2007-1

Superseded by
Rev. Proc. 2008-1, 2008-1 I.R.B. 1

2007-2

Superseded by
Rev. Proc. 2008-2, 2008-1 I.R.B. 90

2007-3

Superseded by
Rev. Proc. 2008-3, 2008-1 I.R.B. 110

2007-4

Superseded by
Rev. Proc. 2008-4, 2008-1 I.R.B. 121

2007-5

Superseded by
Rev. Proc. 2008-5, 2008-1 I.R.B. 164

2007-6

Superseded by
Rev. Proc. 2008-6, 2008-1 I.R.B. 192

2007-7

Superseded by
Rev. Proc. 2008-7, 2008-1 I.R.B. 229

2007-8

Superseded by
Rev. Proc. 2008-8, 2008-1 I.R.B. 233

2007-26

Obsoleted in part by
Rev. Proc. 2008-17, 2008-10 I.R.B. 549

2007-31

Obsoleted in part by
Rev. Proc. 2008-19, 2008-11 I.R.B. 594

2007-39

Superseded by
Rev. Proc. 2008-3, 2008-1 I.R.B. 110

2007-52

Superseded by
Rev. Proc. 2008-9, 2008-2 I.R.B. 258

2008-13

Corrected by
Ann. 2008-15, 2008-9 I.R.B. 511

Revenue Rulings:

58-612

Clarified and amplified by
Rev. Rul. 2008-15, 2008-12 I.R.B. 633

Revenue Rulings— Continued:

89-42

Modified and superseded by
Rev. Rul. 2008-17, 2008-12 I.R.B. 626

97-31

Modified and superseded by
Rev. Rul. 2008-17, 2008-12 I.R.B. 626

2001-48

Modified and superseded by
Rev. Rul. 2008-17, 2008-12 I.R.B. 626

2007-4

Supplemented and superseded by
Rev. Rul. 2008-3, 2008-2 I.R.B. 249

Treasury Decisions:

9362

Corrected by
Ann. 2008-9, 2008-7 I.R.B. 444
Ann. 2008-12, 2008-7 I.R.B. 446

9363

Corrected by
Ann. 2008-10, 2008-7 I.R.B. 445

9375

Corrected by
Ann. 2008-16, 2008-9 I.R.B. 511

¹ A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2007–27 through 2007–52 is in Internal Revenue Bulletin 2007–52, dated December 26, 2007.



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| | 049-004-02470-5 | Cum. Bulletin 2002-2 (Jul-Dec) | 28.80 | |
| | 049-004-02466-1 | Cum. Bulletin 2002-3 | 54.00 | |
| | 049-004-02463-7 | Cum. Bulletin 2004-2 (July-Dec) | 54.00 | |
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