

## **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. 2009-22, page 167.**

**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 August 2009.

#### **REG-130200-08, page 174.**

Proposed regulations under section 280C of the Code concern taxpayers who make the election to claim the reduced research credit under section 41(a). A public hearing is scheduled for November 4, 2009.

#### **Notice 2009-55, page 170.**

This notice provides a list of transactions that have been identified by the Service as “transactions of interest” for purposes of regulations section 1.6011-4(b)(6) and sections 6111 and 6112 of the Code.

#### **Notice 2009-59, page 170.**

This notice provides a list of transactions that have been identified by the Service as “listed transactions” for purposes of regulations section 1.6011-4(b)(2) and sections 6111 and 6112 of the Code. Notice 2004-67 supplemented and superseded.

#### **Notice 2009-59, page 170.**

This notice provides a list of transactions that have been identified by the Service as “listed transactions” for purposes of regulations section 1.6011-4(b)(2) and sections 6111 and 6112 of the Code. Notice 2004-67 supplemented and superseded.

### **ADMINISTRATIVE**

#### **Notice 2009-55, page 170.**

This notice provides a list of transactions that have been identified by the Service as “transactions of interest” for purposes of regulations section 1.6011-4(b)(6) and sections 6111 and 6112 of the Code.

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 August 2009. See Rev. Rul. 2009-22, page 167.

## Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2009. See Rev. Rul. 2009-22, page 167.

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

The adjusted applicable federal long-term rate is set forth for the month of August 2009. See Rev. Rul. 2009-22, page 167.

## Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2009. See Rev. Rul. 2009-22, page 167.

## 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 August 2009. See Rev. Rul. 2009-22, page 167.

## 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 August 2009. See Rev. Rul. 2009-22, page 167.

## 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 August 2009. See Rev. Rul. 2009-22, page 167.

## 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 August 2009. See Rev. Rul. 2009-22, page 167.

## Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of August 2009. See Rev. Rul. 2009-22, page 167.

## 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 August 2009. See Rev. Rul. 2009-22, page 167.

## 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 August 2009. See Rev. Rul. 2009-22, page 167.

## 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 August 2009.

## Rev. Rul. 2009-22

This revenue ruling provides various prescribed rates for federal income tax purposes for August 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 August 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. 2009-22 TABLE 1  
Applicable Federal Rates (AFR) for August 2009

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-term</i>				
AFR	.83%	.83%	.83%	.83%
110% AFR	.91%	.91%	.91%	.91%
120% AFR	1.00%	1.00%	1.00%	1.00%
130% AFR	1.08%	1.08%	1.08%	1.08%
<i>Mid-term</i>				
AFR	2.80%	2.78%	2.77%	2.76%
110% AFR	3.08%	3.06%	3.05%	3.04%
120% AFR	3.37%	3.34%	3.33%	3.32%
130% AFR	3.64%	3.61%	3.59%	3.58%
150% AFR	4.21%	4.17%	4.15%	4.13%
175% AFR	4.93%	4.87%	4.84%	4.82%
<i>Long-term</i>				
AFR	4.26%	4.22%	4.20%	4.18%
110% AFR	4.69%	4.64%	4.61%	4.60%
120% AFR	5.12%	5.06%	5.03%	5.01%
130% AFR	5.57%	5.49%	5.45%	5.43%

REV. RUL. 2009-22 TABLE 2  
Adjusted AFR for August 2009

	<i>Period for Compounding</i>			
	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	.92%	.92%	.92%	.92%
Mid-term adjusted AFR	2.40%	2.39%	2.38%	2.38%
Long-term adjusted AFR	4.48%	4.43%	4.41%	4.39%

REV. RUL. 2009-22 TABLE 3  
Rates Under Section 382 for August 2009

Adjusted federal long-term rate for the current month	4.48%
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.)	4.48%

REV. RUL. 2009-22 TABLE 4  
Appropriate Percentages Under Section 42(b)(1) for August 2009

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

Appropriate percentage for the 70% present value low-income housing credit	7.82%
Appropriate percentage for the 30% present value low-income housing credit	3.35%

REV. RUL. 2009-22 TABLE 5  
Rate Under Section 7520 for August 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 3.4%

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**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 August 2009. See Rev. Rul. 2009-22, page 167.

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**Section 7520.—Valuation  
Tables**

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 2009. See Rev. Rul. 2009-22, page 167.

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**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 August 2009. See Rev. Rul. 2009-22, page 167.

# Part III. Administrative, Procedural, and Miscellaneous

## Transactions of Interest

### Notice 2009-55

#### SECTION 1. PURPOSE

This notice provides a list of transactions that have been identified by the Internal Revenue Service as “transactions of interest” for purposes of § 1.6011-4(b)(6) of the Income Tax Regulations and §§ 6111, 6112, 6662A, 6707, 6707A and 6708 of the Internal Revenue Code.

#### SECTION 2. TRANSACTIONS OF INTEREST

Transactions that are the same as or substantially similar to one of the types of transactions described in the list below have been identified by the Service as “transactions of interest” for purposes of § 1.6011-4(b)(6) and §§ 6111, 6112, 6662A, 6707, 6707A and 6708. Generally, persons entering into these transactions on or after November 2, 2006, must disclose their participation in the transaction as described in § 1.6011-4. Taxpayers who fail to disclose may be subject to penalties under §§ 6662A and 6707A. Material advisors who make a tax statement on or after November 2, 2006, with respect to transactions entered into on or after November 2, 2006, may have disclosure and list maintenance obligations under §§ 6111 and 6112. See § 1.6011-4, and §§ 301.6111-3 and 301.6112-1 of the Procedure and Administration Regulations. Material advisors who fail to disclose or maintain and furnish lists may be subject to penalties under §§ 6707 and 6708, respectively.

(1) Notice 2007-72, 2007-2 C.B. 544 (transactions in which a taxpayer directly or indirectly acquires certain rights in real property or in an entity that directly or indirectly holds real property, transfers the rights more than one year after the acquisition to an organization described in § 170(c), and claims a charitable contribution deduction under § 170 that is significantly higher than the amount that the taxpayer paid to acquire the rights (identified as “transactions of interest” on August 14, 2007));

(2) Notice 2007-73, 2007-2 C.B. 545 (transactions using a grantor trust and

the purported termination and subsequent re-creation of the trust’s grantor trust status, for the purpose of allowing the grantor to claim a tax loss greater than any actual economic loss sustained by the taxpayer or to avoid inappropriately the recognition of gain (identified as “transactions of interest” on August 14, 2007));

(3) Notice 2008-99, 2008-47 I.R.B. 1194 (transactions involving the sale or other disposition of all the interests in a charitable remainder trust (subsequent to the contribution of appreciated assets to and their reinvestment by the trust) resulting in the grantor or other noncharitable recipient receiving the value of that person’s trust interest while claiming to recognize little or no taxable gain (identified as “transactions of interest” on October 31, 2008));

(4) Notice 2009-7, 2009-3 I.R.B. 312 (transactions in which a U.S. taxpayer that owns controlled foreign corporations (CFCs) that hold stock of a lower-tier CFC through a domestic partnership takes the position that subpart F income of the lower-tier CFC or an amount determined under § 956(a) related to holdings of United States property by the lower-tier CFC does not result in income inclusions under § 951(a) for the U.S. taxpayer (identified as “transactions of interest” on December 29, 2008)).

#### SECTION 3. ADDITIONAL TRANSACTIONS OF INTEREST

For updates to this list go to the IRS web page at [www.irs.gov/businesses/corporations](http://www.irs.gov/businesses/corporations) and click on “Abusive Tax Shelters and Transactions.” Notices and other published guidance will still be used to identify transactions that have been determined by the Service to be “transactions of interest.”

#### DRAFTING INFORMATION

The principal author of this notice is Charles D. Wien of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Mr. Wien at (202) 622-3080 (not a toll-free call).

## Listed Transactions

### Notice 2009-59

#### SECTION 1. PURPOSE

This notice updates the list of transactions that have been determined by the Internal Revenue Service to be “listed transactions” for purposes of § 1.6011-4(b)(2) of the Income Tax Regulations and §§ 6111, 6112, 6662A, 6707, 6707A, and 6708 of the Internal Revenue Code. This notice restates the list of “listed transactions” in Notice 2004-67, 2004-2 C.B. 600, and updates the list by adding transactions identified as “listed transactions” in notices and other guidance released after September 24, 2004.

#### SECTION 2. CURRENT LISTED TRANSACTIONS

Transactions that are the same as or substantially similar to one of the types of transactions described in the list below have been determined by the Service to be tax avoidance transactions and are “listed transactions” for purposes of § 1.6011-4(b)(2) and §§ 6111, 6112, 6662A, 6707, 6707A and 6708. As a result, taxpayers may need to disclose their participation in these listed transactions as prescribed in § 1.6011-4, and material advisors may need to disclose these transactions under § 301.6111-3 of the Procedure and Administration Regulations. Taxpayers who fail to disclose may be subject to penalties under §§ 6662A and 6707A. Material advisors who fail to disclose may be subject to penalties under § 6707. In addition, material advisors must maintain lists of advisees and other information with respect to these listed transactions pursuant to § 301.6112-1. Material advisors who fail to furnish a list as required under § 301.6112-1 may be subject to penalties under § 6708.

(1) Rev. Rul. 90-105, 1990-2 C.B. 69 (transactions in which taxpayers claim deductions for contributions to a qualified cash or deferred arrangement or matching contributions to a defined contribution plan where the contributions are attributable to compensation earned by plan participants after the end of

the taxable year (identified as “listed transactions” on February 28, 2000)). *See also* Rev. Rul. 2002–46, 2002–2 C.B. 117 (result is the same, and transactions are substantially similar, even though the contributions are designated as satisfying a liability established before the end of the taxable year), *modified by* Rev. Rul. 2002–73, 2002–2 C.B. 805;

(2) Notice 95–34, 1995–1 C.B. 309 (certain trust arrangements purported to qualify as multiple employer welfare benefit funds exempt from the limits of §§ 419 and 419A (identified as “listed transactions” on February 28, 2000)). *See also* § 1.419A(f)(6)–1 (10 or more employer plans);

(3) Transactions substantially similar to those at issue in *ASA Investering Partnership v. Commissioner*, 201 F.3d 505 (D.C. Cir. 2000), and *ACM Partnership v. Commissioner*, 157 F.3d 231 (3d Cir. 1998) (transactions involving contingent installment sales of securities by partnerships in order to accelerate and allocate income to a tax-indifferent partner, such as a tax-exempt entity or foreign person, and to allocate later losses to another partner (identified as “listed transactions” on February 28, 2000));

(4) Section 1.643(a)–8 (transactions involving distributions described in § 1.643(a)–8 from charitable remainder trusts (identified as “listed transactions” on February 28, 2000));

(5) Notice 99–59, 1999–2 C.B. 761 (transactions involving the distribution of encumbered property in which taxpayers claim tax losses for capital outlays that they have in fact recovered (identified as “listed transactions” on February 28, 2000)). *See also* § 1.301–1(g);

(6) Section 1.7701(l)–3 (transactions involving fast-pay arrangements as defined in § 1.7701(l)–3(b) (identified as “listed transactions” on February 28, 2000));

(7) Rev. Rul. 2000–12, 2000–1 C.B. 744 (certain transactions involving the acquisition of two debt instruments the values of which are expected to change significantly at about the same time in opposite directions (identified as “listed transactions” on February 28, 2000));

(8) Notice 2000–44, 2000–2 C.B. 255 (transactions generating losses resulting from artificially inflating the basis of partnership interests (identified as “listed

transactions” on August 11, 2000)). *See also* §§ 1.752–1(a), 1.752–6, and 1.752–7;

(9) Notice 2000–60, 2000–2 C.B. 568 (transactions involving the purchase of a parent corporation’s stock by a subsidiary, a subsequent transfer of the purchased parent stock from the subsidiary to the parent’s employees, and the eventual liquidation or sale of the subsidiary (identified as “listed transactions” on November 16, 2000));

(10) Notice 2000–61, 2000–2 C.B. 569 (transactions purporting to apply § 935 to Guamanian trusts (identified as “listed transactions” on November 21, 2000));

(11) Notice 2001–16, 2001–1 C.B. 730 (transactions involving the use of an intermediary to sell the assets of a corporation (identified as “listed transactions” on January 18, 2001)). Notice 2008–111, 2008–51 I.R.B. 1299, clarifies Notice 2001–16 and supersedes Notice 2008–20, 2008–6 I.R.B. 406;

(12) Notice 2001–17, 2001–1 C.B. 730 (transactions involving a loss on the sale of stock acquired in a purported § 351 transfer of a high basis asset to a corporation and the corporation’s assumption of a liability that the transferor has not yet taken into account for federal income tax purposes (identified as “listed transactions” on January 18, 2001));

(13) Notice 2001–45, 2001–2 C.B. 129 (certain redemptions of stock in transactions not subject to U.S. tax in which the basis of the redeemed stock is purported to shift to a U.S. taxpayer (identified as “listed transactions” on July 26, 2001));

(14) Notice 2002–21, 2002–1 C.B. 730 (transactions involving the use of a loan assumption agreement to inflate basis in assets acquired from another party to claim losses (identified as “listed transactions” on March 18, 2002));

(15) Notice 2002–35, 2002–1 C.B. 992 (transactions involving the use of a notional principal contract to claim current deductions for periodic payments made by a taxpayer while disregarding the accrual of a right to receive offsetting payments in the future (identified as “listed transactions” on May 6, 2002)). Notice 2006–16, 2006–1 C.B. 538, clarifies and modifies Notice 2002–35;

(16) Notice 2002–50, 2002–2 C.B. 98 (transactions involving the use of a straddle, a tiered partnership structure, a transitory partner, and the absence of

a § 754 election to claim a permanent noneconomic loss (identified as “listed transactions” on June 25, 2002)); Notice 2002–65, 2002–2 C.B. 690 (transactions involving the use of a straddle, an S corporation or a partnership, and one or more transitory shareholders or partners to claim a loss while deferring an offsetting gain are substantially similar to transactions described in Notice 2002–50); and Notice 2003–54, 2003–2 C.B. 363 (transactions involving the use of economically offsetting positions, one or more tax indifferent parties, and the common trust fund accounting rules of § 584 to allow a taxpayer to claim a noneconomic loss are substantially similar to transactions described in Notice 2002–50 and Notice 2002–65);

(17) Rev. Rul. 2002–69, 2002–2 C.B. 760, modifying and superseding Rev. Rul. 99–14, 1999–1 C.B. 835 (transactions in which a taxpayer purports to lease property and then purports to immediately sublease it back to the lessor (often referred to as “lease-in/lease-out” or “LILO” transactions) (identified as “listed transactions” on February 28, 2000));

(18) Rev. Rul. 2003–6, 2003–1 C.B. 286 (certain arrangements involving the transfer of employee stock ownership plans (ESOPs) that hold stock in an S corporation for the purpose of claiming eligibility for the delayed effective date of § 409(p) (identified as “listed transactions” on December 17, 2002));

(19) Notice 2003–22, 2003–1 C.B. 851 (certain arrangements involving leasing companies that have been used to avoid or evade federal income and employment taxes (identified as “listed transactions” on April 4, 2003));

(20) Notice 2003–24, 2003–1 C.B. 853 (certain arrangements that purportedly qualify as collectively-bargained welfare benefit funds excepted from the account limits of §§ 419 and 419A (identified as “listed transactions” on April 11, 2003));

(21) Notice 2003–47, 2003–2 C.B. 132 (transactions involving compensatory stock options and related persons to avoid or evade federal income and employment taxes (identified as “listed transactions” on July 1, 2003));

(22) Notice 2003–55, 2003–2 C.B. 395 (transactions in which one participant claims to realize rental or other income from property or service contracts and another participant claims the deductions

related to that income (often referred to as “lease strips”), modifying and superseding Notice 95-53, 1995-2 C.B. 334 (identified as “listed transactions” on February 28, 2000);

(23) Notice 2003-77, 2003-2 C.B. 1182 (certain transactions that use contested liability trusts improperly to accelerate deductions for contested liabilities under § 461(f) (identified as “listed transactions” on November 19, 2003)). See also § 1.461-2. See Rev. Proc. 2004-31, 2004-1 C.B. 986, for procedures which taxpayers must use to change their methods of accounting for deducting under § 461(f) amounts transferred to trusts in transactions described in Notice 2003-77;

(24) Notice 2003-81, 2003-2 C.B. 1223 (certain transactions in which a taxpayer claims a loss upon the assignment of a purported § 1256 contract to a charity but fails to report the recognition of gain when the taxpayer’s obligation under an offsetting non-section 1256 contract terminates (identified as “listed transactions” on December 4, 2003)). Notice 2007-71, 2007-2 C.B. 472, modified and supplemented Notice 2003-81;

(25) Notice 2004-8, 2004-1 C.B. 333 (certain transactions designed to avoid the limitations on contributions to Roth IRAs described in § 408A (identified as “listed transactions” on December 31, 2003));

(26) Rev. Rul. 2004-4, 2004-1 C.B. 414 (transactions that involve segregating the business profits of an ESOP-owned S corporation in a qualified subchapter S subsidiary, so that rank-and-file employees do not benefit from participation in the ESOP (identified as “listed transactions” on January 23, 2004));

(27) Situation 2 of Rev. Rul. 2004-20, 2004-1 C.B. 546, modifying and superseding Rev. Rul. 55-748, 1955-2 C.B. 234 (certain arrangements in which an employer deducts contributions to a qualified pension plan used to pay premiums on life insurance contracts that provide for death benefits in excess of the participant’s death benefit, where under the terms of the plan, the balance of the death benefit proceeds revert to the plan as a return on investment) (identified as “listed transactions” on February 13, 2004)). See also Rev. Rul. 2004-21, 2004-1 C.B. 544, §§ 1.79-1(d)(3), 1.83-3(e) and 1.402(a)-1(a)(1) and (2), and Rev. Proc. 2005-25, 2005-1 C.B. 962, modifying

and superseding Rev. Proc. 2004-16, 2004-1 C.B. 559;

(28) Notice 2004-20, 2004-1 C.B. 608 (transactions in which, pursuant to a prearranged plan, a domestic corporation purports to acquire stock in a foreign target corporation and to make an election under § 338 before selling all or substantially all of the target corporation’s assets in a pre-planned transaction that generates a taxable gain for foreign tax purposes (but not for U.S. tax purposes) (identified as “listed transactions” on February 17, 2004));

(29) Notice 2004-30, 2004-1 C.B. 828 (transactions in which S corporation shareholders attempt to transfer the incidence of taxation on S corporation income by purportedly donating S corporation nonvoting stock to an exempt organization while retaining the economic benefits associated with that stock (identified as “listed transactions” on April 1, 2004));

(30) Notice 2004-31, 2004-1 C.B. 830 (transactions in which corporations claim inappropriate deductions for payments made through a partnership (identified as “listed transactions” on April 1, 2004));

(31) Notice 2005-13, 2005-1 C.B. 630 (transactions in which a taxpayer enters into a purported sale-lease-back arrangement with a tax-indifferent person in which substantially all of the tax-indifferent person’s payment obligations are economically defeased and the taxpayer’s risk of loss from a decline, and opportunity for profit from an increase, in the value of the leased property are limited (often referred to as “sale-in/lease out” or “SILO” transactions) (identified as “listed transactions” on February 11, 2005));

(32) Notice 2007-57, 2007-2 C.B. 87 (transactions in which a U.S. taxpayer uses offsetting positions with respect to foreign currency or other property for the purpose of importing a loss, but not the corresponding gain, in determining U.S. taxable income (identified as “listed transactions” on June 20, 2007));

(33) Notice 2007-83, 2007-2 C.B. 960 (certain arrangements involving a trust or other fund described in § 419(e)(3) that is purportedly a welfare benefit fund and pays premiums on one or more life insurance policies with respect to which value is accumulated, where the employer has deducted contributions in excess of specified amounts (identified as “listed transactions” on October 17, 2007));

(34) Notice 2008-34, 2008-12 I.R.B. 645 (transactions 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 (identified as “listed transactions” on February 27, 2008)).

### SECTION 3. TRANSACTIONS NO LONGER CONSIDERED TO BE LISTED TRANSACTIONS

Transactions that are the same as, or substantially similar to, one of the types of transactions described in the list below will no longer be considered listed transactions for purposes of § 1.6011-4(b)(2) and §§ 6111 and 6112. No inference is intended, however, as to whether such transactions are otherwise subject to the disclosure requirements of § 6011, the disclosure requirements of § 6111, or the list maintenance requirements of § 6112.

(1) Transactions described in Part II of Notice 98-5, 1998-1 C.B. 334 (transactions in which the reasonably expected economic profit is insubstantial in comparison to the value of the expected foreign tax credits (identified as “listed transactions” on February 28, 2000)). Notice 2004-19, 2004-1 C.B. 606, withdrew Notice 98-5. Effective for taxable years for which the due date of the return (including extensions, whether or not actually requested) is after February 17, 2004, transactions will not be considered listed transactions for purposes of § 1.6011-4(b)(2) and § 6112 solely because they are the same as or substantially similar to the transactions or arrangements described in Part II of Notice 98-5. In addition, for offers made after February 17, 2004, transactions will not be considered listed transactions for purposes of § 6111 solely because they are the same as or substantially similar to the transactions or arrangements described in Part II of Notice 98-5.

(2) Transactions described in Notice 2002-70, 2002-2 C.B. 765 (transactions involving reinsurance arrangements between a taxpayer and the taxpayer’s own

reinsurance company that is subject to little or no federal income tax (identified as “listed transactions” on October 15, 2002)). Notice 2004–65, 2004–2 C.B. 599, modified Notice 2002–70 by removing the identification of transactions that are the same as, or substantially similar to, transactions described in Notice 2002–70 as listed transactions effective for taxable years for which the due date of the return (including extensions, whether or not ac-

tually requested) is after September 24, 2004.

#### SECTION 4. EFFECT ON OTHER NOTICES

Notice 2004–67 is supplemented and superseded. For updates to this list go to the IRS web page at [www.irs.gov/businesses/corporations](http://www.irs.gov/businesses/corporations) and click on “Abusive Tax Shelters and Transactions.” Notices and other published guidance will still be used

to identify transactions that have been determined by the Service to be “listed transactions.”

#### DRAFTING INFORMATION

The principal authors of this notice are Eric P. Ingala and Michael H. Beker of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact the authors at (202) 622–3070 (not a toll-free call).

# Part IV. Items of General Interest

## Notice of Proposed Rulemaking and Notice of Public Hearing

### Election of Reduced Research Credit Under Section 280C(c)(3)

#### REG-130200-08

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: This document contains proposed regulations that amend the regulations concerning taxpayers who make the election to claim the reduced research credit. The proposed regulations simplify how taxpayers make the election and affect taxpayers that claim the research credit. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 14, 2009. Outlines of topics to be discussed at the public hearing scheduled for November 4, 2009 at 10 a.m. must be received by October 16, 2009.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-130200-08), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-130200-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-130200-08). The public hearing will be held in Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Selig, (202) 622-3040; concerning submission of

comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst, [Richard.A.Hurst@ircounsel.treas.gov](mailto:Richard.A.Hurst@ircounsel.treas.gov), (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background and Explanation of Provisions

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the election for claiming the reduced research credit under section 280C(c)(3). Section 280C(c)(1) provides, in general, that no deduction shall be allowed for that portion of the qualified research expenses (as defined in section 41(b)) or basic research expenses (as defined in section 41(e)(2)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 41(a).

Similarly, section 280C(c)(2) provides that if the amount of the credit determined for the taxable year under section 41(a)(1) exceeds the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses (determined without regard to section 280C(c)(1)), the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

Section 280C(c)(3)(A) provides, in general, that in the case of any taxable year for which an election is made under section 280C(c)(3), sections 280C(c)(1) and (c)(2) shall not apply, and the amount of the credit under section 41(a) shall be the amount determined under section 280C(c)(3)(B). Under section 280C(c)(3)(B), the amount of credit for any taxable year shall be the amount equal to the excess of the amount of credit determined under section 41(a) without regard to section 280C(c)(3), over the product of the amount of credit determined under section 280C(c)(3)(B)(i), and the maximum rate of tax under section 11(b)(1).

Section 280C(c)(3)(C) provides that an election under section 280C(c)(3) for any taxable year shall be made not later than the time for filing the return of tax for

such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Such an election, once made, shall be irrevocable.

Section 280C(c)(4) provides that section 280C(b)(3) shall apply for purposes of section 280C(c). Under section 280C(b)(3), in the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), section 280C(b) shall be applied under rules prescribed by the Secretary similar to the rules applicable under section 41(f)(1)(A) and (B).

Currently, §1.280C-4(a) provides that the section 280C(c)(3) election to have the provisions of section 280C(c)(1) and (c)(2) not apply shall be made by claiming the reduced credit under section 41(a) determined by the method provided in section 280C(c)(3)(B) on an original return for the taxable year, filed at any time on or before the due date (including extensions) for filing the income tax return for such year. An election, once made, for any taxable year, is irrevocable for that taxable year.

The proposed regulations simplify the section 280C(c)(3) election to have the provisions of section 280C(c)(1) and (c)(2) not apply by requiring the election to be made on Form 6765, "*Credit for Increasing Research Activities*". The form must be filed with an original return for the taxable year filed on or before the due date (including extensions) for filing the income tax return for such year. An election, once made for any taxable year, is irrevocable for that taxable year.

The IRS and the Treasury Department have received comments on whether all members of a controlled group (as defined in §1.41-6(a)(3)(ii)) are bound by an election under section 280C(c)(3), or whether each member of a controlled group can make a separate election under section 280C(c)(3). If a taxpayer is a member of a controlled group, section 280C(c)(4) requires that the election for the reduced research credit must be determined under rules similar to rules

applicable to a controlled group. Section 1.41-6(a)(1) provides that to determine the amount of research credit (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group, a taxpayer must: (i) compute the group credit in the manner described in §1.41-6(b), and (ii) allocate the group credit among the members of the group in the manner described under §1.41-6(c). All members of the controlled group are required to use the same computation method, that is, the section 41(a)(1) method, the section 41(c)(4) alternative incremental research credit (alternative incremental credit) method, or the section 41(c)(5) alternative simplified research credit method, in computing the group credit for the credit year. Under section 41(h)(2), as amended by section 301(b) of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008 (Div. C of Public Law 110-343, 122 Stat. 3765), a taxpayer cannot elect the alternative incremental research credit under section 41(c)(4) for taxable years beginning after December 31, 2008.

The reduced research credit under section 280C(c)(3) is not a computational rule under section 41 used for computing the group credit for a credit year under §§1.41-6(b)(1) and 1.41-6T(b)(1). There is no change to the overall tax effect of the research credit if each member of a controlled group, after computing and allocating its share of the group credit under §§1.41-6(b)(1) and 1.41-6(c) and 1.41-6T(b)(1) and 1.41-6(c)(2), determines whether it wants to claim the reduced research credit under section 280C(c)(3)(B). Accordingly, the proposed regulations provide that each member of a controlled group may make the election under section 280C(c)(3) after the group credit is computed and allocated under §§1.41-6(b)(1) and 1.41-6(c) and 1.41-6T(b)(1) and 1.41-6T(c)(2).

### Proposed Effective Date

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

### Special Analyses

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

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

The proposed rule affects individuals and small businesses engaged in research activities under section 41. The IRS has determined that this proposed rule will have an impact on a substantial number of small entities. However, the IRS also has determined that the impact on entities affected by the proposed rule will not be significant. This determination is based on the fact that the regulations would simplify the procedure for making the election for the reduced research credit under section 280C(c)(3)(C). Instead of requiring such an election to be made “on an original return,” the regulations specify that the election is made on Form 6765, “*Credit for Increasing Research Activities*,” which is attached to the return. This form requires only a minimal amount of time to complete and places no greater burden on the taxpayer than the current procedure. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies)

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

A public hearing has been scheduled for November 4, 2009, at 10 a.m. in Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the “FOR FURTHER INFORMATION CONTACT” section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 16, 2009. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal author of these regulations is David Selig, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

\* \* \* \* \*

### Proposed Amendments to the Regulations

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

#### PART 1—INCOME TAXES

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

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

Par. 2. Section 1.280C-4 is revised to read as follows:

*§1.280C-4 Credit for increasing research activities.*

(a) *In general.* An election under section 280C(c)(3) to have the provisions of section 280C(c)(1) and (c)(2) not apply and elect the reduced research credit under section 280C(c)(3)(B) shall be made on Form 6765, “*Credit for Increasing Research Activities*,” (or any successor form). In order for the election to be effective, the Form 6765 must clearly indicate the taxpayer’s intent to make the section

280C(c)(3) election, and must be filed with an original return for the taxable year filed on or before the due date (including extensions) for filing the income tax return for such year, regardless of whether any research credits are claimed on the original return. An election, once made for any taxable year, is irrevocable for that taxable year.

(b) *Controlled groups of corporations; trades or businesses under common control.* A member of a controlled group of corporations (within the meaning of section 41(f)(5)), or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section

41(f)(1)(B)), may make the election under section 280C(c)(3). Such member or trade or business shall make the election on Form 6765 and by the time prescribed in paragraph (a) of this section.

(c) *Effective/applicability date.* This section applies to taxable years ending on or after the date of publication of the Treasury Decision adopting these rules as final regulations in the **Federal Register**.

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

(Filed by the Office of the Federal Register on July 15, 2009, 8:45 a.m., and published in the issue of the Federal Register for July 16, 2009, 74 F.R. 34523)

# 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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<sup>1</sup> A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2009–1 through 2009–26 is in Internal Revenue Bulletin 2009–26, dated June 29, 2009.









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