

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. 2009-25, page 365.

E&P determinations for section 264(a)(4) disallowed interest. This ruling addresses when interest that is disallowed as a deduction under section 264(a)(4) of the Code is taken into account in determining earnings and profits.

Rev. Rul. 2009-26, page 366.

Single insured-reinsurance. This ruling presents two situations to illustrate the application of insurance principles to whether a reinsurance arrangement is sufficient for the assuming company to qualify as an insurance company under section 831(c) of the Code. The guidance holds that 1) where the only business of the assuming company is the assumption of a block of business that itself constitutes insurance, the assuming company qualifies as an insurance company and 2) where the assuming company enters into agreements with various insurance companies, an agreement with one ceding company that involves the risks of a single policyholder should be treated as reinsuring risks such that the assuming company qualifies as an insurance company.

Notice 2009-73, page 369.

2009 Section 43 inflation adjustment factor. This notice announces the inflation adjustment factor and phase-out amount for the enhanced oil recovery credit for taxable years beginning in the 2009 calendar year. The notice also contains the previously published figures for taxable years beginning in the 1991 through 2008 calendar years.

Notice 2009-74, page 370.

2009 marginal production rates. This notice announces the applicable percentage under section 613A of the Code to be used in determining percentage depletion for marginal properties for the 2009 calendar year.

Rev. Proc. 2009-39, page 371.

This procedure amplifies, clarifies, and modifies Rev. Proc. 2008-52, which provides procedures for taxpayers to obtain automatic consent for the changes in method of accounting described in its APPENDIX. This procedure also clarifies and modifies Rev. Proc. 97-27, as amplified and modified by Rev. Proc. 2002-19, as amplified and clarified by Rev. Proc. 2002-54, and as modified by Rev. Proc. 2007-67, which provides the general procedures for obtaining non-automatic consent for changes in method of accounting. Rev. Procs. 97-27 clarified and modified, 2005-63 modified, and 2008-52 amplified, clarified, and modified.

Announcement 2009-67, page 388.

This announcement corrects certain procedures in Rev. Proc. 2009-39 for a taxpayer that has a refund or credit under review by the Joint Committee on Taxation and that wants to obtain the Commissioner's consent to a change in method of accounting under Rev. Proc. 2008-52 (automatic change) or Rev. Proc. 97-27 (non-automatic change). Rev. Proc. 2009-39 modified.

Announcements of Disbarments and Suspensions begin on page 388.
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.

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

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

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

Section 101.—Certain Death Benefits

This revenue ruling addresses when interest that is disallowed as a deduction under section 264(a)(4) of the Code is taken into account in determining earnings and profits. See Rev. Rul. 2009-25, page 365.

Section 264.—Certain Amounts Paid in Connection With Insurance Contracts

This revenue ruling addresses when interest that is disallowed as a deduction under section 264(a)(4) of the Code is taken into account in determining earnings and profits. See Rev. Rul. 2009-25, page 365.

Section 312.—Effect on Earnings and Profits

26 CFR 1.312-6: Earnings and profits. (Also §§ 101, 264.)

E&P determinations for section 264(a)(4) disallowed interest. This ruling addresses when interest that is disallowed as a deduction under section 264(a)(4) of the Code is taken into account in determining earnings and profits.

Rev. Rul. 2009-25

ISSUE

When is interest that is disallowed as a deduction under § 264(a)(4) of the Internal Revenue Code (“Disallowed Interest”) taken into account in determining earnings and profits?

FACTS

A, an individual, holds a paid-up life insurance contract on his own life. Upon the death of A, the death benefit under the contract (\$500) is payable to the beneficiary named in the contract.

X is a calendar year subchapter C corporation unrelated to A. On the first day of Year 1, X purchases A’s life insurance contract for \$100 in a transaction that is not described in § 101(a)(2)(A) or (B), and names itself the beneficiary under the contract.

On the first day of Year 1, X borrows \$100 at seven percent simple interest *per*

annum to purchase the life insurance contract. The interest on the loan is unconditionally payable at the end of Year 1 and Year 2 and the interest was in fact paid at the end of Year 1 and Year 2. But for its disallowance under § 264(a)(4), X could deduct seven dollars of interest on the loan in both Year 1 and Year 2 under § 163. Other than the initial purchase price, the interest on the loan is the only amount X incurs in connection with the contract.

A dies on the first day of Year 3, and X receives the \$500 death benefit under the life insurance contract. Pursuant to § 101(a)(2), X includes \$386 in gross income (\$500 (death benefit) - (\$100 (amount paid for the contract) + \$14 (Disallowed Interest deductions in Year 1 and Year 2))).

LAW AND ANALYSIS

Section 101(a)(1) provides that except as otherwise provided in §§ 101(a)(2), 101(d), 101(f), and 101(j), gross income does not include amounts received (whether in a single sum or otherwise) under a life insurance contract, if such amounts are paid by reason of the death of the insured.

Section 101(a)(2) generally provides that in the case of a transfer for valuable consideration, by assignment or otherwise, of a life insurance contract or any interest therein, the amount excluded from gross income by § 101(a)(1) shall not exceed an amount equal to the sum of the actual value of such consideration and the premiums and “other amounts” subsequently paid by the transferee. The term “other amounts” includes interest paid or accrued by the transferee on indebtedness with respect to the contract or any interest therein if such interest paid or accrued is not allowable as a deduction by reason of § 264(a)(4).

Section 163(a) generally provides that a deduction is allowed for all interest paid or accrued within the taxable year on indebtedness.

Section 264(a)(4) generally provides that no deduction shall be allowed for any interest paid or accrued on any indebtedness with respect to 1 or more life insurance policies owned by the taxpayer

covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering any individual.

Earnings and profits are a measure of economic income, or a corporation’s capacity to pay dividends. See *e.g.*, S. Rep. No. 169, Vol. 1, 98th Cong., 2d Sess., 198 (1984). “In general, the computation of earnings and profits of a corporation . . . is based upon reasonable accounting concepts that take into account the economic realities of corporate transactions as well as those resulting from the application of tax law. Thus, losses and expenses that are disallowed as a deduction for Federal income tax purposes, charitable contributions in excess of the limitation provided therefore [sic], and other items that have actually depleted the assets of the corporation, even though not reflected in the income computations, are allowed as deductions in computing earnings and profits.” Rev. Rul. 75-515, 1975-2 C.B. 117, *obsoleted by* Rev. Rul. 2003-99, 2003-2 C.B. 388 (holding codified in § 312(l)). See also Rev. Rul. 71-165, 1971-1 C.B. 111 (“An expense of an accrual basis corporation that under the Code is never an allowable deduction in computing taxable income usually is reflected in earnings and profits in the year to which it is attributable, except where the Code specifically provides that the corporation’s earnings and profits shall not be reduced by any amount which is not allowable as a deduction in computing its taxable income.”); Rev. Rul. 77-442, 1977-2 C.B. 264 (quoting Rev. Rul. 71-165 and Rev. Rul. 75-515). Because Disallowed Interest depletes the assets of a corporation at the time the interest would be allowed as a deduction but for its disallowance under § 264(a)(4), earnings and profits are also reduced in that year. Accordingly, X in both Year 1 and Year 2 reduces its earnings and profits by the seven dollars of Disallowed Interest.

In Year 3, X receives the \$500 death benefit under the life insurance contract purchased from A and, under § 101(a)(2), excludes from gross income an amount representing the \$14 of Disallowed Interest.

Items excluded from gross income generally increase earnings and profits. See § 1.312-6(b). Furthermore, even though the Disallowed Interest in Year 1 and Year 2 actually depletes the amount of earnings available for distribution, X previously reduced its earnings and profits by the Disallowed Interest in each of those years. Section 1.312-6(d) (“A loss sustained for a year before the taxable year does not affect the earnings and profits of the taxable year.”); Rev. Rul. 76-299, 1976-2 C.B. 211 (“A capital loss carryover does not affect the earnings and profits of the taxable year in which it is used because the loss giving rise to the carryover is reflected in the accumulated earnings and profits at the beginning of the taxable year of the carryover”). Reducing earnings and profits in Year 3 by the amount of Disallowed Interest taken into account under § 101(a)(2) would cause an unwarranted double reduction of earnings and profits and, therefore, is not permitted. See, e.g., *Bangor & Aroostook Railroad Co. v. Commissioner*, 16 T.C. 578, 586 (1951), *aff’d* 193 F.2d 827 (1st Cir. 1951).

Although X in Year 3 includes in its gross income only \$386 of the \$500 death benefit because of the applicable offsets under § 101(a)(2) (including the \$14 of Disallowed Interest), X includes \$400 (\$500 (the death benefit) less \$100 (the amount X pays for the contract)) in its earnings and profits in Year 3.

HOLDING

Disallowed Interest under § 264(a)(4) reduces earnings and profits for the taxable year in which the interest would have been allowable as a deduction but for its disallowance under § 264(a)(4). It does not further reduce earnings and profits when the death benefit is received under a life insurance contract.

DRAFTING INFORMATION

The principal author of this revenue ruling is Russell P. Subin of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue ruling, contact Russell P. Subin at (202) 622-7790 (not a toll-free call).

Section 831.—Tax on Insurance Companies Other than Life Insurance Companies

Single insured-reinsurance. This ruling presents two situations to illustrate the application of insurance principles to whether a reinsurance arrangement is sufficient for the assuming company to qualify as an insurance company under section 831(c) of the Code. The guidance holds that 1) where the only business of the assuming company is the assumption of a block of business that itself constitutes insurance, the assuming company qualifies as an insurance company and 2) where the assuming company enters into agreements with various insurance companies, an agreement with one ceding company that involves the risks of a single policyholder should be treated as reinsuring risks such that the assuming company qualifies as an insurance company.

Rev. Rul. 2009-26

ISSUE

In the situations described below, is Z’s agreement with IC Y treated as “reinsuring risks” underwritten by insurance companies for purposes of determining whether Z is an insurance company within the meaning of § 831(c)?

FACTS

Situation 1. IC Y and Z are stock corporations that are licensed and regulated as insurance companies in all jurisdictions in which they do business. IC Y is an insurance company for federal income tax purposes, subject to tax under § 831(a).

For valid, non-tax business purposes, IC Y entered into a contract, or treaty, with Z at the beginning of Year 1. Under the contract, IC Y agreed to pay to Z 90 percent of all the premiums received with regard to all the insurance contracts issued by IC Y in the commercial multiple peril line of business in a 10-state region. In exchange, Z agreed to indemnify IC Y for 90 percent of all the losses under those contracts. IC Y remained directly liable to its policyholders. A contract of this type is sometimes referred to as indemnity reinsurance.

During Year 1, insurance contracts that IC Y entered into with 10,000 unrelated

policyholders were subject to the contract between IC Y and Z. Z possessed adequate capital to fulfill its obligations under the contract, and in all respects operated at arms-length in its transaction with IC Y and in accordance with the applicable requirements of state law. The contract with IC Y was Z’s only business during Year 1.

Situation 2. The facts are the same as in Situation 1, except that the contract between IC Y and Z covered only the risks of X, a policyholder of IC Y unrelated to Z. In addition, Z assumed risks of policyholders unrelated to X but in the same line of business through contracts with other insurance companies. The contracts with IC Y and with other insurance companies were Z’s only business during Year 1. Had Z assumed these risks by entering into contracts with each of the original policyholders (including X) directly, those contracts would have qualified as insurance contracts for federal income tax purposes, and Z would have qualified as an insurance company for federal income tax purposes. See, e.g., Rev. Ruls. 2005-40, 2005-2 C.B. 4; 2002-91, 2002-2 C.B. 991; 2002-90, 2002-2 C.B. 985; and 2002-89, 2002-2 C.B. 984.

LAW

Section 831(a) of the Internal Revenue Code provides that taxes, computed as provided in § 11, are imposed for each taxable year on the taxable income of each insurance company other than a life insurance company. Section 831(c) provides that, for purposes of § 831, the term “insurance company” has the meaning given to such term by § 816(a). Under § 816(a), the term “insurance company” means “any company more than half the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.”

Neither the Code nor the regulations define the terms “insurance” or “insurance contract.” The Supreme Court of the United States has explained that in order for an arrangement to constitute insurance for federal income tax purposes, both risk shifting and risk distribution must be present. *Helvering v. Le Gierse*, 312 U.S. 531 (1941). The risk transferred must be risk of economic loss. *Allied Fidelity Corp. v. Commissioner*, 572 F.2d

1190, 1193 (7th Cir. 1978). The risk must contemplate the fortuitous occurrence of a stated contingency, *Commissioner v. Treganowan*, 183 F.2d 288, 290–91 (2d Cir. 1950), and must not be merely an investment or business risk. Rev. Rul. 2007–47, 2007–2 C.B. 127. In addition, the arrangement must constitute insurance in the commonly accepted sense. See, e.g., *Ocean Drilling & Exploration Co. v. U.S.*, 988 F.2d 1135, 1153 (Fed. Cir. 1993); *AMERCO, Inc. v. Commissioner*, 979 F.2d 162 (9th Cir. 1992).

Risk shifting occurs if a person facing the possibility of an economic loss transfers some or all of the financial consequences of the potential loss to the insurer, such that a loss by the insured does not affect the insured because the loss is offset by a payment from the insurer. Risk distribution incorporates the statistical phenomenon known as the law of large numbers. Distributing risk allows the insurer to reduce the possibility that a single costly claim will exceed the amount taken in as premiums and set aside for the payment of such a claim. By assuming numerous relatively small, independent risks that occur randomly over time, the insurer smooths out losses to match more closely its receipt of premiums. *Clougherty Packing Co. v. Commissioner*, 811 F.2d 1297, 1300 (9th Cir. 1987).

Courts have recognized that risk distribution necessarily entails a pooling of premiums, so that a potential insured is not in significant part paying for its own risks. *Humana, Inc. v. Commissioner*, 881 F.2d 247, 257 (6th Cir. 1989). See also *Ocean Drilling & Exploration Co.*, 988 F.2d at 1153 (“Risk distribution involves spreading the risk of loss among policyholders.”); *Beech Aircraft Corp. v. U.S.*, 797 F.2d 920, 922 (10th Cir. 1986) (“[R]isk distributing means that the party assuming the risk distributes his potential liability, in part, among others.”) Thus, purported insurance arrangements that involve an issuer who contracts with only one policyholder do not qualify as insurance contracts for federal income tax purposes. Rev. Rul. 2005–40.

The Code and administrative guidance treat reinsurance in a manner similar to insurance for many purposes. For example, gross premiums of both life and non-life insurance companies include not only premiums on direct business, but also gross

premiums in respect of assumed liabilities under contracts issued by another company. Section 803(b)(1)(E); Rev. Rul. 77–453, 1977–2 C.B. 236. Consistently, both life insurance reserves under § 807 and discounted unpaid losses under § 846 include not only reserves and losses on direct business, but also reserves and losses on liabilities assumed under contracts issued by another company. Furthermore, a contract that reinsures another contract is treated in the same manner as the reinsured contract under § 848(e)(5) for purposes of computing the amount of specified policy acquisition expenses that must be capitalized and amortized as deferred acquisition costs (DAC) under § 848. Most importantly, both direct insurance and reinsurance business may qualify a taxpayer as an insurance company under § 816(a) or § 831(c), as applicable. But see § 845 (granting the Secretary explicit authority to reallocate, recharacterize, or make other adjustments with respect to certain reinsurance arrangements, but not referring to direct insurance).

Courts have generally analogized reinsurance to insurance, as well. For example, in *Ocean Drilling & Exploration Co.*, 988 F.2d at 1153 n25, the court noted that “[d]irect insurance and reinsurance are both considered insurance,” and in *Cologne Life Reinsurance Co. v. Commissioner*, 80 T.C. 859, 862 (1983), *acq.*, 1985–2 C.B. viii, the court noted that “[u]nder [part I of subchapter L], the issuance of indemnity life reinsurance is treated generally as the issuance of life insurance”, except where specified otherwise.

In *Alinco Life Insurance Co. v. United States*, 373 F.2d 336 (Ct.Cl. 1967), a large finance company formed a wholly-owned subsidiary corporation (Alinco), which qualified as a life insurance company under the laws of Indiana. Customers of the finance company (borrowers) purchased credit life insurance from an unrelated insurance company, which in turn reinsured a fixed proportion of those contracts with Alinco. Even though Alinco reinsured risks underwritten by only one insurance company, those risks aggregated nearly one billion dollars of business, with a large number of customers, for which Alinco was required by the state insurance department to maintain reserves. Interpreting regulatory language that was identical to

what now appears in § 816(a), the court concluded that Alinco was in the business of “reinsuring risks” underwritten by insurance companies.

In the context of captive insurance, courts have likewise looked through a fronting arrangement to analyze whether the requirements of risk shifting and risk distribution were met. See, e.g., *Carnation Co. v. Commissioner*, 71 T.C. 400 (1978), *aff’d* 640 F.2d 1010 (9th Cir. 1981) (concluding that premiums paid by taxpayer to an unrelated insurer were not deductible to the extent risks under the contract were in turn reinsured with taxpayer’s wholly-owned subsidiary); *Kidde Industries, Inc. v. United States*, 40 Fed. Cl. 42 (1997).

ANALYSIS

Situation 1

In Situation 1, the contracts issued by *IC Y* to 10,000 unrelated policyholders involved commercial multiple peril risks, which are insurance risks. The contracts shifted those insurance risks from those policyholders to *IC Y*, and distributed those risks such that a loss by one policyholder was not borne, in substantial part, by the premiums paid by that policyholder. The contracts were insurance in the commonly accepted sense. The contracts thus were insurance contracts for federal income tax purposes.

The contract, or treaty, between *IC Y* and *Z* in turn shifted 90 percent of the risks under those insurance contracts from *IC Y*, an insurance company, to *Z*. As in *Alinco Life*, the transaction shifted insurance risks which were funded by reserves and constituted reinsurance in the commonly accepted sense. As to *Z*, the risks of each original policyholder were still distributed such that a loss by one such policyholder was not borne, in substantial part, by the premiums paid by that policyholder. Hence, by entering into its arrangement with *IC Y*, *Z* was “reinsuring risks” within the meaning of §§ 816(a) and 831(c).

Because, under the arrangement with *IC Y*, *Z* was treated as “reinsuring risks” underwritten by an insurance company, and the arrangement represented more than half the business of *Z* for Year 1, *Z* qualified as an insurance company within the meaning of § 831(c), even though the

contract with *IC Y* was *Z*'s only business for the year.

Situation 2

In Situation 2, the facts are the same as in Situation 1, except that the arrangement between *IC Y* and *Z* shifted to *Z* only the risks of *X*, a policyholder of *IC Y* unrelated to *Z*. *Z* assumed additional risks of the same line under contracts with other insurance companies in the same line of business.

The risks assumed by *Z* under the arrangements with *IC Y* and with other insurance companies were insurance risks. Those risks were shifted from the original policyholders (including *X*) to the primary insurers (including *IC Y*), and in turn to *Z*. As to *Z*, the risks of each original policyholder (including *X*) were distributed such that a loss by one policyholder was not borne, in substantial part, by the premiums paid by that policyholder. Hence, by entering into its arrangements with the primary

insurers (including *IC Y*), *Z* was “reinsuring risks” underwritten by insurance companies within the meaning of §§ 816(a) and 831(c).

Because under the arrangements with the primary insurers (including *IC Y*) *Z* is treated as “reinsuring risks” underwritten by insurance companies, and those arrangements represented more than half the business of *Z* for Year 1, *Z* qualified as an insurance company within the meaning of § 831(c).

HOLDINGS

In Situation 1, *Z*'s agreement with *IC Y* is treated as “reinsuring risks” underwritten by an insurance company because, even though the agreement was *Z*'s only business during Year 1, the requirement of risk distribution was still met from the standpoint of *Z* as to each original policyholder. Accordingly, *Z* was an insurance company within the meaning of § 831(c).

In Situation 2, *Z*'s agreement with *IC Y* is treated as “reinsuring risks” underwritten by insurance companies because, even though the agreement covered only the risks of a single policyholder, *Z* assumed sufficient risks under agreements with other insurance companies in Year 1 such that requirement of risk distribution was met from the standpoint of *Z* as to each original policyholder. Accordingly, *Z* was an insurance company within the meaning of § 831(c).

DRAFTING INFORMATION

The principal author of this revenue ruling is John E. Glover of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue ruling, contact Mr. Glover at (202) 622-3970 (not a toll-free call).

Part III. Administrative, Procedural, and Miscellaneous

2009 Section 43 Inflation Adjustment

Notice 2009-73

Section 43(b)(3)(B) of the Internal Revenue Code requires the Secretary to publish an inflation adjustment factor. The enhanced oil recovery credit under § 43 for any taxable year is reduced if the “reference price,” determined under § 45K(d)(2)(C), for the calendar year preceding the calendar year in which the

taxable year begins is greater than \$28 multiplied by the inflation adjustment factor for that year. The credit is phased out in any taxable year in which the reference price for the preceding calendar year exceeds \$28 (as adjusted) by at least \$6.

The term “inflation adjustment factor” means, with respect to any calendar year, a fraction the numerator of which is the GNP implicit price deflator for the preceding calendar year and the denominator of which is the GNP implicit price deflator for 1990.

Because the reference price for the 2008 calendar year (\$94.03) exceeds \$28 multiplied by the inflation adjustment factor for the 2008 calendar year (\$42.01) by \$52.02, the enhanced oil recovery credit for qualified costs paid or incurred in 2009 is phased out completely.

Table 1 contains the GNP implicit price deflator used for the 2009 calendar year, as well as the previously published GNP implicit price deflators used for the 1991 through 2008 calendar years.

<i>Calendar Year</i>	<i>GNP Implicit Price Deflator</i>
1990	112.9 (used for 1991)
1991	117.0 (used for 1992)
1992	120.9 (used for 1993)
1993	124.1 (used for 1994)
1994	126.0 (used for 1995)*
1995	107.5 (used for 1996)
1996	109.7 (used for 1997)**
1997	112.35 (used for 1998)
1998	112.64 (used for 1999)***
1999	104.59 (used for 2000)
2000	106.89 (used for 2001)
2001	109.31 (used for 2002)
2002	110.63 (used for 2003)
2003	105.67 (used for 2004)****
2004	108.23 (used for 2005)
2005	112.129 (used for 2006)
2006	116.036 (used for 2007)
2007	119.656 (used for 2008)
2008	122.407 (used for 2009)

* Beginning in 1995, the GNP implicit price deflator was rebased relative to 1992. The 1990 GNP implicit price deflator used to compute the 1996 § 43 inflation adjustment factor is 93.6.

** Beginning in 1997, two digits follow the decimal point in the GNP implicit price deflator. The 1990 GNP price deflator used to compute the 1998 § 43 inflation adjustment factor is 93.63.

*** Beginning in 1999, the GNP implicit price deflator was rebased relative to 1996. The 1990 GNP implicit price deflator used to compute the 2000 § 43 inflation adjustment factor is 86.53.

**** Beginning in 2003, the GNP implicit price deflator was rebased, and the 1990 GNP implicit price deflator used to compute the 2004 § 43 inflation adjustment factor is 81.589.

Table 2 contains the inflation adjustment factor and the phase-out amount for taxable years beginning in the 2009

calendar year as well as the previously published inflation adjustment factors and phase-out amounts for taxable years be-

ginning in the 1991 through 2008 calendar years.

Notice 2009-73 TABLE 2

INFLATION ADJUSTMENT FACTORS AND PHASE-OUT AMOUNTS

<i>Calendar Year</i>	<i>Inflation Adjustment Factor</i>	<i>Phase-out Amount</i>
1991	1.0000	0
1992	1.0363	0
1993	1.0708	0
1994	1.0992	0
1995	1.1160	0
1996	1.1485	0
1997	1.1720	0
1998	1.1999	0
1999	1.2030	0
2000	1.2087	0
2001	1.2353	0
2002	1.2633	0
2003	1.2785	0
2004	1.2952	0
2005	1.3266	0
2006	1.3743	100 percent
2007	1.4222	100 percent
2008	1.4666	100 percent
2009	1.5003	100 percent

DRAFTING INFORMATION

The principal author of this notice is Brian J. Americus of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Americus at (202) 622-3110 (not a toll-free call).

2009 Marginal Production Rates

Notice 2009-74

This notice announces the applicable percentage under § 613A of the Internal Revenue Code to be used in determining percentage depletion for marginal properties for the 2009 calendar year.

Section 613A(c)(6)(C) defines the term “applicable percentage” for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the per-

centage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which \$20 exceeds the reference price (determined under § 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 45K(d)(2)(C) for the 2008 calendar year is \$94.03.

Table 1 contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2009.

APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

<i>Calendar Year</i>	<i>Applicable Percentage</i>
1991	15 percent
1992	18 percent
1993	19 percent
1994	20 percent
1995	21 percent
1996	20 percent
1997	16 percent
1998	17 percent
1999	24 percent
2000	19 percent
2001	15 percent
2002	15 percent
2003	15 percent
2004	15 percent
2005	15 percent
2006	15 percent
2007	15 percent
2008	15 percent
2009	15 percent

The principal author of this notice is Brian J. Americus of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Mr. Americus at (202) 622-3110 (not a toll-free call).

26 CFR 601.204: Changes in accounting periods and in methods of accounting.

(Also: Part I, §§ 118, 162, 167, 168, 263A, 446, 451; 461, 471, 472, 481, 904, 953; 1.118-2, 1.162-3, 1.162-4, 1.446-1, 1.446-5, 1.461-1, 1.471-2.)

Rev. Proc. 2009-39

SECTION 1. PURPOSE

This revenue procedure amplifies, clarifies, and modifies Rev. Proc. 2008-52, 2008-2 C.B. 587, which provides procedures for taxpayers within the scope of that revenue procedure to obtain automatic consent for the changes in method of accounting described in its APPENDIX. This revenue procedure also clarifies and modifies Rev. Proc. 97-27, 1997-1 C.B. 680, as amplified and modified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and as modified by Rev. Proc. 2007-67, 2007-2 C.B. 1072, which provides the general procedures for ob-

taining the advance consent of the Commissioner of Internal Revenue to change a method of accounting.

SECTION 2. CHANGES TO REV. PROC. 2008-52

.01 *Change to section 2.05, Method change with a § 481(a) adjustment.* Section 2.05(1) of Rev. Proc. 2008-52 is clarified to read as follows:

(1) *Need for adjustment.* Section 481(a) requires those adjustments necessary to prevent amounts from being duplicated or omitted to be taken into account when the taxpayer's taxable income is computed under a method of accounting different from the method used to compute taxable income for the preceding taxable year. When there is a change in method of accounting to which § 481(a) is applied, income for the taxable year preceding the year of change must be determined under the method of accounting that was then employed, and income for the year of change and the following taxable years must be determined under the new method of accounting as if the new method had always been used. The § 481(a) adjustment is computed notwithstanding that the period of limitations on assessment and collection of tax may have closed on the years (closed years) in which the events giving rise to the need for an adjustment

occurred. *See Superior Coach of Fla., Inc. v. Commissioner*, 80 T.C. 895, 912 (1983). In computing the net § 481(a) adjustment, a taxpayer must take into account all relevant accounts. For example, the § 481(a) adjustment for a change in the proper time for deducting salary bonuses under § 461 should reflect any necessary adjustments for amounts of salary bonuses capitalized to inventory under § 263A.

Example. A taxpayer that is not required to use inventories uses the overall cash receipts and disbursements method and changes to an overall accrual method. The taxpayer has \$120,000 of income earned but not yet received (accounts receivable) and \$100,000 of expenses incurred but not yet paid (accounts payable) as of the end of the taxable year preceding the year of change. A positive § 481(a) adjustment of \$20,000 (\$120,000 accounts receivable less \$100,000 accounts payable) is required as a result of the change.

.02 *Changes to section 3.08, Definition of "under examination."*

(1) *Change to section 3.08(1)(a).* Section 3.08(1)(a) of Rev. Proc. 2008-52 is modified to read as follows:

(1) *In general.*

(a) Except as provided in sections 3.08(2), (3), (4), (5) and (6) of this revenue procedure, an examination of a taxpayer with respect to a federal income tax return begins on the date the taxpayer is contacted in any manner by a representative of the Internal Revenue Service (Service) for the purpose of scheduling any type of

examination of the return. An examination ends:

* * *

(2) *New sections 3.08(4), 3.08(5) and 3.08(6).* Section 3.08 of Rev. Proc. 2008-52 is modified by adding new sections 3.08(4) and 3.08(5) and is clarified by adding a new section 3.08(6) to read as follows:

(4) *Certain foreign corporations.* A foreign corporation that is not required to file a federal income tax return is under examination if any of its controlling domestic shareholders, as defined in § 6.02(3)(b) of this revenue procedure, is under examination for a taxable year(s) in which it was a United States shareholder of the foreign corporation. For purposes of this revenue procedure, a foreign corporation is no longer under examination when the controlling domestic shareholders are no longer under examination, as defined in section 3.08 of this revenue procedure.

(5) *Taxpayer before Joint Committee on Taxation.* If an examination of a taxpayer involves a refund or credit in excess of the statutory sum that is subject to review by the Joint Committee on Taxation pursuant to § 6405, then, for purposes of this revenue procedure, the taxpayer is under examination while the taxpayer has a refund or credit under review by the Joint Committee on Taxation and continues to be under examination until Joint Committee on Taxation review procedures and any necessary follow-up are complete. See Rev. Proc. 2005-32, 2005-1 C.B. 1206.

(6) *Taxpayer in Compliance Assurance Process.* For purposes of this revenue procedure, a taxpayer participating in the Compliance Assurance Process (CAP) is considered to be under examination as of the date the taxpayer executes the Memorandum of Understanding for the CAP.

.03 *Change to section 3.09, Definition of "issue under consideration."* Section 3.09 of Rev. Proc. 2008-52 is modified by adding a new section 3.09(4) at the end of section 3.09 to read as follows:

(4) *Certain foreign corporations.* In the case of a controlled foreign corporation (CFC) as defined in § 953(c)(1)(B) or § 957 or a noncontrolled section 902 corporation as defined in § 904(d)(2)(E) (10/50 corporation), a foreign corporation's method of accounting for an item is an issue under consideration if any of the corporation's controlling domestic

shareholders receives notification described in section 3.09(1), (2) or (3) that the treatment of a distribution or deemed distribution from the foreign corporation, or the amount of its earnings and profits or foreign taxes deemed paid, is an issue under consideration.

.04 *Change to section 4.02, Scope "Inapplicability"*. Section 4.02(1) of Rev. Proc. 2008-52 is modified and section 4.02(4) of Rev. Proc. 2008-52 is clarified to read as follows:

(1) *Under examination.* If, on the date the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) would otherwise file a copy of the application with the national office, the taxpayer is under examination (as provided in section 3.08 of this revenue procedure), except as provided in sections 6.03(2) (90-day window), 6.03(3) (120-day window), 6.03(4) (consent of director), 6.03(5) (changes lacking audit protection), and 6.03(6) (issue pending) of this revenue procedure;

* * *

(4) *Section 381(a) transaction.* Except as otherwise provided in this section 4.02(4) or in final regulations issued under § 381, if the taxpayer engages in a transaction to which § 381(a) applies within the proposed taxable year of change (determined without regard to any potential closing of the year under § 381(b)(1)):

* * *

.05 *Changes to section 5, TERMS AND CONDITIONS OF CHANGE, and section 6, GENERAL APPLICATION PROCEDURES.*

(1) *Changes to sections 5.06(4) and 6.02(3)(b).* Section 5.06(4) of Rev. Proc. 2008-52 is clarified by deleting the reference to the temporary regulations under § 1.964-1T(c)(3) and inserting reference to the final regulations under §§ 1.964-1(c)(3). Section 6.02(3)(b) is clarified by deleting the references to the temporary regulations under §§ 1.964-1T(c)(3) and 1.964-1T(c)(5) and inserting references to the final regulations under §§ 1.964-1(c)(3) and 1.964-1(c)(5), respectively.

(2) *Changes to sections 6.02(1)(b), 6.02(11), 6.03, 6.04 and 6.05 of Rev. Proc. 2008-52.* Sections 6.02(1)(b) of Rev. Proc. 2008-52 is clarified and sections 6.02(11), 6.03, 6.04 and 6.05 of Rev. Proc. 2008-52 are modified to read as follows:

.02 *Filing requirements.*

(1) *Applications.*

* * *

(b) *Separate applications.*

(i) *In general.* Ordinarily, a taxpayer must submit a separate application for each change in method of accounting.

(ii) *Single application for two or more changes.* In some cases, the provisions of this revenue procedure or other guidance published in the IRB applicable to particular changes in method of accounting may require or allow a taxpayer to file a single application for two or more concurrent changes. See, for example, section 14.03 of the APPENDIX of this revenue procedure.

When the taxpayer is required or allowed to file a single Form 3115 for two or more concurrent changes, the taxpayer must attach to the single Form 3115 the information required by Part II, line 12, and Part IV, line 25 (including the amount of any § 481(a) adjustment), of Form 3115 for each change in method of accounting included on that single Form 3115. Also attach an explanation for any other line(s) on the single Form 3115 where the taxpayer's answer is different for any of the concurrent changes to which the single Form 3115 relates.

* * *

(11) *Additional copies required.*

(a) *Scope restrictions waived for taxpayer under examination.* If (i) one or more of the scope limitation provisions of section 4.02 of this revenue procedure would otherwise preclude a taxpayer from making a change under this revenue procedure, but (ii) the scope limitation provisions of section 4.02 of this revenue procedure do not apply to the change sought by the taxpayer (see, for example section 2.01 of the APPENDIX of this revenue procedure), and (iii) the taxpayer is under examination (as provided in section 3.08 of this revenue procedure) on the date it files the copy of its application with the national office, then the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must provide a copy of the application to the examining agent(s) at the same time that it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(b) *Taxpayer before an appeals office or a federal court and issue not under consideration.* If a taxpayer that is otherwise within the scope of this revenue procedure (or if section 6.02(3)(b) of this revenue procedure applies, any controlling domestic shareholder of a CFC or 10/50 corporation) is before an appeals office or a federal court and the present method to be changed is not an issue under consideration by the appeals office or the federal court on the date the copy of its application is filed with the national office, then the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must provide a copy of the application to the appeals officer(s) or counsel(s) for the government, as applicable, at the same time that it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the appeals officer(s) or counsel(s) for the government, as applicable.

.03 Taxpayer under examination.

(1) *In general.* Except as otherwise provided in the APPENDIX of this revenue procedure (see, for example, section 2.01 of the APPENDIX of this revenue procedure), a taxpayer that is under examination (as provided in section 3.08 of this revenue procedure) may file an application to change a method of accounting under section 6 of this revenue procedure only if the taxpayer is within the provisions of section 6.03(2) (90-day window), 6.03(3) (120-day window), 6.03(4) (consent of director), 6.03(5) (changes lacking audit protection), or 6.03(6) (issue pending) of this revenue procedure. A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) that files an application beyond the time periods provided in the 90-day and 120-day windows is not eligible for the automatic extension of time and will not be granted an extension of time to file under § 301.9100, except in unusual and compelling circumstances.

(2) 90-day window period.

(a) A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) may file a copy of the application with the national office to change a method of accounting under this revenue procedure during the first 90-days of any taxable year (the 90-day window) if the taxpayer has (or in the case of a tax-

payer that is a CFC or 10/50 corporation, all of its controlling domestic shareholders that are under examination have) been under examination for at least 12 consecutive months as of the first day of the taxable year. This 90-day window is not available if the method of accounting the taxpayer is changing is an issue under consideration at the time the taxpayer (or designated shareholder) would otherwise file the copy of the application or an issue the examining agent(s) has placed in suspense at the time the taxpayer (or designated shareholder) would otherwise file the copy of the application.

(b) A taxpayer changing a method of accounting under this 90-day window (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must provide a copy of the application to the examining agent(s) at the same time it files the copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(3) 120-day window period.

(a) A taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) may file a copy of the application with the national office to change a method of accounting under this revenue procedure during the 120-day period following the date an examination of the taxpayer (or in the case of a taxpayer that is a CFC or 10/50 corporation, of each of its controlling domestic shareholders that were under examination) ends (the 120-day window), regardless of whether a subsequent examination has commenced. This 120-day window is not available if the method of accounting the taxpayer is changing is an issue under consideration at the time the taxpayer (or designated shareholder) would otherwise file a copy of the application or an issue the examining agent(s) has placed in suspense at the time the taxpayer (or designated shareholder) would otherwise file a copy of the application.

(b) A taxpayer changing a method of accounting under this 120-day window (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must provide a copy of the application to the examining agent(s) for any examination that is in process at the same time it files the copy of the application with the national office. The application must con-

tain the name(s) and telephone number(s) of the examining agent(s).

(4) Consent of director.

(a) A taxpayer under examination may change its method of accounting under this revenue procedure if the director consents to the filing of the application. The director will consent to the filing of the application unless, in the opinion of the director, the method of accounting to be changed would ordinarily be included as an item of adjustment in the year(s) for which the taxpayer is under examination. For example, the director will consent to the filing of an application to change from a clearly permissible method of accounting, or from an impermissible method of accounting where the impermissible method was adopted subsequent to the years under examination. The director's consent is limited to the director's consent to file the application and does not constitute the director's agreement to, or approval of, the requested change in method of accounting. The question of whether the method of accounting from which the taxpayer is changing is permissible or was adopted subsequent to the years under examination may be referred to the national office as a request for technical advice under the provisions of Rev. Proc. 2009-2 (or any successor).

(b) A taxpayer changing a method of accounting under this revenue procedure with the consent of the director (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must attach to the copy of the application filed with the national office a statement from the director consenting to the filing of the application. In addition, the taxpayer (or designated shareholder) must attach to its original application attached to its timely filed original federal income tax return a statement certifying that it has obtained the written consent of the director to the filing of the application and that the taxpayer (or designated shareholder) will maintain a copy of such consent available for inspection. The taxpayer (or designated shareholder) must provide a copy of the application to the director at the same time it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(5) Changes lacking audit protection.

(a) A taxpayer under examination may change its method of accounting under this revenue procedure if the description of the change in the APPENDIX of this revenue procedure provides that the change is not subject to the audit protection provisions of section 7 of this revenue procedure.

(b) A taxpayer changing a method of accounting under this section 6.03(5) (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must provide a copy of the application to the examining agent(s) for any examination that is in process at the same time it files the copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(6) *Issue pending.*

(a) A taxpayer that is under examination with respect to any income tax issue may request to change a method of accounting if the method of accounting to be changed is an issue pending for any taxable year under examination. However, the audit protection provisions of section 7 of this revenue procedure do not apply to a taxpayer changing its method of accounting under this section 6.03(6). For purposes of this section 6.03(6), an issue is pending for a taxable year under examination if the Service has given the taxpayer (or if section 6.02(3)(b) of this revenue procedure applies, any controlling domestic shareholders of a CFC or 10/50 corporation) written notification indicating an adjustment is being made or will be proposed with respect to the taxpayer's method of accounting. The notification by the Service may result from an inquiry by the Joint Committee on Taxation. This notification normally will occur after the Service or the Joint Committee on Taxation has gathered information sufficient to determine that an adjustment is appropriate and justified, although the exact amount of the adjustment may not yet be determined.

(b) A taxpayer that requests to change a method of accounting under this section 6.03(6) (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must provide a copy of the application to the examining agent(s) at the same time it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

.04 Taxpayer before an appeals office. A taxpayer otherwise within the scope of this revenue procedure that is before an appeals office with respect to any income tax issue (or if section 6.02(3)(b) of this revenue procedure applies, a CFC or 10/50 corporation with a controlling domestic shareholder that is before an appeals office with respect to any income tax issue) may request a change in method of accounting. However, the audit protection provisions of section 7 of this revenue procedure do not apply if the method of accounting to be changed is an issue under consideration by the appeals office. A taxpayer that requests to change a method of accounting under this section 6.04 (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must provide a copy of the application to the appeals officer at the time it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the appeals officer(s).

.05 Taxpayer before a federal court. A taxpayer otherwise within the scope of this revenue procedure that is before a federal court with respect to any income tax issue (or if section 6.02(3)(b) of this revenue procedure applies, a CFC or 10/50 corporation with a controlling domestic shareholder that is before a federal court with respect to any income tax issue) may request a change in method of accounting. However, the audit protection provisions of section 7 of this revenue procedure do not apply if the method of accounting to be changed is an issue under consideration by the federal court. A taxpayer (or designated shareholder) that requests to change a method of accounting under this section 6.05 must provide a copy of the application to the counsel(s) for the government at the time it files a copy of the original application with the national office. The application must contain the name(s) and telephone number(s) of the counsel(s) for the government.

.06 Change to section 13, EFFECT ON OTHER DOCUMENTS. Rev. Proc. 2008-52 is clarified by inserting a new paragraph at the end to read as follows:

Rev. Proc. 2008-18, 2008-10 I.R.B. 573, is modified, and, as modified, is superseded.

.07 New section 3.05 of the APPENDIX, Materials and supplies. Section 3 of the

APPENDIX of Rev. Proc. 2008-52 is modified by adding a new section 3.05 to read as follows:

.05 Materials and supplies.

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change its method of accounting for materials and supplies on hand to the method of treating the cost of materials and supplies as a deferred expense to be taken into account in the taxable year in which they are actually consumed and used in operation, consistent with § 1.162-3.

(b) *Inapplicability.* This change does not apply to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under section 3.05 of this APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

(2) *Amounts taken into account.* Applicable provisions of the Code, regulations, and other guidance published in the IRB prescribe the manner in which a liability that has been incurred is taken into account. For example, for a taxpayer with inventories, certain indirect material costs must be included in inventory costs and may be recovered through the cost of goods sold. See § 1.263A-1(e)(3)(ii)(E). A taxpayer may not rely on the provisions of section 3.05 of this APPENDIX to take a current deduction.

(3) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(4) *Proposed regulations.* The Department of the Treasury has published proposed regulations that address the definition and treatment of materials and supplies under § 162. See Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property, REG-168745-03, 73 FR 12838-01 (March 10, 2008), 2008-18 I.R.B. 871.

The proposed regulations are not effective until publication of a Treasury decision adopting them as final regulations in the Federal Register. Thus, taxpayers may not change a method of accounting in reliance upon the rules contained in the proposed regulations until the rules are published as final regulations in the Federal Register. If final regulations are adopted with positions that are inconsistent with the method of accounting implemented by the taxpayer under section 3.05 of this APPENDIX, that method will no longer be regarded as proper. In such event, the taxpayer will be required to follow any instructions in the final regulations or other guidance published in the IRB concerning methods of accounting for materials and supplies for future taxable years.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change in method of accounting under section 3.05 of this APPENDIX is "143." See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Justin G. Meeks at 202-622-5020 (not a toll-free call).

.08 *New section 3.06 of the APPENDIX, Repair and maintenance costs.* Section 3 of the APPENDIX of Rev. Proc. 2008-52 is modified by adding a new section 3.06 to read as follows:

.06 *Repair and maintenance costs.*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change its method of accounting from capitalizing under § 263(a) costs paid or incurred to repair and maintain tangible property (including network assets) to treating the repair and maintenance costs as ordinary and necessary business expenses under § 162 and § 1.162-4. This change also applies to a taxpayer that wants to change the unit of property it uses to determine the deductibility of repair and maintenance costs to a unit of property that is permissible under applicable legal authority.

(b) *Inapplicability.* This change does not apply to:

(i) A taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under section 3.06 of this AP-

PENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable);

(ii) A taxpayer that wants to change its method of accounting for dispositions of depreciable property, including a change in the unit of property used for such dispositions (but see sections 6.24 and 6.25 of this APPENDIX); or

(iii) Any property subject to the repair allowance under § 1.167(a)-11(d)(2) (including expenditures incurred after December 31, 1980, for the repair, maintenance, rehabilitation, or improvement of property placed in service before January 1, 1981).

(2) *Manner of making change.* A taxpayer making this change must attach to its Form 3115 a statement with the following:

(a) A detailed description of the types of tangible property to which this change applies;

(b) A detailed description of the types of repair and maintenance costs to which this change applies;

(c) If the taxpayer is changing any unit of property determination, a detailed description of the unit(s) of property under its present method of accounting for determining the deductibility of repair and maintenance costs and a detailed description of the unit(s) of property it will use under its proposed method of determining the deductibility of repair and maintenance costs, together with a description of the legal authority supporting the taxpayer's proposed unit(s) of property for determining the deductibility of repair and maintenance costs;

(d) The following statements regarding the costs to which this change applies:

(i) "The taxpayer represents that the repair and maintenance costs are incurred to keep the taxpayer's property in ordinarily efficient operating condition."

(ii) "The taxpayer represents that the repair and maintenance costs do not materially increase the value or substantially prolong the useful life of any unit of property compared to the value or useful life of the property before the general wear or tear or particular event that led to the repairs or maintenance."

(iii) "The taxpayer represents that the repair and maintenance costs do not adapt

any unit of property to a new or different use."

(iv) "The taxpayer represents that the repair and maintenance costs do not include costs to replace any unit of property or any major components or substantial structural parts of any unit of property."

(v) "The taxpayer represents that the repair and maintenance costs are not incurred as part of a plan of rehabilitation, modernization, or improvement to any unit of property."

(vi) "The taxpayer represents that the repair and maintenance costs do not result from any prior owner's use of any unit of property."

(3) *Additional copy of Form 3115 required.* A taxpayer changing its method of accounting under section 3.06 of this APPENDIX must, in addition to the timely duplicate filing requirements in section 6.02(3) of Rev. Proc. 2008-52, send a copy of its completed Form 3115 (including attachments) to the following address on or before the date the taxpayer files a copy of the Form 3115 with the national office: Internal Revenue Service, 1973 North Rulon White Blvd., Mail Stop 4917, Ogden, UT 84404.

(4) *Amounts taken into account.* Applicable provisions of the Code, regulations, and other guidance published in the IRB prescribe the manner in which a liability that has been incurred is taken into account. For example, for a taxpayer with inventories, certain repair and maintenance costs must be included in inventory costs and may be recovered through the cost of goods sold. See § 1.263A-1(e)(3)(ii)(E). A taxpayer may not rely on the provisions of section 3.06 of this APPENDIX to take a current deduction.

(5) *No ruling on unit of property.* The consent granted under this revenue procedure for this change is not a determination by the Commissioner that the taxpayer is using the appropriate unit of property in determining the deductibility of repair and maintenance costs and does not create any presumption that the proposed unit of property is permissible. The director will ascertain whether the taxpayer's determination of its unit of property is correct.

(6) *Concurrent automatic change.* A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year

of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(7) *Proposed regulations.* The Department of the Treasury has published proposed regulations that address the application of §§ 162 and 263 to expenditures paid or incurred to repair, maintain, or improve tangible property. See Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property, 73 FR 12838-01 (March 10, 2008), 2008-1 C.B. 871. The proposed regulations are not effective until publication of a Treasury decision adopting them as final regulations in the Federal Register. Thus, taxpayers may not change a method of accounting in reliance upon the rules contained in the proposed regulations until the rules are published as final regulations in the Federal Register. If final regulations are adopted with positions that are inconsistent with the method of accounting implemented by the taxpayer under section 3.06 of this APPENDIX, that method will no longer be regarded as proper. In such event, the taxpayer will be required to follow any instructions in the final regulations or other guidance published in the IRB concerning methods of accounting for the repair, maintenance, or improvement of tangible property for future taxable years.

(8) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change in method of accounting under section 3.06 of this APPENDIX is "144." See section 6.02(4) of this revenue procedure.

(9) *Contact information.* For further information regarding a change under this section, contact Mon Lam at 202-622-4950 (not a toll-free call).

.09 *New section 6.23 of the APPENDIX, Tenant construction allowances.* Section 6 of the APPENDIX of Rev. Proc. 2008-52 is modified by adding a new section 6.23 to read as follows:

.23 *Tenant construction allowances.*

(1) *Description of change and scope.*

(a) *Applicability.* This change applies to a taxpayer that wants to change its method of accounting for tenant construction allowances:

(i) from improperly treating the taxpayer as having a depreciable interest in the property subject to the tenant construction allowances for federal income tax purposes to properly treating the taxpayer as not having a depreciable interest in such property for federal income tax purposes; or

(ii) from improperly treating the taxpayer as not having a depreciable interest in the property subject to the tenant construction allowances for federal income tax purposes to properly treating the taxpayer as having a depreciable interest in such property for federal income tax purposes.

(b) *Inapplicability.* This change does not apply to:

(i) any tenant construction allowance that qualifies under § 110;

(ii) any portion of a tenant construction allowance that is not expended on depreciable property; or

(iii) any amount expended for depreciable property in excess of the tenant construction allowance.

(2) *Definition.* For purposes of section 6.23 of this APPENDIX, the term "tenant construction allowance(s)" means any amount received by a lessee from a lessor to construct, acquire, or improve property for use by the lessee pursuant to a lease.

(3) *Manner of making the change.*

(a) The change in method of accounting under section 6.23 of this APPENDIX is made using a cut-off method and only applies to leases entered into on or after the beginning of the year of change. See section 2.06 of this revenue procedure.

(b) If a taxpayer wants to change its method of accounting for tenant construction allowances under existing leases, the taxpayer must file a Form 3115 with the Commissioner in accordance with the requirements of § 1.446-1(e)(3)(i) and Rev. Proc. 97-27. A change involving tenant construction allowances under existing leases will require a § 481(a) adjustment. Consent to change a method of accounting for tenant construction allowances under existing leases is granted only if the taxpayer's treatment of the property subject to the tenant construction allowances is consistent with the treatment of such property by the counterparty for federal income tax purposes. The following information must be submitted with a Form 3115 submitted under Rev. Proc. 97-27:

(i) If a lessee is filing the Form 3115, the lessee must submit with the Form 3115: (A) a statement that provides the amount of the tenant construction allowance received by the lessee, the amount of such tenant construction allowance expended by the lessee on property, and the name of the lessor that provided the tenant construction allowance; and (B) a representation, signed under penalties of perjury, from such lessor that provides the amount of the tenant construction allowance provided to the lessee and an explanation as to how the lessor is treating the property subject to such tenant construction allowance for federal income tax purposes. If the lessor capitalized the tenant construction allowance (or any portion thereof) provided to the lessee and depreciated the property subject to such tenant construction allowance, the representation must also include the amount that was capitalized by the lessor, the Internal Revenue Code section under which the property is depreciated by the lessor, and the life over which the property is depreciated by the lessor.

(ii) If a lessor is filing the Form 3115, the lessor must submit with the Form 3115: (A) a statement that provides the amount of the tenant construction allowance provided to a lessee and the name of the lessee that received such tenant construction allowance; and (B) a representation, signed under penalties of perjury, from such lessee that provides the amount of the tenant construction allowance received from the lessor, the amount of such tenant construction allowance recognized as gross income by the lessee, the amount of the tenant construction allowance expended by the lessee on property, and an explanation as to how the lessee is treating the property subject to the tenant construction allowance for federal income tax purposes. If the lessee capitalized the tenant construction allowance (or any portion thereof) received from the lessor and depreciated the property subject to such tenant construction allowance, the representation must also include the amount that was capitalized by the lessee, the Internal Revenue Code section under which the property is depreciated by the lessee, and the life over which the property is depreciated by the lessee.

(4) *No audit protection.* A taxpayer does not receive audit protection under

section 7 of this revenue procedure in connection with this change.

(5) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 6.23 of this APPENDIX is “145.” See section 6.02(4) of this revenue procedure.

(6) *Contact information.* For further information regarding a change under this section, contact Ruba Nasrallah at 202-622-4930 (not a toll-free call).

.10 *New section 6.24 of the APPENDIX, Dispositions of structural components of a building (section 168).* Section 6 of the APPENDIX of Rev. Proc. 2008-52 is modified by adding a new section 6.24 to read as follows:

.24 *Dispositions of structural components of a building (section 168).*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change to a unit of property that is permissible under applicable legal authority for determining when the taxpayer has disposed of a building (as defined in § 1.48-1(e)(1), except as otherwise provided under any other applicable provision of the Code or regulations relating to depreciation or amortization (for example, § 1400I(f)(3))) and its structural components (as defined in § 1.48-1(e)(2)) for depreciation purposes. This change also will affect the determination of gain or loss from the disposition of the building (including its structural components).

(b) *Inapplicability.* This change does not apply to:

(i) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under section 6.24 of this APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable);

(ii) any property that is not depreciated under § 168 under the taxpayer’s present and proposed methods of accounting;

(iii) any section 1245 property or depreciable land improvement (but see section 6.25 of this APPENDIX for making this change);

(iv) any leasehold improvement, whether made by the lessor or the lessee

(unless the taxpayer leased land and constructed a building on such leased land, and such building (including its structural components) is the leasehold improvement and is the unit of property under the taxpayer’s proposed method of accounting under section 6.24 of this APPENDIX);

(v) any property disposed of by the taxpayer in a transaction to which a non-recognition section of the Code applies (for example, § 1031, transactions subject to § 168(i)(7));

(vi) any property subject to a general asset account election under § 168(i)(4) and the regulations thereunder;

(vii) any building with multiple condominium or cooperative units (unless each condominium or cooperative unit is the unit of property under the taxpayer’s proposed method of accounting under section 6.24 of this APPENDIX); or

(viii) any multiple buildings (including their structural components) that are treated as a single building (single unit of property) under the taxpayer’s present method of accounting or will be treated as a single building (single unit of property) under the taxpayer’s proposed method of accounting.

(2) *Manner of making change.* A taxpayer making this change must attach to its Form 3115 a statement with the following:

(a) A detailed description of the types of property to which this change applies;

(b) A detailed description of the unit of property under the taxpayer’s present and proposed methods of accounting for determining when the building (including its structural components) is disposed of by the taxpayer for depreciation purposes (when depreciation ends);

(c) A detailed description of how the taxpayer determined the unit of property under its present method of accounting for determining when the building (including its structural components) is disposed of by the taxpayer for depreciation purposes and will determine the unit of property under its proposed method of accounting for determining when the building (including its structural components) is disposed of by the taxpayer for depreciation purposes. If this proposed unit of property is not each building (including its structural components) (except as provided in section 6.24(1)(b)(vii) of this APPENDIX regarding condominium or cooperative units), also provide the legal authority

supporting the taxpayer’s proposed unit of property for determining when the building (including its structural components) is disposed of by the taxpayer for depreciation purposes; and

(d) A statement as to whether the taxpayer’s proposed unit of property for determining when the building (including its structural components) is disposed of by the taxpayer for depreciation purposes is the same as the taxpayer’s present unit of property for determining when the building (including its structural components) is placed in service by the taxpayer (when depreciation begins). If not, also provide the unit of property for determining when the building (including its structural components) is placed in service by the taxpayer and explain why the taxpayer is using a different unit of property for determining when the building (including its structural components) is placed in service.

(3) *Additional copy of Form 3115 required.* A taxpayer changing its method of accounting under section 6.24 of this APPENDIX must, in addition to the timely duplicate filing requirements in section 6.02(3) of Rev. Proc. 2008-52, send a copy of its completed Form 3115 (including attachments) to the following address on or before the date the taxpayer files a copy of the Form 3115 with the national office: Internal Revenue Service, 1973 North Rulon White Blvd., Mail Stop 4917, Ogden, UT 84404

(4) *No ruling on unit of property.* The consent granted under this revenue procedure for this change is not a determination by the Commissioner that the taxpayer is using the appropriate unit of property for determining when the building (including its structural components) is placed in service or disposed of by the taxpayer for depreciation purposes and does not create any presumption that the proposed unit of property is permissible for depreciation purposes. The director will ascertain whether the taxpayer’s determination of its unit of property for depreciation purposes is correct.

(5) *Concurrent automatic change.*

(a) A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method

change numbers for both changes on the appropriate line on that Form 3115.

(b) A taxpayer that wants to make both this change and a change under section 6.25 of this APPENDIX for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change in method of accounting under section 6.24 of this APPENDIX is "146." See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Charles Magee at 202-622-4930 (not a toll-free call).

.11 *New section 6.25 of the APPENDIX, Dispositions of tangible depreciable assets (other than a building or its structural components) (section 168).* Section 6 of the APPENDIX of Rev. Proc. 2008-52 is modified by adding a new section 6.25 to read as follows:

.25 *Dispositions of tangible depreciable assets (other than a building or its structural components) (section 168).*

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change to a unit of property that is permissible under applicable legal authority for determining when the taxpayer has disposed of a section 1245 property or a depreciable land improvement for depreciation purposes. This change also will affect the determination of gain or loss from the disposition of the section 1245 property or the depreciable land improvement.

(b) *Inapplicability.* This change does not apply to:

(i) a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under section 6.25 of this APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable);

(ii) any property that is not depreciated under § 168 under the taxpayer's present and proposed methods of accounting;

(iii) any building (including its structural components) (but see section 6.24 of this APPENDIX for making this change);

(iv) any leasehold improvement, whether made by the lessor or the lessee (unless each leasehold improvement is the unit of property under the taxpayer's proposed method of accounting under section 6.25 of this APPENDIX);

(v) any property disposed of by the taxpayer in a transaction to which a non-recognition section of the Code applies (for example, § 1031, transactions subject to § 168(i)(7));

(vi) any property subject to a general asset account election under § 168(i)(4) and the regulations thereunder;

(vii) any property subject to a mass asset account election under former § 168(d)(2)(A); or

(viii) any property subject to the repair allowance under § 1.167(a)-11(d)(2) (including expenditures incurred after December 31, 1980, for the repair, maintenance, rehabilitation, or improvement of property placed in service before January 1, 1981).

(2) *Manner of making change.* A taxpayer making this change must attach to its Form 3115 a statement with the following:

(a) A detailed description of the types of property to which this change applies;

(b) A detailed description of the unit of property under the taxpayer's present and proposed methods of accounting for determining when the property is disposed of by the taxpayer for depreciation purposes (when depreciation ends);

(c) A detailed description of how the taxpayer determined the unit of property under its present method of accounting for determining when the property is disposed of by the taxpayer for depreciation purposes and will determine the unit of property under its proposed method of accounting for determining when the property is disposed of by the taxpayer for depreciation purposes. If this proposed unit of property is not determined using only the functional interdependence standard (see, e.g., *Armstrong World Industries, Inc. v. Commissioner*, T.C. Memo. 1991-326, *aff'd*, 974 F.2d 422 (3rd Cir. 1992); *Hawaiian Independent Refinery, Inc. v. United States*, 697 F.2d 1063, 1069 (Fed. Cir.

1983)), also provide the legal authority supporting the taxpayer's proposed unit of property for determining when the property is disposed of by the taxpayer for depreciation purposes; and

(d) A statement as to whether the taxpayer's proposed unit of property for determining when the property is disposed of by the taxpayer for depreciation purposes is the same as the taxpayer's present unit of property for determining when the property is placed in service by the taxpayer (when depreciation begins). If not, also provide the unit of property for determining when the property is placed in service by the taxpayer and explain why the taxpayer is using a different unit of property for determining when the property is placed in service.

(3) *Additional copy of Form 3115 required.* A taxpayer changing its method of accounting under section 6.25 of this APPENDIX must, in addition to the timely duplicate filing requirements in section 6.02(3) of Rev. Proc. 2008-52, send a copy of its completed Form 3115 (including attachments) to the following address on or before the date the taxpayer files a copy of the Form 3115 with the national office: Internal Revenue Service, 1973 North Rulon White Blvd., Mail Stop 4917, Ogden, UT 84404.

(4) *No ruling on unit of property.* The consent granted under this revenue procedure for this change is not a determination by the Commissioner that the taxpayer is using the appropriate unit of property for determining when the property is placed in service or disposed of by the taxpayer for depreciation purposes and does not create any presumption that the proposed unit of property is permissible for depreciation purposes. The director will ascertain whether the taxpayer's determination of its unit of property for depreciation purposes is correct.

(5) *Concurrent automatic change.*

(a) A taxpayer that wants to make both this change and a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(b) A taxpayer that wants to make both this change and a change under section

6.24 of this APPENDIX for the same year of change should file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

(6) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change in method of accounting under section 6.25 of this APPENDIX is “147.” See section 6.02(4) of this revenue procedure.

(7) *Contact information.* For further information regarding a change under this section, contact Charles Magee at 202-622-4930 (not a toll-free call).

.12 *Changes to section 11.01 of the APPENDIX, Certain uniform capitalization (UNICAP) methods used by resellers and reseller-producers.*

(1) *Section 11.01(1)(a) of the APPENDIX, Applicability.*

(a) *Section 11.01(1)(a)(vi) of the APPENDIX.* Section 11.01(1)(a)(vi) of the APPENDIX is modified to apply to a reseller-producer and is also clarified to read as follows:

(vi) a reseller or reseller-producer that wants to change to a UNICAP method (or methods) specifically described in the regulations and includes any necessary changes in the identification of costs subject to § 263A that will be accounted for using the new method in any taxable year, other than the first taxable year, that it does not qualify as a small reseller. However, this does not include a change for purposes of recharacterizing “section 471 costs” as “additional § 263A costs” (or *vice versa*) under the simplified resale method; or

(b) *New section 11.01(1)(a)(vii) of the APPENDIX.* Section 11.01(1)(a) of the APPENDIX is modified by adding a new section 11.01(1)(a)(vii) to read as follows:

(vii) a reseller or reseller-producer that wants to change from not capitalizing a cost subject to § 263A to capitalizing that cost, if the reseller or reseller-producer is otherwise already using a UNICAP method (or methods) specifically described in the regulations.

(2) *Section 11.01(1)(b)(ii) of the APPENDIX.* Section 11.01(1)(b)(ii) of the APPENDIX is clarified to read as follows:

(ii) *Historic absorption ratio.* This change does not apply to a taxpayer that wants to make an historic absorption

ratio election under §§ 1.263A-2(b)(4) or 1.263A-3(d)(4), or to a taxpayer that wants to revoke an election to use the historic absorption ratio with the simplified resale method (see § 1.263A-3(d)(4)(iii)(B)), including a taxpayer using the simplified resale method with an historic absorption ratio that wants to change to a UNICAP method specifically described in the regulations that does not include the historic absorption ratio. However, this change applies to a small reseller that wants to change from the historic absorption ratio with the simplified resale method to a permissible non-UNICAP inventory capitalization method under section 11.01(1)(a)(i) of this APPENDIX.

(3) *Section 11.01(1)(c) of the APPENDIX.* Section 11.01(1)(c) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(c) *Scope limitation inapplicable.* The scope limitation of § 4.02(7) of this revenue procedure does not apply to the changes described in §§ 11.01(1)(a)(i) and (ii) of the APPENDIX of this revenue procedure.

(4) *Section 11.01(2), Definitions.* Section 11.01(2)(g) of the APPENDIX of Rev. Proc. 2008-52 is clarified to read as follows:

(g) “A UNICAP method specifically described in the regulations” includes the 90-10 *de minimis* rule to allocate a mixed service department’s costs to resale activities (§ 1.263A-1(g)(4)(ii)), the 1/3-2/3 rule to allocate labor costs of personnel to purchasing activities (§ 1.263A-3(c)(3)(ii)(A)), the 90-10 *de minimis* rule to allocate a dual-function storage facility’s costs to property acquired for resale (§ 1.263A-3(c)(5)(iii)(C)), the specific identification method (§ 1.263A-1(f)(2)), the burden rate method (§ 1.263A-1(f)(3)), the standard cost method (§ 1.263A-1(f)(3)), the direct reallocation method (§ 1.263A-1(g)(4)(iii)(A)), the step-allocation method (§ 1.263A-1(g)(4)(iii)(B)), the simplified service cost method (§ 1.263A-1(h)) (with a labor-based allocation ratio), and the simplified resale method without the historic absorption ratio election (§ 1.263A-3(d)), but does not include any other reasonable allocation method within the meaning of § 1.263A-1(f)(4).

.13 *Changes to section 11.02 of the APPENDIX, Certain uniform capitalization (UNICAP) methods used by producers and reseller-producers.*

(1) *Section 11.02(1)(a) of the APPENDIX.* Section 11.02(1)(a) of the APPENDIX is modified by adding a new second sentence and is also clarified to read as follows:

(a) *Applicability.* This change applies to a producer (as defined in section 11.01(2)(d) of this APPENDIX) or a reseller-producer (as defined in section 11.01(2)(e) of this APPENDIX) that wants to change to a UNICAP method (or methods) specifically described in the regulations, including any necessary changes in the identification of costs subject to § 263A that will be accounted for using the new method. This change also includes a change from not capitalizing a cost subject to § 263A to capitalizing that cost for a producer or a reseller-producer that is otherwise already using a UNICAP method (or methods) specifically described in the regulations. However, this change does not include a change for purposes of recharacterizing “section 471 costs” as “additional § 263A costs” (or *vice versa*) under the simplified production method.

(2) *Section 11.02(1)(b) of the APPENDIX.* Section 11.02(1)(b) of the APPENDIX is clarified to read as follows:

(b) *Inapplicability.* This change does not apply to a producer or reseller-producer that wants to revoke an election to use the historic absorption ratio with the simplified production method (see § 1.263A-2(b)(4)(iii)(B)), including a taxpayer using the simplified production method with an historic absorption ratio changing to a UNICAP method specifically described in the regulations that does not include the historic absorption ratio. This change also does not apply to a taxpayer that wants to use either the simplified service cost method or the simplified production method for self-constructed assets under §§ 1.263A-1(h)(2)(i)(D) and 1.263A-2(b)(2)(i)(D). Also, this change does not apply to a producer or reseller-producer that wants to change its method of accounting for interest capitalization.

.14 *Change to section 14.01 of the APPENDIX, Change in overall method from the cash method to an accrual method.*

(1) *Change to section 14.01(1)(a) of the APPENDIX.* The second paragraph of section 14.01(1)(a) of the APPENDIX is clarified to read as follows:

* * *

If the year of change is the first taxable year the taxpayer is required by § 448 to change from the cash method (the first § 448 year) and the taxpayer qualifies to make this change under the automatic consent procedures of § 1.448-1(g) and (h)(2) as well as this revenue procedure, the taxpayer may make the change under this revenue procedure provided the taxpayer complies with the provisions of § 1.448-1(h)(2) and the requirements of this revenue procedure. For a hospital, defined in § 1.448-1(g)(2)(ii)(B), that makes the change for the first § 448 year under the provisions of this revenue procedure, see § 1.448-1(g)(2)(ii) for the applicable § 481(a) adjustment period. If a taxpayer does not change from the cash method for the first § 448 year under the provisions of this revenue procedure, the taxpayer must make the change under the provisions of § 1.448-1(g) and (h)(2).

(2) *Change to section 14.01(1)(b) of the APPENDIX, Inapplicability.* Section 14.01(1)(b) is clarified by inserting a new section 14.01(1)(b)(viii) to read as follows:

(viii) a taxpayer making a change from a hybrid method of accounting to an overall accrual method of accounting. For purposes of section 14.01 of this APPENDIX, a hybrid method of accounting is a combination of the cash and accrual methods under which one or more items of income or expense are reported on the cash method and one or more items of income or expense are reported on an accrual method.

(3) *Change to section 14.01(2) of the APPENDIX, Scope limitations inapplicable.* Section 14.01(2) of the APPENDIX is modified to read as follows:

(2) *Scope limitation inapplicable.* If the year of change is the first taxable year the taxpayer is required by § 448 to change from the cash method (first § 448 year), the scope limitation in section 4.02(6) of this revenue procedure does not apply to a change in method of accounting request made under section 14.01 of this APPENDIX. For all other changes in method of accounting requests made under section 14.01 of this APPENDIX, any prior change to the overall cash method under the provisions of Rev. Proc. 2001-10,

2001-1 C.B. 272, or Rev. Proc. 2002-28, 2002-1 C.B. 815, is disregarded for purposes of section 4.02(6) of this revenue procedure.

.15 *Change to section 14.14 of the APPENDIX, Nonshareholder contributions to capital under § 118.* Section 14.14 of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

.14 *Nonshareholder contributions to capital under § 118.*

(1) *Description of change.*

(a) *Water and sewerage disposal utilities.*

(i) This change applies to a regulated public utility described in § 118(c) that wants to change its method of accounting for payments received from customers as customer connection fees, which are not contributions to the capital of the regulated public utility within the meaning of § 118(c), from excluding the payments from gross income as nontaxable contributions to capital under § 118 to including the payments in gross income under § 61. See Rev. Rul. 2008-30, 2008-1 C.B. 1156.

(ii) This change applies to a regulated public utility described in § 118(c) that wants to change its method of accounting for payments or property received that are contributions in aid of construction under § 118(c) and § 1.118-2 and that meet the requirements of §§ 118(c)(1)(B) and 118(c)(1)(C) from including the payments or the fair market value of the property in gross income under § 61 to excluding the payments or the fair market value of the property from income as nontaxable contributions to capital under § 118(a).

(b) *Other payments or property received.* This change applies to a taxpayer that wants to change its method of accounting for payments or property received (other than the payments received by a public utility described in § 118(c) that are addressed in section 14.14(1)(a)(i) of this APPENDIX) that do not constitute contributions to the capital of the taxpayer within the meaning of § 118 and the regulations thereunder, from excluding the payments or the fair market value of the property from gross income as nontaxable contributions to capital under § 118 to including the payments or the fair market value of the property in gross income under § 61.

(2) *Additional requirement.* In addition to the other filing requirements of this rev-

enue procedure, a taxpayer that is making a change described in section 14.14(1)(a)(i) or (1)(b) must complete Schedule E of Form 3115 for the depreciable property to which the change relates.

(3) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.14 of this APPENDIX is "129." See section 6.02(4) of this revenue procedure.

(4) *Contact information.* For further information regarding a change under this section, contact David H. McDonnell at 202-622-3040 (not a toll-free call).

.16 *New section 14.15 of the APPENDIX, Debt issuance costs.* Section 14 of the APPENDIX of Rev. Proc. 2008-52 is modified by adding a new section 14.15 to read as follows:

.15 *Debt issuance costs.*

(1) *Description of change.* This change applies to a taxpayer that wants to change its method of accounting for capitalized debt issuance costs to comply with § 1.446-5, which provides rules for allocating the costs over the term of the debt.

(2) *Designated automatic accounting method change number.* The designated automatic accounting method change number for a change under section 14.15 of this APPENDIX is "148." See section 6.02(4) of this revenue procedure.

(3) *Contact information.* For further information regarding a change under this section, contact Sonja Kotlica at 202-622-3950 (not a toll-free number).

.17 *Change to section 15.07 of the APPENDIX, Advance payments.* Sections 15.07(1) and (3) of the APPENDIX of Rev. Proc. 2008-52 are modified and section 15.07(2) of the APPENDIX of Rev. Proc. 2008-52 is clarified to read as follows:

(1) *Description of change.* This change applies to a taxpayer using or changing to an overall accrual method of accounting that receives advance payments, as defined in Rev. Proc. 2004-34, 2004-1 C.B. 991, and wants to use either the full inclusion or deferral method, as described in Rev. Proc. 2004-34. See also Announcement 2004-48, 2004-1 C.B. 998. This change includes a change by a taxpayer that changes the way it recognizes advance payments in revenues in its applicable financial statement (AFS) and wants to change its method of accounting to use

its new AFS in determining the extent to which advance payments are included in gross income under Rev. Proc. 2004-34. For example, a taxpayer that changes its AFS from one deferral method to a different deferral method must change its method of accounting under this revenue procedure (if otherwise eligible) to use that different deferral method for tax purposes under Rev. Proc. 2004-34.

(2) *Manner of making change.* In lieu of providing the information and documentation required by line 1 of Schedule B of the Dec. 2003 version of Form 3115, a taxpayer changing to the deferral method must: (i) state whether the taxpayer uses an applicable financial statement and, if so, identify the type; (ii) describe the basis used for deferral (that is, the method the taxpayer uses in its applicable financial statement or how the taxpayer determines amounts earned, as applicable); and (iii) if the taxpayer makes an allocation to which section 5.02(4)(c) of Rev. Proc. 2004-34 applies, include a statement that the allocation method is based on payments the taxpayer regularly receives for an item or items it regularly provides separately. See Rev. Proc. 2004-34 and Announcement 2004-48.

(3) *Concurrent automatic change to an overall accrual method.* A taxpayer that wants to make both a change to the deferral method under section 15.07 of this APPENDIX and a change to an overall accrual method under section 14.01 of this APPENDIX for the same year of change must file a single Form 3115 for both changes and enter the designated automatic accounting method change numbers for both changes on the appropriate line on that Form 3115.

.18 *Change to section 15.10 of the APPENDIX, Retainages.* Section 15.10(1)(a) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(a) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting for treating retainages to a method consistent with the holding in Rev. Rul. 69-314, 1969-1 C.B. 139. A taxpayer changing its method of accounting for retainages under section 15.10 of this APPENDIX must treat all retainages (receivables and payables) in the same manner.

.19 *Change to section 19.01(1) of the APPENDIX, Self-insured employee medi-*

cal benefits. Section 19.01(1)(a)(i) of the APPENDIX of Rev. Proc. 2008-52 is amplified and clarified to read as follows:

(i) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting for self-insured liabilities (including any amounts not covered by insurance, such as a “deductible” amount under an insurance policy) relating to employee medical expenses (including liabilities resulting from medical services provided to retirees and to employees who have filed claims under a workers’ compensation act) that are not paid from a welfare benefit fund within the meaning of § 419(e) to a method as follows:

* * *

.20 *Change to section 19.01(2) of the APPENDIX, Bonuses.* Section 19.01(2)(a) of the APPENDIX of Rev. Proc. 2008-52 is amplified and clarified to read as follows:

(a) *Description of change.*

(i) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting to treat bonuses as incurred in the taxable year in which all events have occurred that establish the fact of the liability to pay a bonus and the amount of the liability can be determined with reasonable accuracy (see § 1.446-1(c)(1)(ii)). Specifically, a taxpayer may change its method of accounting under section 19.01(2) of this APPENDIX to one of the following methods:

(A) If all the events that establish the fact of the liability to pay a bonus have occurred by the end of the taxable year in which the related services are provided, the taxpayer will treat the bonus liability as incurred in that taxable year. See Rev. Rul. 55-446, 1955-2 C.B. 531, as modified by Rev. Rul. 61-127, 1961-2 C.B. 36.

(B) If all the events that establish the fact of the liability to pay a bonus occur in the taxable year subsequent to the taxable year in which the related services are provided, the taxpayer will treat the bonus liability as incurred in such subsequent taxable year.

(ii) *Inapplicability.* This change does not apply:

(A) if the bonus is not received by the employee by the 15th day of the 3rd calendar month after the end of the taxable year

in which the related services are provided; or

(B) to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which the taxpayer wants to change its method of accounting under section 19.01(2) of this APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

.21 *Change to section 19.01(3) of the APPENDIX, Vacation pay.* Section 19.01(3)(a) of the APPENDIX of Rev. Proc. 2008-52 is amplified and clarified to read as follows:

(a) *Description of change.*

(i) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting to treat vacation pay as incurred in the taxable year in which all events have occurred that establish the fact of the liability to pay vacation pay and the amount of the liability can be determined with reasonable accuracy (see § 1.446-1(c)(1)(ii)). Specifically, a taxpayer may change its method of accounting under section 19.01(3) of this APPENDIX to one of the following methods:

(A) If all the events that establish the fact of the liability to pay vacation pay have occurred by the end of the taxable year in which the related services are provided, the taxpayer will treat the vacation pay liability as incurred in that taxable year. A taxpayer may change to this method of accounting only if the vacation pay vests in that taxable year.

(B) If all the events that establish the fact of the liability to pay vacation pay occur in the taxable year subsequent to the taxable year in which the related services are provided, the taxpayer will treat the vacation pay liability as incurred in such subsequent taxable year.

(ii) *Inapplicability.* This change does not apply:

(A) if the vacation pay is not received by the employee by the 15th day of the 3rd calendar month after the end of the taxable year in which the related services are provided; or

(B) to a taxpayer that is required under § 263A and the regulations thereunder to capitalize the costs with respect to which

the taxpayer wants to change its method of accounting under section 19.01(3) of this APPENDIX if the taxpayer is not capitalizing these costs, unless the taxpayer concurrently changes its method to capitalize these costs in conjunction with a change to a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable).

.22 *Changes to section 19.03 of the APPENDIX, Timing of incurring liabilities under a workers' compensation act, tort, breach of contract, or violation of law.*

(1) *Section 19.03(1)(a) of the APPENDIX.* Section 19.03(1)(a) of the APPENDIX of Rev. Proc. 2008-52 is amplified and clarified to read as follows:

(a) *Applicability.* This change applies to an accrual method taxpayer that wants to change its method of accounting for self-insured liabilities (including any amounts not covered by insurance, such as a "deductible" amount under an insurance policy) arising under any workers' compensation act or out of any tort, breach of contract, or violation of law, to treating the liability for the workers' compensation, tort, breach of contract, or violation of law as being incurred in the taxable year in which all the events have occurred that establish the fact of the liability, the amount of the liability can be determined with reasonable accuracy, and payment is made to the person to which the liability is owed. See § 461 and § 1.461-4(g)(1) and (2). If the taxpayer has self-insured liabilities resulting from medical services provided to employees who have filed claims under a workers compensation act, the taxpayer may change its method of accounting for those liabilities under section 19.01(1) of this APPENDIX.

(2) *Section 19.03(3) of the APPENDIX.* Section 19.03(3) of the APPENDIX of Rev. Proc. 2008-52 is amplified and clarified to read as follows:

(3) *Concurrent automatic changes.* A taxpayer that wants to make both this change and change to either a method provided in section 19.01(1) of this APPENDIX for self-insured employee medical expenses or a UNICAP method under section 11.01 or 11.02 of this APPENDIX (as applicable) for the same year of change should file a single Form 3115 and enter the designated automatic accounting method change number for each change on the appropriate line on that Form 3115.

.23 *New section 19.08 of the APPENDIX, Ratable accrual of real property taxes.* Section 19 of the APPENDIX of Rev. Proc. 2008-52 is modified by adding a new section 19.08 to read as follows:

.08 *Ratable accrual of real property taxes.*

(1) *Description of change.* This change applies to an accrual method taxpayer that wants to change its method of accounting for real property taxes to the method described in § 461(c) and § 1.461-1(c)(1) (ratable accrual election). This change applies to real property taxes that relate to a definite period of time. This change does not apply to a taxpayer's first taxable year in which the taxpayer incurs real property taxes, in which case the change is made using the provisions of § 1.461-1(c)(3)(i).

(2) *Manner of making change and designated automatic accounting method change number.*

(a) This change is made on a cut-off basis and applies only to real property taxes accrued on or after the beginning of the year of change. Any real property taxes accrued prior to the year of change are accounted for under the taxpayer's former method of accounting. See § 1.461-1(c)(6), *Examples (2) - (5)*. See also section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required.

(b) In accordance with § 1.446-1(e)(3)(ii), the requirement of § 1.446-1(e)(3)(i) to file an application on Form 3115 is waived and a statement in lieu of the Form 3115 is authorized for this change. The taxpayer's request (Form 3115 or statement) to make the change under this section of the APPENDIX must include all of the following:

(i) the designated automatic accounting method change number for this change, which is "149";

(ii) the taxpayer's name and employer identification (or social security number in the case of an individual);

(iii) the year of change (both the beginning and ending dates); and

(iv) the information described in § 1.461-1(c)(3)(ii)(a) through (f).

(c) The consent granted under this revenue procedure satisfies the consent required under § 461(c)(2)(B) and § 1.461-1(c)(3)(ii).

(3) *Contact information.* For further information regarding a change under this section, contact Daniel Cassano at 202-622-7900 (not a toll-free call).

.24 *Change to section 20 of the APPENDIX, Rent.*

(1) *Heading of section 20.01 of the APPENDIX.* The heading of section 20.01 of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

.01 *Change from an improper method of inclusion of rental income or expense to inclusion in accordance with the rent allocation.*

(2) *Section 20.01(1)(a) of the APPENDIX.* Section 20.01(1)(a) of the APPENDIX of Rev. Proc. 2008-52 is modified by deleting section 20.01(1)(a)(ii), and renumbering section 20.01(1)(a)(iii) as section 20.01(1)(a)(ii).

(3) *Section 20.01(3) of the APPENDIX.* Section 20.01(3) of the APPENDIX of Rev. Proc. 2008-52 is clarified to read as follows:

(3) *Audit protection limited.* Audit protection under section 7 of this revenue procedure does not apply to this change for any § 467 rental agreement determined by the Commissioner to be a disqualified leaseback or long-term agreement described in § 1.467-3(b).

.25 *Change to section 21.01 of the APPENDIX, Cash discounts.* Section 21.01(3) of the APPENDIX of Rev. Proc. 2008-52 is clarified to read as follows:

(3) *Computation of § 481(a) adjustment for changes to gross invoice method.* In the case of a taxpayer changing from the net invoice method to the gross invoice method, a positive adjustment is required to prevent omissions arising from the fact that the net invoice method did not report income upon timely payment for some or all of the goods that remain in inventory, and a negative adjustment is required to prevent duplications arising from the fact that the net invoice method included the invoice price, adjusted for the cash discounts, of some or all goods in cost of goods sold and the discount will be earned by payment in a subsequent taxable year. The net § 481(a) adjustment can be computed by deducting the "Available Discount" at the beginning of the year of change from the "Applicable Discount" at the beginning of the year of change. The Available Discount is equal to the difference between the accounts payable bal-

ance under the gross invoice method and the net invoice method. The Applicable Discount is equal to the difference between the beginning inventory value under the gross invoice method and the net invoice method.

Example. Taxpayer's accounts payable balance at the beginning of the year of change was \$980 under the net invoice method and \$1,000 under the gross invoice method. Taxpayer's inventory value was \$2,955 under the net invoice method and \$3,000 under the gross invoice method. The Applicable Discount is \$45 (\$3,000 - \$2,955) and the Available Discount is \$20 (\$1,000 - \$980). Thus, Taxpayer's net § 481(a) adjustment is a positive \$25 (\$45 - \$20).

.26 *Change to section 21.05 of the APPENDIX, Impermissible methods of identification and valuation.* Section 21.05(1) of the APPENDIX of Rev. Proc. 2008-52 is modified to add a new section 21.05(1)(c) to read as follows:

(c) changing from a method that is not in accordance with § 1.471-2(c) for determining the value of "subnormal" goods.

.27 *Change to section 21.11 of the APPENDIX, Permissible methods of identification and valuation.* Section 21.11(1) of the APPENDIX of Rev. Proc. 2008-52 is clarified to read as follows:

(1) *Description of change.*

(a) *Applicability.* This change applies to a taxpayer that wants to change from one permissible method of identifying and valuing inventories to another permissible method of identifying and valuing inventories. For example, a taxpayer using first-in, first-out (FIFO) as its inventory-identification method may change its inventory-valuation method from cost to cost or market, whichever is lower (LCM). (Note, however, a real estate developer may not value land at LCM because land is not inventoriable property under § 1.471-1. Also, a taxpayer who meets the definition of a "dealer in securities" under both § 1.471-5 and § 475 is required to account for securities, as defined in § 475, under § 475 and may not use the rules described in § 1.471-5 for those securities.) Furthermore, a taxpayer may change to a permissible method of valuing "subnormal" goods under § 1.471-2(c).

However, this change does not apply to any change described in another section of the APPENDIX of this revenue procedure or in other guidance published in the IRB, or to any changes within the last-in, first-out (LIFO) inventory method. For example, this change does not apply to a tax-

payer that wants to change to a rolling-average method (*see* section 21.14 of this APPENDIX).

(b) *Permissible method defined.* For purposes of this change, a permissible method is an inventory method (identification or valuation, or both) specifically permitted by the Code, the regulations, a decision of the United States Supreme Court, a revenue ruling, a revenue procedure, or other guidance published in the IRB for inventories. However, an otherwise permissible inventory method is not permissible under this section of the APPENDIX of this revenue procedure for a specific taxpayer if that taxpayer is prohibited from using that method or if that taxpayer is required to use a different method.

.28 *New section 22.01(6) of the APPENDIX, Change from the LIFO inventory method.* Sections 22.01(6) and 22.01(7) of the APPENDIX of Rev. Proc. 2008-52 are renumbered 22.01(7) and 22.01(8), respectively. Section 22.01 of the APPENDIX is clarified by adding a new section 22.01(6) to read as follows:

(6) *Pool split and partial termination.* If a taxpayer must remove goods from a pool because those goods are not within the scope of that pool (*for example*, removing resale goods from a manufacturing pool), and if the taxpayer wants to change from the LIFO inventory method for those removed goods, the taxpayer may split the pool pursuant to section 22.10 of this APPENDIX and then may change from the LIFO method pursuant to section 22.01 of this APPENDIX. *See* section 22.10(2) of this APPENDIX. The taxpayer must file a separate Form 3115 for each such change.

.29 *Changes to section 22.07 of the APPENDIX, Changes within the inventory price index computation (IPIC) method.*

(1) *Changes to section 22.07(1).*

(a) *Change to section 22.07(1)(f).* Section 22.07(1)(f) of the APPENDIX is modified to read as follows:

(f) change the assignment of one or more inventory items to BLS categories under either Table 3 (Consumer Price Index for All Urban Consumers (CPI-U): U.S. City average, detailed expenditure categories) of the monthly CPI Detailed Report or Table 6 (Producer price indexes and percent changes for commodity groupings and individual items, not seasonally adjusted) of the monthly PPI Detailed

Report. *See* § 1.472-8(e)(3)(iii)(C) for principles concerning the assignment of inventory items to BLS categories under the IPIC method. As part of this change, a taxpayer may separate a reassigned item from an inappropriate pool and combine the reassigned item with items in an appropriate pool. *See* § 1.472-8(g)(2) for principles concerning the manner of combining and separating dollar-value pools;

(b) *New section 22.07(1)(h).* Section 22.07(1) of the APPENDIX of Rev. Proc. 2008-52 is modified by adding a new section 22.07(1)(h) at the end of section 22.07(1) to read as follows:

(h) change from using preliminary BLS price indexes to using final BLS price indexes to compute an inventory price index, or *vice versa*. *See* § 1.472-8(e)(3)(iii)(D)(2) for principles concerning the selection of BLS price indexes under the IPIC method.

(2) *New section 22.07(2).* Sections 22.07(2), 22.07(3) and 22.07(4) of the APPENDIX of Rev. Proc. 2008-52 are renumbered 22.07(3), 22.07(4) and 22.07(5), respectively. Section 22.07 of the APPENDIX is modified by adding a new section 22.07(2) to read as follows:

(2) *Certain scope limitation inapplicable.* The scope limitation in section 4.02(7) of this revenue procedure does not apply to the changes described in sections 22.07(1)(d) and (g) of this APPENDIX.

.30 *Changes to section 22.10 of the APPENDIX, Changes to dollar-value pools of manufacturers.*

(1) *Change to section 22.10(1)(b).* Section 22.10(1)(b) of the APPENDIX of Rev. Proc. 2008-52 is clarified to read as follows:

(b) wants to change from using multiple pools described in § 1.472-8(b)(3) to using natural business unit (NBU) pools described in § 1.472-8(b)(1), or *vice versa*; or

(2) *Change to section 22.10(2).* Section 22.10(2) of the APPENDIX of Rev. Proc. 2008-52 is clarified to read as follows:

(2) *Manner of making change.* This change is made on a cut-off basis and applies only to the computation of ending inventories after the beginning of the year of change. *See* section 2.06 of this revenue procedure for more information regarding a cut-off basis. Accordingly, a § 481(a) adjustment is neither permitted nor required. A taxpayer that changes

its method of pooling pursuant to section 22.10 of this APPENDIX must combine or separate pools as required by § 1.472-8(g). If a taxpayer splits a pool into two or more permissible pools pursuant to section 22.10 of this APPENDIX, which must be implemented on a cut-off basis, the taxpayer then may file a separate Form 3115 to change from the LIFO inventory method for one or more of the resulting pools pursuant to section 22.01 of this APPENDIX, which must be implemented with a § 481(a) adjustment.

.31 *Change to section 28.01 of the APPENDIX, Transactions involving computer programs.* Section 28.01 of the APPENDIX of Rev. Proc. 2008-52 is modified to delete the current text as obsolete, and to substitute the following:

.01 *Reserved.*

.32 *Change in contact name information.*

(1) *Section 11.01 of the APPENDIX, Certain uniform capitalization (UNICAP) methods used by resellers and reseller-producers.* Section 11.01(7) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(7) *Contact information.* For further information regarding a change under this section, contact Kari Fisher or W. Thomas McElroy, Jr. at 202-622-4970 (not a toll-free call).

(2) *Section 11.02 of the APPENDIX, Certain uniform capitalization (UNICAP) methods used by producers and reseller-producers.* Section 11.02(5) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(5) *Contact information.* For further information regarding a change under this section, contact Kari Fisher or W. Thomas McElroy, Jr. at 202-622-4970 (not a toll-free call).

(3) *Section 11.03 of the APPENDIX, Change to no longer capitalize research and experimental expenditures under § 263A.* Section 11.03(5) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(5) *Contact information.* For further information regarding a change under this section, contact Kari Fisher or W. Thomas McElroy, Jr. at 202-622-4970 (not a toll-free call).

(4) *Section 14.01 of the APPENDIX, Change in overall method from the cash method to an accrual method.* Section 14.01(8) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(8) *Contact information.* For further information regarding a change under this section, contact Kari Fisher at 202-622-4970 (not a toll-free call).

(5) *Section 14.03 of the APPENDIX, Taxpayers changing to overall cash method.* Section 14.03(7) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(7) *Contact information.* For further information regarding a change under this section, contact W. Thomas McElroy, Jr. at 202-622-4970 (not a toll-free call).

(6) *Section 14.07 of the APPENDIX, Deduction of incentive payments to health care providers.* Section 14.07(4) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(4) *Contact information.* For further information regarding a change under this section, contact Kay Hossofsky at 202-622-3970 (not a toll-free call).

(7) *Section 14.12 of the APPENDIX, Change to overall cash/hybrid method for certain banks.* Section 14.12(7) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(7) *Contact information.* For further information regarding a change under this section, contact David B. Silber at 202-622-3930 (not a toll-free call).

(8) *Section 15.05 of the APPENDIX, Credit card annual fees.* Section 15.05(4) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(4) *Contact information.* For further information regarding a change under this section, contact Jon Silver at 202-622-3930 (not a toll-free call).

(9) *Section 15.06 of the APPENDIX, Credit card late fees.* Section 15.06(5) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(5) *Contact information.* For further information regarding a change under this section, contact Jon Silver at 202-622-3930 (not a toll-free call).

(10) *Section 15.08, Credit card cash advance fees.* Section 15.08(5) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(5) *Contact information.* For further information regarding a change under this section, contact Jon Silver at 202-622-3930 (not a toll-free call).

(11) *Change to section 24.01, Changing from the § 585 reserve method to the § 166 specific charge-off method.* Section 24.01(6) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(6) *Contact information.* For further information regarding a change under this section, contact David B. Silber at 202-622-3930 or Laura Fields at 202-622-3050 (not a toll-free call).

(12) *Section 25.01, Safe harbor method of accounting for premium acquisition expenses.* Section 25.01(4) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(4) *Contact information.* For further information regarding a change under this section, contact Kay Hossofsky at 202-622-3970 (not a toll-free call).

(13) *Change to section 26.01 of the APPENDIX, Composite method for discounting unpaid losses.* Section 26.01(3) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(3) *Contact information.* For further information regarding a change under this section, contact Kay Hossofsky at 202-622-3970 (not a toll-free call).

(14) *Change to section 27.01 of the APPENDIX, REMIC inducement fees.* Section 27.01(4) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(4) *Contact information.* For further information regarding a change under this section, contact John W. Rogers, III at 202-622-4695 (not a toll-free call).

(15) *Change to section 29.01 of the APPENDIX, Change in functional currency.* Section 29.01(4) of the APPENDIX of Rev. Proc. 2008-52 is modified to read as follows:

(4) *Contact information.* For further information regarding a change under this section, contact Sheila Ramaswamy at 202-622-3870 (not a toll-free call).

(16) *APPENDIX Contact List.* The APPENDIX Contact List is modified for the following sections to read as follows:

APPENDIX Section Number	Designated Automatic Accounting Change Number	Contact Name	Telephone Number	Office
3.05	143	Justin G. Meeks	202-622-5020	IT&A
3.06	144	Mon Lam	202-622-4950	IT&A
6.23	145	Ruba Nasrallah	202-622-4930	IT&A
6.24	146	Charles Magee	202-622-4930	IT&A
6.25	147	Charles Magee	202-622-4930	IT&A
11.01	22	Kari Fisher	202-622-4970	IT&A
11.02	23	W. Thomas McElroy, Jr.	202-622-4970	IT&A
		Kari Fisher	202-622-4970	IT&A
11.03	24	W. Thomas McElroy, Jr.	202-622-4970	IT&A
		Kari Fisher	202-622-4970	IT&A
14.01	122, 123	W. Thomas McElroy, Jr.	202-622-4970	IT&A
		Kari Fisher	202-622-4970	IT&A
14.03	32, 33	W. Thomas McElroy, Jr.	202-622-4970	IT&A
14.07	90	Kay Hossofsky	202-622-3970	FI&P
14.12	127	David B. Silber	202-622-3930	FI&P
14.14	129	David H. McDonnell	202-622-3040	P&SI
14.15	148	Sonja Kotlica	202-622-3950	FI&P
15.05	80, 81	Jon Silver	202-622-3930	FI&P
15.06	82	Jon Silver	202-622-3930	FI&P
15.08	94	Jon Silver	202-622-3930	FI&P
19.08	149	Daniel Cassano	202-622-7900	IT&A
24.01	66	David B. Silber	202-622-3930	FI&P
		Laura Fields	202-622-3050	P&SI
25.01	67	Kay Hossofsky	202-622-3970	FI&P
26.01	68	Kay Hossofsky	202-622-3970	FI&P
27.01	79	John W. Rogers, III	202-622-4695	FI&P
29.01	70	Sheila Ramaswamy	202-622-3870	INTL

The APPENDIX Contact List is also modified to delete APPENDIX Section Number 28.01.

SECTION 3. CHANGES TO REV. PROC. 97-27

.01 Section 3.07 of Rev. Proc. 97-27 is modified by adding new section 3.07(3) and is clarified by adding a new section 3.07(4) to read as follows:

(3) *Taxpayer before Joint Committee on Taxation.* If an examination of a taxpayer involves a refund or credit in excess of the statutory sum that is subject to review by the Joint Committee on Taxation pursuant to § 6405, then, for purposes of this revenue procedure, the taxpayer is under examination while the taxpayer has a refund or credit under review by the Joint Committee on Taxation and continues to be under examination until Joint Committee on Taxation review procedures and any necessary follow-up are complete. See Rev. Proc. 2005-32, 2005-1 C.B. 1206.

Further, for purposes of section 6.01(5) (issue pending), an issue is pending for a

taxable year under examination if the Service has given the taxpayer written notification indicating an adjustment is being made or will be proposed with respect to the taxpayer's method of accounting. The notification by the Service may result from an inquiry by the Joint Committee on Taxation. This notification normally will occur after the Service or the Joint Committee on Taxation has gathered information sufficient to determine that an adjustment is appropriate and justified, although the exact amount of the adjustment may not yet be determined.

(4) *Taxpayer in Compliance Assurance Process.* For purposes of this revenue procedure, a taxpayer participating in the Compliance Assurance Process (CAP) is considered to be under examination as of the date the taxpayer executes the Memorandum of Understanding for the CAP.

.02 *Certain Foreign Corporations.* With respect to a foreign corporation that is not required to file a federal income tax return, sections 3.07 (definition of under examination), 3.08 (definition of issue under consideration), 4.02(2) (scope, in-

applicability when under examination), 6 (under examination, or before an appeals office, or a federal court), 7 (section 481(a) adjustment period), and 8.08 (signature requirements) of Rev. Proc. 97-27, as amplified and modified by Rev. Proc. 2002-19, are clarified and modified in the same manner as the comparable provisions of sections 3.08, 3.09, 4.02(1), 5.06, 6.02(3)(b) (applies to the Form 3115 filed under Rev. Proc. 97-27), 6.02(3)(c)(ii), 6.02(5), 6.02(10), 6.02(11), 6.03, 6.04 and 6.05 of Rev. Proc. 2008-52, as modified by sections, 2.02(2) (relating to certain foreign corporations), 2.03, 2.04 and 2.05(2) of this revenue procedure.

.03 *Change "district director" to "director."*

(1) Section 3 of Rev. Proc. 97-27 is modified by adding a new section 3.10 to read as follows:

.10 *Director.* The term "director" has the same meaning as this term has in Rev. Proc. 2009-1, 2009-1 I.R.B. 1 (or any successor).

(2) Rev. Proc. 97-27 is clarified by replacing the term “district director” wherever it appears with the term “director.”

SECTION 4. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 2008-52 is amplified, clarified, and modified.

.02 Rev. Proc. 97-27 is clarified and modified.

.03 Rev. Proc. 2005-63, 2005-2 C.B. 491, is modified to provide that taxpayers within the scope of Rev. Proc. 2008-52, that desire to make the change in method of accounting described in § 1.461-1(c) must follow the procedures in Rev. Proc. 2008-52 instead of the procedures in the regulations and Rev. Proc. 2005-63.

SECTION 5. EFFECTIVE DATE

.01 *In general.*

(a) *Rev. Proc. 2008-52.* Except as provided in section 5.02 of this revenue procedure, this revenue procedure is effective for applications filed under Rev. Proc. 2008-52 on or after August 27, 2009, for a year of change ending on or after December 31, 2008.

(b) *Rev. Proc. 97-27.* This revenue procedure is effective for Forms 3115 filed under Rev. Proc. 97-27, as amplified and modified by Rev. Proc. 2002-19, as amplified and clarified by Rev. Proc. 2002-54, and as modified by Rev. Proc. 2007-67, filed on or after August 27, 2009, for a year of change ending on or after August 27, 2009.

.02 *Transition rules.*

(1) *No application filed by August 27, 2009.* For a year of change ending on or after December 31, 2008, and on or before July 31, 2009, a taxpayer may choose not to apply the following sections of this revenue procedure: 2.07; 2.08; 2.09; 2.10; 2.11; 2.12(1)(a); 2.12(1)(b); 2.12(3); 2.12(4); 2.13(1); 2.14(3); 2.16; 2.17 (section 15.07(1) of the APPENDIX of Rev. Proc. 2008-52, without regard to section 15.07(3) of the APPENDIX, as modified by this revenue procedure); 2.18; 2.19; 2.20; 2.21; 2.22; 2.23; 2.24; 2.26; 2.29(1)(a); 2.29(1)(b); 2.29(2).

For a taxpayer filing an application under Rev. Proc. 2008-52, as amplified, clarified, and modified by this revenue procedure, and choosing not to apply sec-

tions 2.12(3), 2.17 (section 15.07(1) of the APPENDIX of Rev. Proc. 2008-52, without applying section 15.07(3) of the APPENDIX, as modified by this revenue procedure), and 2.18 of this revenue procedure (transition application), the timely duplicate filing requirement of section 6.02(3)(a) of Rev. Proc. 2008-52 is modified to require the copy of the application to be submitted to the national office on or before September 15, 2009. A taxpayer filing such a transition application under this section 5.02(1) must otherwise be eligible to make the change under Rev. Proc. 2008-52, as amplified, clarified, and modified by this revenue procedure, and should write on the top of page 1 of the national office copy of the application “FILED UNDER SECTION 5.02(1) OF REV. PROC. 2009-39.”

(2) *Form 3115 filed under Rev. Proc. 97-27.* If before August 27, 2009, a taxpayer within the scope of Rev. Proc. 97-27 timely filed a Form 3115 under Rev. Proc. 97-27 for a year of change ending on or after December 31, 2008, requesting consent for a change in method of accounting described in the APPENDIX of Rev. Proc. 2008-52, as amplified, clarified, and modified by this revenue procedure, and the Form 3115 is pending with the national office on August 27, 2009, the taxpayer may choose to convert the Form 3115 to make the change under Rev. Proc. 2008-52, as amplified, clarified, and modified by this revenue procedure, but without regard to the modifications to the non-APPENDIX sections of Rev. Proc. 2008-52 in sections 2.02 (adding new sections 3.08(4) and 3.08(5) of Rev. Proc. 2008-52), 2.03 (adding new section 3.09 of Rev. Proc. 2008-52), 2.04 (modifying section 4.02(1) of Rev. Proc. 2008-52), and 2.05(2) (modifying sections 6.02(11), 6.03, 6.04 and 6.05 of Rev. Proc. 2008-52) of this revenue procedure (these modifications apply to certain foreign corporations), if the taxpayer is otherwise eligible under the APPENDIX of Rev. Proc. 2008-52, as amplified, clarified, and modified by this revenue procedure. The taxpayer must notify the national office of its intent to convert the Form 3115 under this section 5.02(2) prior to the later of October 26, 2009, or the issuance of a letter ruling granting or denying consent for the change filed under Rev. Proc. 97-27. If the taxpayer timely noti-

fies the national office that it will convert the Form 3115 under this section 5.02(2), the national office will return the Form 3115 to the taxpayer to make the necessary modifications to comply with the applicable provisions of Rev. Proc. 2008-52, as amplified, clarified, and modified by this revenue procedure, and will refund the user fee submitted with the Form 3115.

A taxpayer may convert a Form 3115 that is returned to the taxpayer under this section 5.02(2) to an application under Rev. Proc. 2008-52, as amplified, clarified, and modified by this revenue procedure, if the taxpayer resubmits the Form 3115 with the necessary modifications, along with a copy of the national office letter sent with the returned Form 3115, to the national office within 30 calendar days after the date of the Service’s letter returning the Form 3115 to the taxpayer. For purposes of the timely duplicate filing requirement in section 6.02(3) of Rev. Proc. 2008-52, the national office copy of the Form 3115 will be considered filed as of the date the taxpayer originally filed the Form 3115 under Rev. Proc. 97-27.

A Form 3115 filed under Rev. Proc. 97-27 that is pending with the national office on August 27, 2009, will be disregarded for purposes of the prior 5 year change rules in sections 4.02(6) and (7) of Rev. Proc. 2008-52, in the following circumstances:

(a) the taxpayer converts the Form 3115 under this section 5.02(2); or

(b) the taxpayer withdraws the Form 3115 and files an application under Rev. Proc. 2008-52, as amplified, clarified, and modified by this revenue procedure, for the same change in method of accounting for a year of change ending on or before December 31, 2009.

(3) *Option to amend an application filed under Rev. Proc. 2008-52 before August 27, 2009.* If before August 27, 2009, a taxpayer properly filed an application under Rev. Proc. 2008-52 for a year of change that is the taxpayer’s first taxable year ending on or after December 31, 2008, the taxpayer may choose to file an amended application for that year of change under Rev. Proc. 2008-52, as amplified, clarified, and modified by this revenue procedure (amended application) if, within 6 months from the due date of the federal income tax return for the year of change (excluding any extension), the

taxpayer (i) files an original or amended return using the new method of accounting pursuant to Rev. Proc. 2008–52, as amplified, clarified, and modified by this revenue procedure; (ii) attaches the original amended application filed under this revenue procedure to its original or amended return for the year of change; (iii) writes on the top of page 1 of the national office copy of the amended application “FILED UNDER SECTION 5.02(3) OF REV. PROC. 2009–39”; and (iv) sends the national office copy of the amended application to the following address no later than the date the original amended application is filed with the original or amended return: Internal Revenue Service, P.O. Box 14095, Benjamin Franklin Station, Washington, DC 20044, Attention: CC:ITA:B8.

A Form 3115 filed under Rev. Proc. 2008–52 prior to August 27, 2009, for a taxable year ending on or after December 31, 2008, that is amended under this section 5.02(3) will be disregarded for purposes of the prior 5 year change rules in sections 4.02(6) and (7) of Rev. Proc. 2008–52.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been

reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control numbers 1545–1551 and 1545–1541. Responses to this collection of information are necessary and will be used to determine whether the taxpayer properly changed to a permitted method of accounting. The estimated annual frequency of responses is on occasion. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in sections 2.02, 2.05, 2.08, 2.09, 2.10, 2.11, 2.23, 3.01, and 3.02. The likely respondents are the following: individuals, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

Sections 2.02, 2.05, 2.08, 2.09, 2.10, 2.11 and 2.23 will increase the estimated number of responses and burden hours for the control number 1545–1551. The estimated annual burden per respondent/recordkeeper for control number 1545–1551 varies from 1/6 hour to 8 1/2 hours, depending on individual circumstances, with an estimated average of 1 1/4 hours. The estimated number of respondents is 14,060. The estimated total

annual reporting and/or recordkeeping burden for control number 1545–1551 is 15,206 hours.

Sections 2.09, 3.01 and 3.02 will increase the estimated number of responses and burden hours for the control number 1545–1541. The estimated annual burden for control number 1545–1541 per respondent/recordkeeper varies from 1/6 hour to 5 hours, depending on individual circumstances, with an estimated average of 3 1/4 hours. The estimated number of respondents is 3,070. The estimated total annual reporting and/or recordkeeping burden for control number 1545–1541 is 9,743 hours.

DRAFTING INFORMATION

The principal author of this revenue procedure is Karla M. Meola of the Office of Chief Counsel (Income Tax & Accounting). For further information concerning this revenue procedure, please contact Ms. Meola at (202) 622–4930.

Part IV. Items of General Interest

Corrections to Rev. Proc. 2009-39

Announcement 2009-67

PURPOSE

The Internal Revenue Service publicly released Rev. Proc. 2009-39 on August 27, 2009, in advance of its publication in the Internal Revenue Bulletin on September 21, 2009. Rev. Proc. 2009-39 amplified, clarified, and modified Rev. Proc. 2008-52, 2008-36 I.R.B. 587, which provides procedures under which taxpayers may obtain automatic consent of the Commissioner to change certain methods of accounting. Rev. Proc. 2009-39 also modified and clarified Rev. Proc. 97-27, 1997-1 C.B. 680, as amplified and modified by Rev. Proc. 2002-19, 2002-1 C.B. 696, as amplified and clarified by Rev. Proc. 2002-54, 2002-2 C.B. 432, and as modified by Rev. Proc. 2007-67, 2007-2 C.B. 1072, which provides procedures for obtaining the advance consent of the Commissioner of Internal Revenue to change a method of accounting.

Rev. Proc. 2009-39 modified the procedures for a taxpayer that wants to make a change in method of accounting under Rev. Proc. 2008-52 or Rev. Proc. 97-27 while that taxpayer has a refund or credit under review by the Joint Committee on Taxation. This announcement corrects certain procedures described in Rev. Proc. 2009-39 for a taxpayer that has a refund or credit under review by the Joint Committee on Taxation. Rev. Proc. 2009-39, as published in Internal Revenue Bulletin 2009-38, reflects the corrections described in this announcement.

CORRECTIONS

(1) In section 2.02(2) of Rev. Proc. 2009-39, section 3.08 (Under examination) of Rev. Proc. 2008-52 was modified to insert new section 3.08(5) regarding a taxpayer before the Joint Committee on Taxation. Section 2.02(2) of Rev. Proc. 2009-39 is corrected to delete the second paragraph of new section 3.08(5) of Rev. Proc. 2008-52, as modified by Rev. Proc. 2009-39.

(2) In section 2.05(2) of Rev. Proc. 2009-39, sections 6.03(2) (90-day window), 6.03(3) (120-day window), and 6.03(4) (director consent) of Rev. Proc. 2008-52 were modified to insert procedures for a taxpayer before the Joint Committee on Taxation. Section 2.05(2) of Rev. Proc. 2009-39 is corrected to delete the last sentence in the following sections of Rev. Proc. 2008-52, as modified by Rev. Proc. 2009-39: sections 6.03(2)(a); 6.03(3)(a); and 6.03(4)(a).

(3) In section 2.05(2) of Rev. Proc. 2009-39, section 6.03(5) (Changes lacking audit protection) was modified to insert procedures for a taxpayer before the Joint Committee on Taxation. Section 2.05(2) of Rev. Proc. 2009-39 is modified to have section 6.03(5)(b) of Rev. Proc. 2008-52, as modified by Rev. Proc. 2009-39, read as follows:

(b) A taxpayer changing a method of accounting under this section 6.03(5) (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must provide a copy of the application to the examining agent(s) for any examination that is in process at the same time it files the copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(4) In section 2.05(2) of Rev. Proc. 2009-39, section 6.03(6) (Issue pending) was modified to insert procedures for a taxpayer before the Joint Committee on Taxation. Section 2.05(2) of Rev. Proc. 2009-39 is modified to have section 6.03(6)(b) of Rev. Proc. 2008-52, as modified by Rev. Proc. 2009-39, read as follows:

(b) A taxpayer that requests to change a method of accounting under this section 6.03(6) (or if section 6.02(3)(b) of this revenue procedure applies, the designated shareholder) must provide a copy of the application to the examining agent(s) at the same time it files a copy of the application with the national office. The application must contain the name(s) and telephone number(s) of the examining agent(s).

(5) In section 3.01 of Rev. Proc. 2009-39, Rev. Proc. 97-27 was modified to insert new section 3.07(3) of Rev. Proc. 97-27 regarding a taxpayer before the Joint Committee on Taxation. Section 3.01 of Rev. Proc. 2009-39 is corrected to delete the following sentences in new section 3.07(3) of Rev. Proc. 97-27: the first sentence of the second paragraph; and the fourth and fifth sentences of the third paragraph.

EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2009-39 is modified.

The principal author of this announcement is Karla M. Meola of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this announcement, contact Karla M. Meola at (202) 622-4930 (not a toll-free call).

Announcement of Disciplinary Sanctions From the Office of Professional Responsibility

Announcement 2009-68

The Office of Professional Responsibility (OPR) announces recent disciplinary sanctions involving attorneys, certified public accountants, enrolled agents, en-

rolled actuaries, enrolled retirement plan agents, and appraisers. These individuals are subject to the regulations governing practice before the Internal Revenue Ser-

vice (IRS), which are set out in Title 31, Code of Federal Regulations, Part 10, and which are published in pamphlet form as Treasury Department Circular No. 230.

The regulations prescribe the duties and restrictions relating to such practice and prescribe the disciplinary sanctions for violating the regulations.

The disciplinary sanctions to be imposed for violation of the regulations are:

Disbarred from practice before the IRS—An individual who is disbarred is not eligible to represent taxpayers before the IRS.

Suspended from practice before the IRS—An individual who is suspended is not eligible to represent taxpayers before the IRS during the term of the suspension.

Censured in practice before the IRS—Censure is a public reprimand. Unlike disbarment or suspension, censure does not affect an individual's eligibility to represent taxpayers before the IRS, but OPR may subject the individual's future representations to conditions designed to promote high standards of conduct.

Monetary penalty—A monetary penalty may be imposed on an individual who engages in conduct subject to sanction or on an employer, firm, or entity if the individual was acting on its behalf and if it knew, or reasonably should have known, of the individual's conduct.

Disqualification of appraiser—An appraiser who is disqualified is barred from presenting evidence or testimony in any administrative proceeding before the Department of the Treasury or the IRS.

Under the regulations, attorneys, certified public accountants, enrolled agents, enrolled actuaries, and enrolled retirement plan agents may not assist, or accept assistance from, individuals who are suspended or disbarred with respect to matters constituting practice (*i.e.*, representation) before the IRS, and they may not aid or abet suspended or disbarred individuals to practice before the IRS.

Disciplinary sanctions are described in these terms:

Disbarred by decision after hearing, Suspended by decision after hearing, Censured by decision after hearing, Monetary penalty imposed after hearing, and Disqualified after hearing—An administrative law judge (ALJ) conducted an evidentiary hearing upon OPR's complaint alleging violation of the regulations and issued a decision imposing one of these sanctions. After 30 days from the issuance of the decision, in the absence of an appeal, the ALJ's decision became the final agency decision.

Disbarred by default decision, Suspended by default decision, Censured by default decision, Monetary penalty imposed by default decision, and Disqualified by default decision—An ALJ, after finding that no answer to OPR's complaint had been filed, granted OPR's motion for a default judgment and issued a decision imposing one of these sanctions.

Disbarment by decision on appeal, Suspended by decision on appeal, Censured by decision on appeal, Monetary penalty imposed by decision on appeal, and Disqualified by decision on appeal—The decision of the ALJ was appealed to the agency appeal authority, acting as the delegate of the Secretary of the Treasury, and the appeal authority issued a decision imposing one of these sanctions.

Disbarred by consent, Suspended by consent, Censured by consent, Monetary penalty imposed by consent, and Disqualified by consent—In lieu of a disciplinary proceeding being instituted or continued, an individual offered a consent to one of these sanctions and OPR accepted the offer. Typically, an offer of consent will provide for: suspension for an indefinite term; conditions that the individual must observe during the suspension; and the individual's opportunity, after a stated number of months, to file

with OPR a petition for reinstatement affirming compliance with the terms of the consent and affirming current eligibility to practice (*i.e.*, an active professional license or active enrollment status). An enrolled agent or an enrolled retirement plan agent may also offer to resign in order to avoid a disciplinary proceeding.

Suspended by decision in expedited proceeding, Suspended by default decision in expedited proceeding, Suspended by consent in expedited proceeding—OPR instituted an expedited proceeding for suspension (based on certain limited grounds, including loss of a professional license and criminal convictions).

OPR has authority to disclose the grounds for disciplinary sanctions in these situations: (1) an ALJ or the Secretary's delegate on appeal has issued a decision on or after September 26, 2007, which was the effective date of amendments to the regulations that permit making such decisions publicly available; (2) the individual has settled a disciplinary case by signing OPR's "consent to sanction" form, which requires consenting individuals to admit to one or more violations of the regulations and to consent to the disclosure of the individual's own return information related to the admitted violations (for example, failure to file Federal income tax returns); or (3) OPR has issued a decision in an expedited proceeding for suspension.

Announcements of disciplinary sanctions appear in the Internal Revenue Bulletin at the earliest practicable date. The sanctions announced below are alphabetized first by the names of states and second by the last names of individuals. Unless otherwise indicated, section numbers (*e.g.*, § 10.51) refer to the regulations.

City & State	Name	Professional Designation	Disciplinary Sanction	Effective Date(s)
California				
San Francisco	Miller, Gregory R.	CPA	Suspended by consent for admitted violations of §§ 10.22 & 10.51 (improperly advised a client regarding the reporting of deferred compensation)	Indefinite from September 22, 2008
Delaware				
Wilmington	Davis, Michael R.	Attorney	Suspended by decision in expedited proceeding under § 10.82 (suspension of attorney license)	Indefinite from August 24, 2009
Florida				
Hallandale	Aronsky, Richard A.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from August 24, 2009
Tampa	Cruse, Katherine D.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (conviction under 18 U.S.C. § 171, conspiracy to commit mail fraud, and 18 U.S.C. § 1341 and 2, mail fraud)	Indefinite from August 24, 2009
Key Biscayne	Weisenfeld, Joseph J.	Attorney	Suspended by default decision in expedited proceeding under § 10.82 (attorney disbarment)	Indefinite from August 24, 2009

Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

Abbreviations

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

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

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

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

Numerical Finding List¹

Bulletins 2009–27 through 2009–38

Announcements:

2009-56, 2009-28 I.R.B. 145
2009-57, 2009-29 I.R.B. 158
2009-58, 2009-29 I.R.B. 158
2009-59, 2009-29 I.R.B. 158
2009-60, 2009-30 I.R.B. 166
2009-61, 2009-33 I.R.B. 246
2009-62, 2009-33 I.R.B. 247
2009-63, 2009-33 I.R.B. 248
2009-64, 2009-36 I.R.B. 319
2009-65, 2009-36 I.R.B. 319
2009-66, 2009-37 I.R.B. 364
2009-67, 2009-38 I.R.B. 388
2009-68, 2009-38 I.R.B. 388

Notices:

2009-51, 2009-28 I.R.B. 128
2009-55, 2009-31 I.R.B. 170
2009-57, 2009-29 I.R.B. 147
2009-58, 2009-30 I.R.B. 163
2009-59, 2009-31 I.R.B. 170
2009-60, 2009-32 I.R.B. 181
2009-61, 2009-32 I.R.B. 181
2009-62, 2009-35 I.R.B. 260
2009-63, 2009-34 I.R.B. 252
2009-64, 2009-36 I.R.B. 307
2009-69, 2009-35 I.R.B. 261
2009-70, 2009-34 I.R.B. 255
2009-71, 2009-35 I.R.B. 262
2009-72, 2009-37 I.R.B. 325
2009-73, 2009-38 I.R.B. 369
2009-74, 2009-38 I.R.B. 370

Proposed Regulations:

REG-152166-05, 2009-32 I.R.B. 183
REG-112994-06, 2009-28 I.R.B. 144
REG-113289-08, 2009-33 I.R.B. 244
REG-130200-08, 2009-31 I.R.B. 174

Revenue Procedures:

2009-30, 2009-27 I.R.B. 27
2009-31, 2009-27 I.R.B. 107
2009-32, 2009-28 I.R.B. 142
2009-33, 2009-29 I.R.B. 150
2009-34, 2009-34 I.R.B. 258
2009-35, 2009-35 I.R.B. 265
2009-36, 2009-35 I.R.B. 304
2009-37, 2009-36 I.R.B. 309
2009-38, 2009-37 I.R.B. 362
2009-39, 2009-38 I.R.B. 371

Revenue Rulings:

2009-18, 2009-27 I.R.B. 1
2009-19, 2009-28 I.R.B. 111
2009-20, 2009-28 I.R.B. 112
2009-21, 2009-30 I.R.B. 162
2009-22, 2009-31 I.R.B. 167
2009-23, 2009-32 I.R.B. 177
2009-24, 2009-36 I.R.B. 306
2009-25, 2009-38 I.R.B. 365
2009-26, 2009-38 I.R.B. 366
2009-29, 2009-37 I.R.B. 322

Treasury Decisions:

9452, 2009-27 I.R.B. 1
9453, 2009-28 I.R.B. 114
9454, 2009-32 I.R.B. 178
9455, 2009-33 I.R.B. 239
9456, 2009-33 I.R.B. 188

¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2009–1 through 2009–26 is in Internal Revenue Bulletin 2009–26, dated June 29, 2009.

Finding List of Current Actions on Previously Published Items¹

Bulletins 2009–27 through 2009–38

Announcements:

2006-93

Superseded by
Ann. 2009-62, 2009-33 I.R.B. 247

Notices:

2004-67

Supplemented and superseded by
Notice 2009-59, 2009-31 I.R.B. 170

2006-70

Obsoleted by
T.D. 9453, 2009-28 I.R.B. 114

2006-109

Superseded in part by
Rev. Proc. 2009-32, 2009-28 I.R.B. 142

2008-43

Obsoleted by
REG-113289-08, 2009-33 I.R.B. 244

2009-28

Clarified by
Notice 2009-69, 2009-35 I.R.B. 261

Revenue Procedures:

97-27

Clarified and modified by
Rev. Proc. 2009-39, 2009-38 I.R.B. 371

97-49

Modified and superseded by
Rev. Proc. 2009-31, 2009-27 I.R.B. 107

2005-63

Modified by
Rev. Proc. 2009-39, 2009-38 I.R.B. 371

2007-44

Modified by
Rev. Proc. 2009-36, 2009-35 I.R.B. 304

2008-38

Superseded by
Rev. Proc. 2009-30, 2009-27 I.R.B. 27

2008-44

Superseded by
Rev. Proc. 2009-35, 2009-35 I.R.B. 265

2008-52

Amplified, clarified, and modified by
Rev. Proc. 2009-39, 2009-38 I.R.B. 371

2008-65

Modified by
Rev. Proc. 2009-33, 2009-29 I.R.B. 150

Revenue Procedures— Continued:

2009-16

Modified by
Rev. Proc. 2009-33, 2009-29 I.R.B. 150

2009-39

Modified by
Ann. 2009-67, 2009-38 I.R.B. 388

¹ 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.



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

Order Processing Code:
3465

Easy Secure Internet:
bookstore.gpo.gov

Internal Revenue Cumulative Bulletins Publications and Subscription Order Form

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

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

Publications

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

Subscriptions

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

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

Standing Order Service*

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

Qty.	Standing Order	Title
	ZIRSC	Internal Revenue Cumulative Bulletins

Authorization

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

VISA MasterCard Discover/NOVUS American Express

Superintendent of Documents (SOD) Deposit Account

Authorizing signature (Standing orders not valid unless signed.)

Please print or type your name.

Daytime phone number (____) _____

SuDocs Deposit Account

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

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



Check method of payment:

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

(expiration date)

Thank you for your Order!

Authorizing signature

06/06

Company or personal name

(Please type or print)

Additional address/attention line

Street address

City, State, Zip Code

E-mail address

Daytime phone including area code

Purchase order number (optional)

*Standing Order Service

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

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

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

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

INTERNAL REVENUE BULLETIN

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

CUMULATIVE BULLETINS

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

ACCESS THE INTERNAL REVENUE BULLETIN ON THE INTERNET

You may view the Internal Revenue Bulletin on the Internet at www.irs.gov. Select Businesses. Under Businesses Topics, select More Topics. Then select Internal Revenue Bulletins.

INTERNAL REVENUE BULLETINS ON CD-ROM

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

HOW TO ORDER

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

WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

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

Internal Revenue Service
Washington, DC 20224

Official Business
Penalty for Private Use, \$300