

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. 2009-16, page 1058.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for June 2009.

T.D. 9451, page 1060.

Final regulations under section 1563 of the Code provide guidance to taxpayers for determining which corporations are included in a controlled group of corporations.

Notice 2009-46, page 1068.

This notice requests comments regarding several proposals to simplify the procedures under which employers substantiate an employee's business use of employer-provided cellular telephones or other similar telecommunications equipment, and requests suggestions for alternative approaches to simplify those procedures.

EXEMPT ORGANIZATIONS

Announcement 2009-47, page 1071.

The IRS has revoked its determination that Custom Mortgage Foundation of Eagle, ID; Home Ownership Provided to Everyone, Inc., of Ontario, CA; Jolene Kennedy Ministries, Inc., of Fresno, CA; and United American Housing & Education Foundation of Houston, TX, qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Code.

Announcement 2009-48, page 1071.

A list is provided of organizations now classified as private foundations.

Finding Lists begin on page ii.



The IRS Mission

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

the tax law with integrity and fairness to all.

Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

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

Part II.—Treaties and Tax Legislation.

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

Part III.—Administrative, Procedural, and Miscellaneous.

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

Part IV.—Items of General Interest.

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

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

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

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

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

The adjusted applicable federal long-term rate is set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of

sections 382, 642, 1274, 1288, and other sections of the Code, tables set forth the rates for June 2009.

Rev. Rul. 2009-16

This revenue ruling provides various prescribed rates for federal income tax purposes for June 2009 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(1) for buildings placed in service during the current month. However, under section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2009-16 TABLE 1
Applicable Federal Rates (AFR) for June 2009

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.75%	.75%	.75%	.75%
110% AFR	.83%	.83%	.83%	.83%
120% AFR	.90%	.90%	.90%	.90%
130% AFR	.98%	.98%	.98%	.98%
<i>Mid-term</i>				
AFR	2.25%	2.24%	2.23%	2.23%
110% AFR	2.48%	2.46%	2.45%	2.45%
120% AFR	2.71%	2.69%	2.68%	2.68%
130% AFR	2.93%	2.91%	2.90%	2.89%
150% AFR	3.39%	3.36%	3.35%	3.34%
175% AFR	3.96%	3.92%	3.90%	3.89%
<i>Long-term</i>				
AFR	3.88%	3.84%	3.82%	3.81%
110% AFR	4.26%	4.22%	4.20%	4.18%
120% AFR	4.66%	4.61%	4.58%	4.57%
130% AFR	5.05%	4.99%	4.96%	4.94%

REV. RUL. 2009-16 TABLE 2
Adjusted AFR for June 2009

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.75%	.75%	.75%	.75%
Mid-term adjusted AFR	2.05%	2.04%	2.03%	2.03%
Long-term adjusted AFR	4.28%	4.24%	4.22%	4.20%

REV. RUL. 2009-16 TABLE 3
Rates Under Section 382 for June 2009

Adjusted federal long-term rate for the current month	4.28%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	4.61%

REV. RUL. 2009-16 TABLE 4
Appropriate Percentages Under Section 42(b)(1) for June 2009

Note: Under Section 42(b)(2), the applicable percentage for non-federally subsidized new buildings placed in service after July 30, 2008, and before December 31, 2013, shall not be less than 9%.

Appropriate percentage for the 70% present value low-income housing credit	7.71%
Appropriate percentage for the 30% present value low-income housing credit	3.30%

REV. RUL. 2009-16 TABLE 5

Rate Under Section 7520 for June 2009

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

2.8%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 1563.—Definitions and Special Rules

26 CFR 1.1563-1: *Definitions of controlled group of corporations and component members and related concepts.*

T.D. 9451

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Guidance Necessary to Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulation.

SUMMARY: This document contains a final regulation that provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations. This regulation is being published to replace an expiring temporary regulation.

DATES: *Effective Date:* This regulation is effective on May 27, 2009.

Applicability Date: Section 1.1563-1T(c)(2)(i)-(iii) expired on May 26, 2009, pursuant to section 7805(e)(2) and §1.1563-1T(e)(2). In accordance

with section 7805(b)(1)(B), this regulation applies to taxable years beginning on or after May 26, 2009. However, taxpayers may apply this regulation to taxable years beginning before May 26, 2009. See §1.1563-1(e).

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

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-2019.

This collection of information is in §1.1563-1(c)(2). This information is required if a taxpayer or taxpayers could be a member of more than one brother-sister controlled group and does not elect which group to be a member of. In that case, the IRS would designate a group.

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

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

Background and Explanation of Provisions

On December 22, 2006, the IRS and the Treasury Department published several temporary regulations, including §1.1563-1T. See T.D. 9304 (71 FR 76904), 2007-1 C.B. 423. Also on December 22, 2006, the IRS and the Treasury

Department issued a notice of proposed rulemaking cross-referencing those temporary regulations. See REG-161919-05 (71 FR 76955), 2007-1 C.B. 463. Section 1.1563-1T was also amended by the publication of a temporary regulation on December 26, 2007. See T.D. 9369 (72 FR 72929), 2008-6 I.R.B. 394. Also on December 26, 2007, the IRS and Treasury Department issued a notice of proposed rulemaking cross-referencing that temporary regulation. See REG-104713-07 (72 FR 72970), 2008-6 I.R.B. 409.

Section 1.1563-1T republished §1.1563-1 to conform it to current formatting conventions. It was not intended that any such reformatting constitute a substantive change. See §3.A of the preamble to T.D. 9304. Treasury decision 9304 also removed §1.1563-1. Section 1.1563-1T provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations.

This Treasury decision adopts the proposed regulation §1.1563-1 with no substantive changes. In addition, this Treasury decision removes the corresponding temporary regulation, §1.1563-1T.

This Treasury decision does not adopt the other proposed regulations that were published as part of T.D. 9304. Those proposed regulations are now found in REG-113688-09, and their status will be addressed at a later date.

The IRS and the Treasury Department received no written or electronic comments from the public in response to the notice of proposed rulemaking and no public hearing was requested or held.

Special Analysis

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

Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation primarily affects large corporations (which are members of either controlled or consolidated groups). Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

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

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Adoption of Amendments to the Regulation

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §1.1563-1T to read in part as follows:

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

Par. 2. Section 1.1563-1 is added to read as follows:

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

(a) *Controlled group of corporations*—(1) *In general*—(i) *Types of controlled groups.* For purposes of sections 1561 through 1563, the term *controlled group of corporations* means any group of corporations which is—

(A) A *parent-subsidiary controlled group* (as defined in paragraph (a)(2) of this section);

(B) A *brother-sister controlled group* (as defined in paragraph (a)(3)(i) of this section);

(C) A *combined group* (as defined in paragraph (a)(4) of this section); or

(D) A *life insurance controlled group* (as defined in paragraph (a)(5) of this section).

(ii) *Cross reference.* For the exclusion of certain stock for purposes of applying the definitions contained in this paragraph, see section 1563(c) and §1.1563-2.

(2) *Parent-subsidiary controlled group*—(i) *Definition.* The term *parent-subsidiary controlled group* means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (directly and with the application of §1.1563-3(b)(1), relating to options) by one or more of the other corporations; and

(B) The common parent corporation owns (directly and with the application of §1.1563-3(b)(1), relating to options) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(ii) *Examples.* The definition of a parent-subsidiary controlled group of corporations may be illustrated by the following examples:

Example 1. P Corporation owns stock possessing 80 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

Example 2. Assume the same facts as in *Example 1.* Assume further that S owns stock possessing 80 percent of the total value of shares of all classes of stock of X Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and X. The result would be the same if P, rather than S, owned the X stock.

Example 3. P Corporation owns 80 percent of the only class of stock of S Corporation and S, in turn, owns 40 percent of the only class of stock of X Corporation. P also owns 80 percent of the only class of stock of Y Corporation and Y, in turn, owns 40 percent of the only class of stock of X. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, X, and Y.

Example 4. P Corporation owns 75 percent of the only class of stock of Y and Z Corporations; Y owns all the remaining stock of Z; and Z owns all the remaining stock of Y. Since intercompany stockholdings are excluded (that is, are not treated

as outstanding) for purposes of determining whether P owns stock possessing at least 80 percent of the voting power or value of at least one of the other corporations, P is treated as the owner of stock possessing 100 percent of the voting power and value of Y and of Z for purposes of paragraph (a)(2)(i)(B) of this section. Also, stock possessing 100 percent of the voting power and value of Y and Z is owned by the other corporations in the group within the meaning of paragraph (a)(2)(i)(A) of this section. (P and Y together own stock possessing 100 percent of the voting power and value of Z, and P and Z together own stock possessing 100 percent of the voting power and value of Y.) Therefore, P is the common parent of a parent-subsidiary controlled group of corporations consisting of member corporations P, Y, and Z.

(3) *Brother-sister controlled group*—(i) *Definition.* The term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in §1.1563-3(b)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(ii) *Additional stock ownership requirement for purposes of certain other provisions of law.* For purposes of any provision of law (other than sections 1561 through 1563) that incorporates the section 1563(a) definition of a controlled group, the term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in §1.1563-3(b)) stock possessing—

(A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each corporation (the 80 percent requirement);

(B) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation (the more-than-50

percent identical ownership requirement); and

(C) The five or fewer persons whose stock ownership is considered for purposes of the 80 percent requirement must be the same persons whose stock own-

ership is considered for purposes of the more-than-50 percent identical ownership requirement.

(iii) *Examples.* The principles of paragraph (a)(3)(ii) of this section may be illustrated by the following examples:

Example 1. (i) The outstanding stock of corporations P, W, X, Y, and Z, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	P (%)	W (%)	X (%)	Y (%)	Z (%)	Identical Ownership
A	55	51	55	55	55	51
B	45	49				(45% in P and W)
C			45			
D				45		
E					45	
Total	100	100	100	100	100	

(ii) Corporations P and W are members of a brother-sister controlled group of corporations. Although the more-than-50 percent identical ownership requirement is met for all 5 corporations, corporations X, Y, and Z are not members because at least

80 percent of the stock of each of those corporations is not owned by the same 5 or fewer persons whose stock ownership is considered for purposes of the more-than-50 percent identical ownership requirement.

Example 2. (i) The outstanding stock of corporations X and Y, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations	
	X (%)	Y (%)
A	12	12
B	12	12
C	12	12
D	12	12
E	13	13
F	13	13
G	13	13
H	13	13
Total	100	100

(ii) Any group of five of the shareholders will own more than 50 percent of the stock in each corporation, in identical holdings. However, X and Y are not members of a brother-sister controlled group because

at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

Example 3. (i) Corporation X and Y each have two classes of stock outstanding, voting common and non-voting common. (None of this stock is excluded

from the definition of stock under section 1563(c).) Unrelated individuals A and B own the following percentages of the class of stock entitled to vote (voting) and of the total value of shares of all classes of stock (value) in each of corporations X and Y:

Individuals	Corporations	
	X	Y
A	100% voting; 60% value	75% voting; 60% value
B	0% voting; 10% value	25% voting; 10% value

(ii) No other shareholder of X owns (or is considered to own) any stock in Y. X and Y are a brother-sister controlled group of corporations. The group meets the more-than-50 percent identical ownership requirement because A and B own more than 50 percent of the total value of shares of all classes of stock of X and Y in identical holdings. (The group also meets the more-than-50 percent identical ownership requirement because of A's voting stock ownership.) The group meets the 80 percent requirement because

A and B own at least 80 percent of the total combined voting power of all classes of stock entitled to vote.

Example 4. Assume the same facts as in *Example 3* except that the value of the stock owned by A and B is not more than 50 percent of the total value of shares of all classes of stock of each corporation in identical holdings. X and Y are not a brother-sister controlled group of corporations. The group meets the more-than-50 percent identical ownership requirement because A owns more than 50 percent

of the total combined voting power of the voting stock of each corporation. For purposes of the 80 percent requirement, B's voting stock in Y cannot be combined with A's voting stock in Y since B, who does not own any voting stock in X, is not a person whose ownership is considered for purposes of the more-than-50 percent identical ownership requirement. Because no other shareholder owns stock in both X and Y, these other shareholders' stock ownership is not counted towards meeting either the

more-than-50 percent identical ownership requirement or the 80 percent ownership requirement.

(iv) *Special rule if prior law applies.* Paragraph (a)(3)(ii) of this section, as amended by T.D. 8179, applies to taxable years ending on or after December 31, 1970. See, however, the transitional rule in paragraph (d) of this section.

(4) *Combined group*—(i) *Definition.* The term *combined group* means any group of three or more corporations if—

(A) Each such corporation is a member of either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of corporations; and

(B) At least one of such corporations is the common parent of a parent-subsidiary controlled group and also is a member of a brother-sister controlled group.

(ii) *Examples.* The definition of a combined group of corporations may be illustrated by the following examples:

Example 1. A, an individual, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are members of the same combined group since—

(i) X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations; and

(ii) Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y.

Example 2. Assume the same facts as in *Example 1*, and further assume that corporation X owns 80 percent of the total value of shares of all classes of stock of corporation S. X, Y, Z, and S are members of the same combined group.

(5) *Life insurance controlled group*—(i) *Definition.* The term *life insurance controlled group* means two or more life insurance companies each of which is a member of a controlled group of corporations described in paragraph (a)(2), (a)(3)(i), or (a)(4) of this section and to which §1.1502-47(f)(6) does not apply. Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of a controlled group described in such paragraph (a)(2), (a)(3)(i), or (a)(4) of this section. For purposes of this section, the common parent of the controlled group described in paragraph (a)(2) of this section shall be referred to as the common parent of the life insurance controlled group.

(ii) *Examples.* The following examples illustrate the definition of a *life insurance controlled group*. In these examples, L indicates a life company, another letter indicates a nonlife company and each corporation uses the calendar year as its taxable year:

Example 1. Since January 1, 1999, corporation P has owned all the stock of corporations L₁ and Y, and L₁ has owned all the stock of corporation X. On January 1, 2005, Y acquired all of the stock of corporation L₂. Since L₁ and L₂ are members of a parent-subsidiary controlled group of corporations, such companies are treated as members of a life insurance controlled group separate from the parent-subsidiary controlled group consisting of P, X and Y. For purposes of this section, P is referred to as the common parent of the life insurance controlled group even though P is not a member of such group.

Example 2. The facts are the same as in *Example 1*, except that, beginning with the 2005 tax year, the P affiliated group elected to file a consolidated return and P made a section 1504(c)(2) election. Pursuant to paragraph (a)(5)(i) of this section, L₁ and L₂ are not members of a separate life insurance controlled group. Instead, P, X, Y, L₁ and L₂ constitute one controlled group. See §1.1502-47(f)(6).

(6) *Voting power of stock.* For purposes of this section, and §§1.1563-2 and 1.1563-3, in determining whether the stock owned by a person (or persons) possesses a certain percentage of the total combined voting power of all classes of stock entitled to vote of a corporation, consideration will be given to all the facts and circumstances of each case. A share of stock will generally be considered as possessing the voting power accorded to such share by the corporate charter, by-laws, or share certificate. On the other hand, if there is any agreement, whether express or implied, that a shareholder will not vote his stock in a corporation, the formal voting rights possessed by his stock may be disregarded in determining the percentage of the total combined voting power possessed by the stock owned by other shareholders in the corporation, if the result is that the corporation becomes a component member of a controlled group of corporations. Moreover, if a shareholder agrees to vote his stock in a corporation in the manner specified by another shareholder in the corporation, the voting rights possessed by the stock owned by the first shareholder may be considered to be possessed by the stock owned by such other shareholder if the result is that the corporation becomes a component member of a controlled group of corporations.

(b) *Component members*—(1) *In general*—(i) *Definition.* For purposes of sections 1561 through 1563, a corporation is with respect to its taxable year a component member of a controlled group of corporations for the group's testing date if such corporation—

(A) Is a member of such controlled group on such testing date and is not treated as an excluded member under paragraph (b)(2) of this section; or

(B) Is not a member of such controlled group on such testing date but is treated as an additional member under paragraph (b)(3) of this section.

(ii) *Member of a controlled group of corporations.* For purposes of sections 1561 through 1563, a member of a controlled group is a corporation connected with other member(s) of a controlled group under the stock ownership rules and the stock qualification rules set forth in section 1563. Under these rules, for a corporation to qualify as a component member of the group with respect to a group's December 31st testing date (or the short-year testing date for a short-year member), that corporation does not have to be a member of that group on that group's testing date. In addition, a corporation that is a member of a controlled group on the group's testing date does not necessarily qualify as a component member of that group with respect to that testing date.

(iii) *Additional concepts used in applying the controlled group rules.*

(A) The term *testing date* means the date used for determining the status of controlled group members as either component members or excluded members. That testing date is then also used to determine which taxable years of those component members are to be subjected to the controlled group rules. Generally, a member's testing date is the December 31st date included within that member's taxable year, whether such member is on a calendar or fiscal taxable year. However, if a component member of a controlled group has a short taxable year that does not include a December 31st date, then the last day of that short taxable year becomes that member's testing date.

(B) The term *testing period* means the time period used for determining the status of controlled group members as either component members or excluded members. The testing period begins on the first

day of a member's taxable year and ends on the day before its testing date. (Generally, the testing date is December 31st, but for a component member having a short taxable year not ending on December 31st, the testing date for the short taxable year of that member (and only that member) becomes the last day of that member's short taxable year.) Thus, for a member on a fiscal taxable year, the portion of its taxable year beginning on December 31st and ending on the last day of its taxable year is not taken into account for determining its status as a component member or an excluded member.

(2) *Excluded members*—(i) *Temporal test*. A corporation, which is a member of a controlled group of corporations on the group's testing date, a date included within that member's taxable year, but who was a member of such group for less than one-half of the number of days of its testing period, shall be treated as an excluded member of such group for that group's testing date.

(ii) *Qualification test*. A corporation which is a member of a controlled group of corporations on a testing date shall be treated as an excluded member of such group on such date if, for its taxable year including such date, such corporation is—

(A) Exempt from taxation under section 501(a) (except a corporation which is subject to tax on its unrelated business taxable income under section 511) or 521 for such taxable year;

(B) A foreign corporation not subject to taxation under section 882(a) for the taxable year;

(C) An S corporation (as defined in section 1361) for purposes of any tax benefit item described in section 1561(a) to which it is not subject;

(D) A franchised corporation (as defined in section 1563(f)(4) and §1.1563-4); or

(E) An insurance company subject to taxation under section 801, unless such insurance company (without regard to this paragraph (b)(2)(ii)(E)) is a component member of a life insurance controlled group described in paragraph (a)(5)(i) of this section or unless §1.1502-47(f)(6) applies (which treats a life insurance company, for which a section 1504(c)(2) election is effective, as a member (whether eligible or ineligible) of a life-nonlife affiliated group).

(3) *Additional members*. A corporation shall be treated as an additional member of a controlled group of corporations, that is, an additional component member, on the group's testing date if it—

(i) Is not a member of such group on such date;

(ii) Is not described, with respect to such taxable year, in paragraph (b)(2)(ii)(A), (b)(2)(ii)(B), (b)(2)(ii)(C), (b)(2)(ii)(D), or (b)(2)(ii)(E) of this section; and

(iii) Was a member of such group for one-half (or more) of the number of days in its testing period.

(4) *Examples*. The provisions of this paragraph (b) may be illustrated by the following examples:

Example 1. B, an individual, owns all the stock of corporations W and X on each day of 1964. W and X each use the calendar year as their taxable year. On January 1, 1964, B also owns all the stock of corporation Y (a fiscal year corporation with a taxable year beginning on July 1, 1964, and ending on June 30, 1965), which stock he sells on October 15, 1964. On December 1, 1964, B purchases all the stock of corporation Z (a fiscal year corporation with a taxable year beginning on September 1, 1964, and ending on August 31, 1965). On December 31, 1964, W, X, and Z are members of the same controlled group. However, the component members of the group on such December 31st are W, X, and Y. Under paragraph (b)(2)(i) of this section, Z is treated as an excluded member of the group on December 31, 1964, since Z was a member of the group for less than one-half of the number of days (29 out of 121 days) during the period beginning on September 1, 1964 (the first day of its taxable year) and ending on December 30, 1964. Under paragraph (b)(3) of this section, Y is treated as an additional member of the group on December 31, 1964, since Y was a member of the group for at least one-half of the number of days (107 out of 183 days) during the period beginning on July 1, 1964 (the first day of its taxable year) and ending on December 30, 1964.

Example 2. On January 1, 1964, corporation P owns all the stock of corporation S, which in turn owns all the stock of corporation S-1. On November 1, 1964, P purchases all of the stock of corporation X from the public and sells all of the stock of S to the public. Corporation X owns all the stock of corporation Y during 1964. P, S, S-1, X, and Y file their returns on the basis of the calendar year. On December 31, 1964, P, X, and Y are members of a parent-subsidiary controlled group of corporations; also, corporations S and S-1 are members of a different parent-subsidiary controlled group on such date. However, since X and Y have been members of the parent-subsidiary controlled group of which P is the common parent for less than one-half the number of days during the period January 1 through December 30, 1964, they are not component members of such group on such date. On the other hand, X and Y have been members of a parent-subsidiary controlled group of which X is the common parent for at least one-half the number of days during the period January 1 through December 30, 1964, and

therefore they are component members of such group on December 31, 1964. Also since S and S-1 were members of the parent-subsidiary controlled group of which P is the common parent for at least one-half the number of days in the taxable years of each such corporation during the period January 1 through December 30, 1964, P, S, and S-1 are component members of such group on December 31, 1964.

Example 3. Throughout 1964, corporation M owns all the stock of corporation F which, in turn, owns all the stock of corporations L₁, L₂, X, and Y. M is a domestic mutual insurance company subject to taxation under section 821, F is a foreign corporation not engaged in a trade or business within the United States, L₁ and L₂ are domestic life insurance companies subject to taxation under section 802, and X and Y are domestic corporations subject to tax under section 11 of the Code. Each corporation uses the calendar year as its taxable year. On December 31, 1964, M, F, L₁, L₂, X, and Y are members of a parent-subsidiary controlled group of corporations. However, under paragraph (b)(2)(ii) of this section, M, F, L₁, and L₂ are treated as excluded members of the group on December 31, 1964. Thus, on December 31, 1964, the component members of the parent-subsidiary controlled group of which M is the common parent include only X and Y. Furthermore, since paragraph (b)(2)(ii)(E) of this section does not result in L₁ and L₂ being treated as excluded members of a life insurance controlled group, L₁ and L₂ are component members of a life insurance controlled group on December 31, 1964.

(5) *Application of constructive ownership rules*. For purposes of paragraphs (b)(2)(i) and (b)(3)(iii) of this section, it is necessary to determine whether a corporation was a member of a controlled group of corporations for one-half (or more) of the number of days in its taxable year which precede the December 31st falling within such taxable year. Therefore, the constructive ownership rules contained in §1.1563-3(b) (to the extent applicable in making such determination) must be applied on a day-by-day basis. For example, if P Corporation owns all the stock of X Corporation on each day of 1964, and on December 30, 1964, acquires an option to purchase all the stock of Y Corporation (a calendar-year taxpayer which has been in existence on each day of 1964), the application of §1.1563-3(b)(1) on a day-by-day basis results in Y being a member of the brother-sister controlled group on only one day of Y's 1964 year which precedes December 31, 1964. Accordingly, since Y is not a member of such group for one-half or more of the number of days in its 1964 year preceding December 31, 1964, Y is treated as an excluded member of such group on December 31, 1964.

(c) *Overlapping groups*—(1) *In general*. If on a December 31st a corporation is

a component member of a controlled group of corporations by reason of ownership of stock possessing at least 80 percent of the total value of shares of all classes of stock of the corporation, and if on such December 31st such corporation is also a component member of another controlled group of corporations by reason of ownership of other stock (that is, stock not used to satisfy the at-least-80 percent total value test) possessing at least 80 percent of the total combined voting power of all classes of stock of the corporation entitled to vote, then such corporation shall be treated as a component member only of the controlled group of which it is a component member by reason of the ownership of at least 80 percent of the total value of its shares.

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

(A) A description of each of the controlled groups in which the corporation

could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

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

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

statement and represent in its statement that it has done so. Either the original or a copy of the statement must be retained by each corporation as part of its records. See §1.6001-1(e) of this chapter.

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

(B) In the event no election is filed in accordance with the provisions of this paragraph (c)(2), then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(iv) *Examples*. The provisions of this paragraph (c)(2) may be illustrated by the following examples (in which it is assumed that all the individuals are unrelated):

Example 1. (i) On each day of 1970 all the outstanding stock of corporations X, Y, and Z is held in the following manner:

Individuals	Corporations		
	X (%)	Y (%)	Z (%)
A	55	40	5
B	40	20	40
C	5	40	55

(ii) Since the more-than-50 percent identical ownership requirement of section 1563(a)(2) is met with respect to corporations X and Y and with respect to corporations Y and Z, but not with respect to corporations X, Y, and Z, corporation Y would, without the application of this paragraph (c)(2), be a compo-

nent member on December 31, 1970, of overlapping groups consisting of X and Y and of Y and Z. If Y does not file an election in accordance with paragraph (c)(2)(i) of this section, the Internal Revenue Service will determine the group in which Y is to be included.

Example 2. (i) On each day of 1970, all the outstanding stock of corporations V, W, X, Y, and Z is held in the following manner:

Individuals	Corporations				
	V	W	X	Y	Z
D	52	52	52	52	52
E	40	2	2	2	2
F	2	40	2	2	2
G	2	2	40	2	2
H	2	2	2	40	2
I	2	2	2	2	40

(ii) On December 31, 1970, the more-than-50 percent identical ownership requirement of section 1563(a)(2) may be met with regard to any combination of the corporations but all five corporations cannot be included as component members of a single controlled group because the inclusion of all the corporations in a single group would be dependent upon taking into account the stock ownership of more than five persons. Therefore, if the corporations do not file a statement in accordance with paragraph (c)(2)(ii) of this section, the Internal Revenue Service will determine the group in which each corporation is to be included. The corporations or the Internal Revenue Service, as the case may be, may designate that three corporations be included in one group and two corporations in another, or that any four corporations be included in one group and that the remaining corporation not be included in any group.

(d) *Transitional rules*—(1) *In general.* Treasury decision 8179 amended paragraph (a)(3)(ii) of this section to revise the definition of a brother-sister controlled group of corporations. In general, those amendments are effective for taxable years ending on or after December 31, 1970.

(2) *Limited nonretroactivity*—(i) *Old group.* Under the authority of section 7805(b), the Internal Revenue Service will treat an old group as a brother-sister controlled group corporations for purposes of applying sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Internal Revenue Code (Code) and sections 202, 203, 204, and 302 of the Employment Retirement Income Security Act of 1974 (ERISA) in a plan year or taxable year beginning before March 2, 1988, to the extent necessary to prevent an adverse effect on any old member (or any other corporation), or on any plan or other entity described in such sections (including plans, etc., of corporations not part of such old group), that would result solely from the retroactive effect of the amendment to this section by T.D. 8179. An adverse effect includes the disqualification of a plan or the disallowance of a deduction or credit for a contribution to a plan. The Internal Revenue Service,

however, will not treat an old member as a member of an old group to the extent that such treatment will have an adverse effect on that old member.

(ii) *Old member of old group.* Section 7805(b) will not be applied pursuant to paragraph (d)(2)(i) of this section to treat an old member of an old group as a member of a brother-sister controlled group to prevent an adverse effect for a taxable year if, for that taxable year, that old member treats or has treated itself as not being a member of that old group for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 and Title IV of ERISA for such taxable year (such as by filing, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating itself as not being a member of the old group for purposes of those sections). However, the fact that one or more (but not all) of the old members do not qualify for section 7805(b) treatment because of the preceding sentence will not preclude that old member (or members) from being treated as a member of the old group under paragraph (d)(2)(i) of this section in order to prevent the disallowance of a deduction or credit of another old member (or other corporation) or to prevent the disqualification of, or other adverse effect on, another old member's plan (or other entity) described in the sections of the Code and ERISA enumerated in such paragraph.

(3) *Election of general nonretroactivity.* In the case of a taxable year ending on or after December 31, 1970, and before March 2, 1988, an old group will be treated as a brother-sister controlled group of corporations for all purposes of the Code for such taxable year if—

(i) Each old member files a statement consenting to such treatment for such taxable year with the District Director having audit jurisdiction over its return within six months after March 2, 1988; and

(ii) No old member—

(A) Files or has filed, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating any old member as not a member of the old group; or

(B) Treats the employees of all members of the old group as not being employed by a single employer for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of ERISA for such taxable year.

(4) *Definitions.* For purposes of this paragraph (d)—

(i) An *old group* is a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as in effect before the amendments made by T.D. 8179, that is not a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as amended by such Treasury decision; and

(ii) An *old member* is any corporation that is a member of an old group.

(5) *Election to choose between membership in more than one controlled group*—(i) *In general.* A corporation may make an election under paragraph (c)(2) of this section by filing an amended return on or before September 2, 1988 if—

(A) An old member has filed an election under paragraph (c)(2) of this section to be treated as a component member of an old group for a December 31st before March 2, 1988; and

(B) That corporation would (without regard to such paragraph (c)(2)) be a compo-

ment member of more than one brother-sister controlled group (not including an old group) on the December 31st.

(ii) *Exception.* This paragraph (d)(5) does not apply to a corporation that is treated as a member of an old group under paragraph (d)(3) of this section.

(6) *Refunds.* See section 6511(a) for period of limitation on filing claims for credit or refund.

(e) *Effective/applicability date.* This section applies to taxable years beginning on or after May 26, 2009. However, taxpayers may apply this section to taxable years beginning before May 26, 2009.

For taxable years beginning before May 26, 2009, see §1.1563-1T as contained in 26 CFR part 1 in effect on April 1, 2009.

§1.1563-1T [Removed]

Par. 3. Section 1.1563-1T is removed.

§1.1563-3 [Amended]

Par. 4. Section 1.1563-3(d)(3), *Example 3*, is amended by removing the language “§1.1563-1T” and adding “§1.1563-1” in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority citation for part 602 continues to read as follows:
Authority: 26 U.S.C. 7805.

Par. 6. In §602.101, paragraph (b) is amended as follows:

1. The following entry to the tables is removed:

§602.101 OMB Control Numbers.

* * * * *
(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1563-1T	1545-2019
* * * * *	

2. The following entry is added in numerical order to the table:

<i>§602.101 OMB Control Numbers.</i>	(b) * * *
* * * * *	

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1563-1	1545-2019
* * * * *	

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

Approved May 20, 2009.

Michael F. Mundaca,
Acting Assistant Secretary of the Treasury (Tax Policy).

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of June 2009. See Rev. Rul. 2009-16, page 1058.

(Filed by the Office of the Federal Register on May 26, 2009, 8:45 a.m., and published in the issue of the Federal Register for May 27, 2009, 74 F.R. 25147)

Part III. Administrative, Procedural, and Miscellaneous

Substantiating Business Use of Employer-Provided Cell Phones

Notice 2009-46

PURPOSE

This notice requests comments from the public regarding several proposals to simplify the procedures under which employers substantiate an employee's business use of employer-provided cellular telephones or other similar telecommunications equipment (hereinafter collectively referred to as "cell phones"). This notice describes the proposals under consideration. The Internal Revenue Service (IRS) and Treasury Department are interested in considering other possible approaches. Therefore, this notice also requests suggestions for alternative approaches to simplify the procedures under which employers substantiate an employee's business use of employer-provided cell phones.

Any changes to the substantiation procedures applicable to employer-provided cell phones will not become effective until the IRS and Treasury Department consider public comments and suggestions received in response to this notice and publish guidance announcing any simplified substantiation procedures.

BACKGROUND

Employers

Section 162(a) of the Internal Revenue Code provides that a deduction is allowed for all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. However, § 262(a) provides that, except as otherwise expressly provided, no deduction shall be allowed for personal, living, or family expenses.

Section 274(d)(4) provides that no deduction shall be allowed with respect to any listed property (as defined in § 280F(d)(4)), unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (A) the amount of such expense

or other item, (B) the use of the property, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons using the property. The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense that does not exceed an amount prescribed pursuant to such regulations.

Section 280F(d)(4)(A)(v) provides that "listed property" includes any cellular telephone (or other similar telecommunications equipment).

Section 1.274-5T(a) of the temporary Income Tax Regulations provides that no deduction or credit shall be allowed with respect to any listed property unless the taxpayer substantiates each element of the expenditure or use. Section 1.274-5T(b)(6) provides that the elements to be proved with respect to any listed property are:

(i) *Amount* — (A) The amount of each separate expenditure with respect to an item of listed property, such as the cost of acquisition, and (B) the amount of each business use based on the appropriate measure (that is, time) and the amount of total use of the listed property for the taxable period (see § 1.274-5T(e)(2));

(ii) *Time* — The date of the expenditure or use with respect to the listed property; and

(iii) *Business purpose* — The business purpose for an expenditure or use with respect to any listed property.

Employees

Section 61(a)(1) provides that, except as otherwise provided, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. Section 1.61-21(b)(1) of the Income Tax Regulations requires that an employee generally must include in gross income the amount by which the fair market value of a fringe benefit exceeds the sum of (i) the amount, if any, paid for the benefit by or on behalf of the employee, and (ii) the amount, if any, specifically excluded from gross income by some other section of the Code. The fair market value of a fringe benefit is the amount that an individual would have to pay for the particu-

lar fringe benefit in an arm's length transaction. Section 1.61-21(b)(2). The cost incurred by an employer is not determinative of the fair market value of a fringe benefit. *Id.*

Section 132(a)(3) provides that gross income does not include any fringe benefit that qualifies as a working condition fringe. Section 132(d) provides that "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under § 162 or § 167.

Section 1.132-5(a)(1)(ii) provides that if, under § 274 or any other section of the Code, certain substantiation requirements must be met in order for a deduction under § 162 or § 167 to be allowable, then those substantiation requirements apply in determining whether a property or service is excludable as a working condition fringe. See also § 1.132-5(c)(1). The substantiation requirements of § 274(d) are satisfied by adequate records or sufficient evidence corroborating the employee's own statement. Section 1.132-5(c)(2). Therefore, such records or evidence provided by the employee, and relied upon by the employer to the extent permitted by the regulations promulgated under § 274(d), will be sufficient to substantiate a working condition fringe exclusion. *Id.*

DISCUSSION

If an employer provides a cell phone to an employee, and the employer acquires and pays the costs of using the cell phone, the employee receives a fringe benefit. To the extent that the employee uses the employer's cell phone for business purposes, the fair market value of such usage qualifies as a working condition fringe benefit excludable from the employee's gross income and the cell phone expense is a deductible business expense for the employer, provided that the substantiation requirements of § 274(d) are met. However, to the extent the employee uses the employer's cell phone for personal purposes, the fair market value of such usage is includable in the employee's gross income. The employer's cost to provide the cell phone is not determinative of the fair mar-

ket value of the benefit received by the employee.

PROPOSALS

The IRS and Treasury Department are considering the following proposals to simplify the § 274(d) substantiation requirements applicable to employee usage of employer-provided cell phones.

A. *Simplified Substantiation Methods*

General Requirements

As discussed in greater detail below, the IRS and Treasury Department are considering three alternative methods to simplify the substantiation requirements applicable to employee usage of employer-provided cell phones: a minimal personal use method, a safe harbor substantiation method, and a statistical sampling method (or a combination of the foregoing). Any simplified cell phone substantiation method will be optional; taxpayers may continue to comply with current § 274(d) substantiation requirements.

The IRS and Treasury Department contemplate that any taxpayer who wishes to use a simplified cell phone substantiation method will be required to implement a written policy that requires employees to carry and use the employer-provided cell phones in connection with the employer's trade or business and that prohibits personal use of employer-provided cell phones, except for minimal personal use, similar to the requirements currently applicable to employer-provided automobiles in § 1.274-6T. In addition, the IRS and Treasury Department anticipate requiring that the employer must reasonably believe that the cell phone is not used for personal purposes except for minimal personal use.

1. *Minimal Personal Use Method*

The IRS and Treasury Department are considering two proposals that would allow an employer to deem all of an employee's usage of an employer-provided cell phone as business usage. Under the first proposal, the entire amount of an employee's use of an employer-provided cell phone would be deemed to be for business purposes if the employee can account to his or her employer with sufficient records to establish that the employee maintains

and uses a personal (non-employer-provided) cell phone for personal purposes during the employee's work hours.

Alternatively, the second proposal would define a specified amount or type of "minimal" personal use that would be disregarded in determining the amount of personal use of an employer-provided cell phone. For example, "minimal" could be defined by reference to a particular number of minutes of use or for certain personal purposes.

2. *Safe Harbor Substantiation Method*

The IRS and Treasury Department are considering a safe harbor method under which an employer would treat a certain percentage of each employee's use of an employer-provided cell phone as business usage. The remaining percentage of use would be deemed to be for personal purposes. For this proposal, the IRS and Treasury Department propose a business use percentage of 75 percent.

3. *Statistical Sampling Method*

The IRS and Treasury Department are considering a proposal that would allow employers to use statistical sampling techniques to measure an employee's personal use of an employer-provided cell phone. In general, an employer could use an approved statistical sampling methodology similar to that provided in Rev. Proc. 2004-29, 2004-1 C.B. 918, to determine the percentage of personal use of employer-provided cell phones. The employer would multiply that percentage times the value of each employee's total usage to determine the value of personal usage. The remaining portion of the employee's usage would be deemed to be for business purposes.

B. *Simplified Fair Market Value Determination*

To the extent that an employee's use of an employer-provided cell phone does not qualify as a working condition fringe benefit (because the employer does not satisfy § 274(d) or the cell phone is used partially for personal purposes), the fair market value of an employee's use of the employer-provided cell phone is a taxable fringe benefit that is includable in the employee's gross income. An employer's cost to provide the cell phone is not determinative of the fair market value of an employee's fringe benefit. The IRS and Treas-

ury Department are interested in understanding the methods employers currently use to arrive at the fair market value to an employee of an employer-provided cell phone. The IRS and Treasury Department are considering whether a simplified valuation method would be helpful and appropriate to determine such fair market value.

REQUEST FOR COMMENTS

The IRS and Treasury Department request public comments on the proposals contained in this notice and suggestions for other approaches for modifying and simplifying the substantiation requirements applicable to employee usage of employer-provided cell phones. The IRS and Treasury Department are particularly interested in any comments regarding:

- The specific provisions that should be required to be included in an employer's written policy prohibiting personal use of employer-provided cell phones;
- The types of employee records sufficient to establish that the employee maintains and uses a personal (non-employer-provided) cell phone for purposes of the first proposed minimum personal use method contained in this notice;
- How to define a specified amount or type of "minimal" personal use (*e.g.*, a maximum number of minutes of use or a list of acceptable personal uses) that should be disregarded in determining the amount of personal use of an employer-provided cell phone for purposes of the second proposed minimum personal use method contained in this notice.
- The business use percentage that should be applied in the proposed safe harbor substantiation method contained in this notice and the data and rationale upon which it is based;
- The methods currently used by employers to determine the fair market value of an employee's use of an employer-provided cell phone; and
- Whether a simplified method of determining the fair market value of an employee's use of an employer-provided cell phone would be appropriate, and, if so, suggested simplified methodologies for determining such fair market value.

Comments must be submitted in writing on or before September 4, 2009, and should include a reference to Notice 2009-46. Submissions should be sent to:

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Notice 2009-46), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

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tion. All comments will be available for public inspection and copying.

DRAFTING INFORMATION

The principal author of this notice is Jeffrey T. Rodrick of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Mr. Rodrick at (202) 622-4930 (not a toll-free call).

Part IV. Items of General Interest

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

Announcement 2009-47

The Internal Revenue Service has revoked its determination that the organizations listed below qualify as organizations described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

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

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on June 8, 2009, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Custom Mortgage Foundation
Eagle, ID

Home Ownership Provided to Everyone,
Inc
Ontario, CA
Jolene Kennedy Ministries, Inc
Fresno, CA
United American Housing & Education
Foundation
Houston, TX

Foundations Status of Certain Organizations

Announcement 2009-48

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

APAGA, Inc., La Canada, CA
Backyard, Yorkville, CA
Bible Stores Theatre of Fine and
Performing Arts, Alexandria, VA
Broadway Education Shapes Tomorrow,
Inc., New York, NY
Cancer Connections, Inc., Miramar, FL
Center for Long Term Care Excellence,
Inc., Rochester, NY
Christian-Islamic Forum, Inc.,
Herndon, VA
Christlike Flavor Ministries, Inc.,
Jacksonville, FL
Community Oasis, Inc., New York, NY
Contagious Compassion Foundation,
San Jose, CA
Contaminated Veterans of America,
Albuquerque, NM

Crosby Adult Assistance Living,
Red Oak, TX
Destination College Network, Inc.,
Washington, DC
Dos Health Services, Inc.,
Miami Beach, FL
Eleventh Commandment Foundation,
Ltd., Westport, CT
Energizing Junction City, Inc.,
Junction City, OR
Enterlock, Fairfield, OH
Foundation Dr. Jean Bartoli, Inc.,
Hollywood, FL
Fox Valley Community Foundation,
Oak Park, IL
Friendly Faces, Lithonia, GA
Glorious Productions Films & Specialities,
Inc., Indianapolis, IN
Harvest House Community Development
Corporation, Inc., Mebane, NC
Healing Café Ministries, Inc.,
Los Angeles, CA
Helping Single Parents Achieve,
Richmond, VA
Home Basic One on One, Inc.,
Houston, TX
In His Name for His Glory, Covington, GA
International LOVE Ministries, Inc.,
Douglasville, GA
Jesse Sapolu Foundation, Inc.,
Costa Mesa, CA
Kids Time Management, Inc., Atlanta, GA
Kids W Hope, Las Vegas, NV
Kidz Our Size, Inc., Baltimore, MD
Kupua Storyworks, Inc., Laie, HI
Lean on Me Transportation,
Orchard Hill, GA
Living in His Kingdom International, Inc.,
Atlanta, GA
Malachi Corporation, Highlands, NC
Minority American Counseling
Resources, Inc., Yuba City, CA
Nehantic Tribe & Nation, Inc., Chester, CT
Neighbor to Neighbor Community
Partnership for Nursing Home Care,
Laguna Beach, CA
New Beginning Community Development
Corporation, Covington, GA
New Covenant Development Corporation,
Memphis, TN
Pentecostal Square Community
Development Corporation, Chester, PA
Plantation Economic Development, Inc.,
Sunrise, FL

Quatro Enterprises, Inc. Buena Vista,
Garfield Hts., OH
RayHowell's Kicking Bear Foundation,
Lacrescent, MN
Richmond Addiction News Corp,
Richmond, VA
Sacred Sounds of Heaven, Inc.,
Nogales, AZ
Shekinah, Inc., Byron, GA
Silverton Development, Inc.,
Silverton, OH
They Will Not Depart a Religious Society,
Detroit, MI
United Communities of Nevada,
Las Vegas, NV

United States Minority Golf Foundation,
Elgin, SC
Unity Community Economic
Development Corporation, Detroit, MI
Victory Community Development
Corporation, Minden, LA
Vision on the Youth, Inc.,
Rancho Cucamonga, CA
Voice of Jesus Ministries, Houston, TX

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or

determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

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INTERNAL REVENUE BULLETIN

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