

## **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**

#### **Notice 2010-35, page 660.**

This notice addresses the new federal refundable tax credit subsidy option under section 6431(f) of the Code for specified tax credit bonds under section 54A. The notice provides guidance on the refundable tax credit payment procedures for this option, required elections, and information reporting. The notice also provides certain interim guidance applicable to specified tax credit bonds and to Build America Bonds under section 54AA(g).

#### **Announcement 2010-32, page 681.**

This announcement informs taxpayers and practitioners that the IRS has revised Form 3115, *Application for Change in Accounting Method*, and its instructions. The Form 3115 (Rev. December 2009) replaces the December 2003 version. The announcement also provides a transition period and transition guidance.

### **EXEMPT ORGANIZATIONS**

#### **Announcement 2010-31, page 681.**

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

### **ADMINISTRATIVE**

#### **Rev. Proc. 2010-16, page 664.**

This procedure explains how the Service is informed of a change of address. Rev. Proc. 2001-18 superseded.

#### **Announcement 2010-30, page 668.**

This announcement releases the draft of Schedule UTP, accompanied by draft instructions, that provides a further explanation of the Service's proposal requiring reporting of uncertain tax positions. The announcement also invites public comment on the draft schedule and instructions.

Finding Lists begin on page ii.



# The IRS Mission

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

the tax law with integrity and fairness to all.

## Introduction

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

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

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

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

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

The Bulletin is divided into four parts as follows:

### **Part I.—1986 Code.**

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

### **Part II.—Treaties and Tax Legislation.**

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

### **Part III.—Administrative, Procedural, and Miscellaneous.**

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

### **Part IV.—Items of General Interest.**

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

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

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

## **Section 54AA.—Build America Bonds**

A notice that addresses the new Federal refundable tax credit subsidy option under section 6431(f) of the Internal Revenue Code for specified tax credit bonds under section 54A. This notice provides guidance on the refundable tax credit payment procedures for this option, required elections, and information reporting. This notice also provides certain interim guidance applicable to specified tax credit bonds and to build America bonds under section 54AA(g). See Notice 2010-35, page 660.

## **Section 54C.—New Clean Renewable Energy Bonds**

A notice that addresses the new Federal refundable tax credit subsidy option under section 6431(f) of the Internal Revenue Code for specified tax credit bonds under section 54A. This notice provides guidance on the refundable tax credit payment procedures for this option, required elections, and information reporting. This notice also provides certain interim

guidance applicable to specified tax credit bonds and to build America bonds under section 54AA(g). See Notice 2010-35, page 660.

## **Section 54D.—Qualified Energy Conservation Bonds**

A notice that addresses the new Federal refundable tax credit subsidy option under section 6431(f) of the Internal Revenue Code for specified tax credit bonds under section 54A. This notice provides guidance on the refundable tax credit payment procedures for this option, required elections, and information reporting. This notice also provides certain interim guidance applicable to specified tax credit bonds and to build America bonds under section 54AA(g). See Notice 2010-35, page 660.

## **Section 54E.—Qualified Zone Academy Bonds**

A notice that addresses the new Federal refundable tax credit subsidy option under section 6431(f)

of the Internal Revenue Code for specified tax credit bonds under section 54A. This notice provides guidance on the refundable tax credit payment procedures for this option, required elections, and information reporting. This notice also provides certain interim guidance applicable to specified tax credit bonds and to build America bonds under section 54AA(g). See Notice 2010-35, page 660.

## **Section 54F.—Qualified School Construction Bonds**

A notice that addresses the new Federal refundable tax credit subsidy option under section 6431(f) of the Internal Revenue Code for specified tax credit bonds under section 54A. This notice provides guidance on the refundable tax credit payment procedures for this option, required elections, and information reporting. This notice also provides certain interim guidance applicable to specified tax credit bonds and to build America bonds under section 54AA(g). See Notice 2010-35, page 660.

# Part III. Administrative, Procedural, and Miscellaneous

## Direct Payment Subsidy Option for Certain Qualified Tax Credit Bonds and Build America Bonds

### Notice 2010–35

#### SECTION 1. PURPOSE

This notice addresses the new Federal refundable tax credit subsidy option (also referred to hereafter as the direct payment subsidy option) under § 6431(f) of the Internal Revenue Code (the “Code”) for certain qualified tax credit bonds under § 54A. This notice provides guidance on the refundable tax credit payment procedures for this option, required elections, information reporting, and certain other interim guidance. This notice describes regulations that the Treasury Department and the IRS expect to issue. Pending the promulgation and effective date of future administrative or regulatory guidance, this notice provides certain interim guidance applicable to these qualified tax credit bonds under § 54A and also to build America bonds under § 54AA(g) (Build America Bonds) on which taxpayers may rely. This notice is intended to facilitate prompt implementation of this borrowing option and to enable issuers to begin issuing these bonds for qualified purposes.

#### SECTION 2. BACKGROUND

##### 2.1. Introduction

Section 301 of the Hiring Incentives to Restore Employment Act, Pub. L. No. 111–147, 124 Stat. 71 (2010) (the “HIRE Act”) added subsection (f) to § 6431 of the Code, which authorizes issuers to elect irrevocably to receive Federal direct payments of allowances of refundable tax credits to subsidize a prescribed portion of their borrowing costs instead of the Federal tax credits that otherwise would be allowed to holders of certain qualified tax credit bonds under § 54A.

In particular, the direct payment subsidy option applies to the following specified tax credit bonds that meet the requirements to be qualified tax credit bonds under § 54A: (1) new clean renewable energy bonds (as defined in § 54C); (2) qual-

ified energy conservation bonds (as defined in § 54D); (3) qualified zone academy bonds (as defined in § 54E); and (4) qualified school construction bonds (as defined in § 54F). The direct payment subsidy option applies to the specified tax credit bonds only if the bonds are issued after the date of enactment of the HIRE Act (March 18, 2010) and the issuer makes an irrevocable election to apply this option under § 6431(f). (The specified tax credit bonds that meet the requirements for the direct payment subsidy option under § 6431(f) are referred to in this notice as “Direct Pay Tax Credit Bonds.”)

In general, under § 6431(f)(1)(C), Direct Pay Tax Credit Bonds provide a Federal borrowing subsidy through a refundable tax credit paid directly to issuers with respect to each interest payment due under the bonds in an amount equal to the lesser of: (i) the amount of interest payable under such bonds on such interest payment date, or (ii) the amount of interest (100 percent of the amount of such interest on qualified school construction bonds and qualified zone academy bonds and 70 percent of the amount of such interest on new clean renewable energy bonds and qualified energy conservation bonds, respectively) which would have been payable under such bonds on such interest payment date if the interest were determined at the tax credit bond rate determined under § 54A(b)(3) for qualified tax credit bonds.

##### 2.2. Direct Pay Tax Credit Bond Requirements

Direct Pay Tax Credit Bonds have different program requirements and different levels of Federal borrowing subsidies depending on the type of qualified tax credit bond. Section 54A imposes specific program requirements for each defined type of qualified tax credit bond (e.g., qualified purposes to finance public school or energy projects). In addition, § 54A(d) imposes general program requirements on all qualified tax credit bonds, particularly requirements in § 54A(d)(2), (3), (4), (5), and (6) relating to expenditures, information reporting, arbitrage investment restrictions, maturity limitations, and prohibitions against financial conflicts of interest, respectively.

Section 54C(a) provides that the term “new clean renewable energy bond” means any bond issued as part of an issue if: (1) 100 percent of the available project proceeds of such issue are to be used for capital expenditures incurred by governmental bodies, public power providers, or cooperative electric companies for one or more qualified renewable energy facilities; (2) the bond is issued by a qualified issuer; and (3) the issuer designates such bond for purposes of § 54C. For more information on new clean renewable energy bonds, see § 54C and Notice 2009–33, 2009–17 I.R.B. 865 (April 27, 2009).

Section 54D(a) provides that the term “qualified energy conservation bond” means any bond issued as part of an issue if: (1) 100 percent of the available project proceeds of such issue are to be used for one or more qualified conservation purposes; (2) the bond is issued by a State or local government; and (3) the issuer designates such bond for purposes of § 54D. For more information on qualified energy conservation bonds, see § 54D and Notice 2009–29, 2009–16 I.R.B. 849 (April 20, 2009).

Section 54E(a) provides that the term “qualified zone academy bond” means any bond issued as part of any issue if: (1) 100 percent of the available project proceeds of such issue are to be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency; (2) the bond is issued by a State or local government within the jurisdiction of which such academy is located; and (3) the issuer designates such bond for purposes of § 54E and makes certain certifications with respect to receiving written assurances for meeting the private business contribution requirement of § 54E(b) and receiving written approval of the eligible local education agency for the bond issue. For more information on qualified zone academy bonds, see § 54E, Notice 2009–30, 2009–16 I.R.B. 852 (April 20, 2009), and Notice 2010–22, 2010–10 I.R.B. 435 (March 8, 2010).

Section 54F(a) provides that the term “qualified school construction bond” means any bond issued as part of an issue if: (1) 100 percent of the available project proceeds of such issue are to be used for

the construction, rehabilitation, or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds of such issue; (2) the bond is issued by a State or local government within the jurisdiction of which such school is located; and (3) the issuer designates such bond for purposes of § 54F. For more information on qualified school construction bonds, see § 54F, Notice 2009–35, 2009–17 I.R.B. 876 (April 27, 2009), and Notice 2010–17, 2010–14 I.R.B. 519 (April 5, 2010).

### 2.3. Amount of Refundable Credit Payment

Section 6431(f)(1)(A) provides that, in applying the refundable credit payment provisions of § 6431, a Direct Pay Tax Credit Bond is treated as a qualified bond. Section 6431(b) provides generally that with respect to each interest payment date on a qualified bond the Treasury Department shall pay to the issuer of such bond (or to any person who makes such interest payments on behalf of the issuer) an amount equal to the amount of the refundable credit allowed under § 6431(b).

Section 6431(f)(1)(C) provides that, for a Direct Pay Tax Credit Bond that is a qualified zone academy bond or a qualified school construction bond, the amount of the refundable credit payment determined under § 6431(b) with respect to any interest payment date under the bond is equal to the lesser of: (i) 100 percent of the amount of interest payable under the bond on such date; or (ii) 100 percent of the amount of interest which would have been payable under such bond on such date if such interest were determined at the applicable tax credit bond rate determined under § 54A(b)(3).

Section 6431(f)(2) provides for a reduced amount of refundable credit payment for a Direct Pay Tax Credit Bond that is a new clean renewable energy bond or a qualified energy conservation bond. For these bonds, the amount of the payment determined under § 6431(b) with respect to any interest payment date under the bond is equal to the lesser of: (i) 100

percent of the amount of interest payable under the bond on such date; or (ii) 70 percent of the amount of interest which would have been payable under such bond on such date if such interest were determined at the applicable credit rate determined under § 54A(b)(3).

### 2.4. Applicable Credit Rate

For purposes of determining the amount of a refundable credit payment to an issuer under § 6431(f)(1)(C)(ii), the applicable credit rate for a qualified tax credit bond, including a Direct Pay Tax Credit Bond, is determined under § 54A(b)(3). Section 54A(b)(3) provides that the applicable credit rate is the rate which the Treasury Department estimates will permit the issuance of qualified tax credit bonds with a specified maturity or redemption date without discount and without interest cost to the qualified issuer.<sup>1</sup>

Under § 54A(b)(3), the applicable credit rate for a qualified tax credit bond, including a Direct Pay Tax Credit Bond, is determined as of the first day on which there is a binding, written contract for the sale or exchange of the bond. The applicable credit rate for any such bond is the tax credit bond rate applicable for qualified tax credit bonds under § 54A that is published for that date by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>. For more information on applicable tax credit bond rate determinations by the Treasury Department, see Notice 2009–15, 2009–6 I.R.B. 449 (February 9, 2009).

### 2.5. Maximum Maturity

The maximum term of a qualified tax credit bond, including a Direct Pay Tax Credit Bond, is the maximum term determined by the Treasury Department under § 54A(d)(5) for purposes of qualified tax credit bonds generally. Section 54A(d)(5)(B) provides that during each calendar month, the Treasury Department shall determine the maximum term permitted under § 54A(d)(5) for bonds issued

during the following calendar month. The maximum term is the term which the Treasury Department estimates will result in the present value of the obligation to repay the principal on the bond being equal to 50 percent of the face amount of the bond. The maximum term is determined under § 54A(d)(5) by using a discount rate equal to 110 percent of the long-term adjusted AFR, compounded semi-annually, for the month in which the bond is sold. For this purpose, a bond is “sold” on the first day on which there is a binding, written contract for the sale or exchange of the bond. The maximum term for a qualified tax credit bond, including a Direct Pay Tax Credit Bond, is published daily by the Bureau of Public Debt on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>.

### 2.6. Sinking Fund Yield

Section 54A(d)(4)(C) provides that an issue of qualified tax credit bonds, including bonds that meet the additional requirements for Direct Pay Tax Credit Bonds, shall not be treated as failing to meet the arbitrage requirements of § 148 by reason of any fund which is expected to be used to repay the issue if: (i) the fund is funded at a rate not more rapid than equal annual installments; (ii) the fund is funded in a manner reasonably expected to result in an amount not greater than an amount necessary to repay the issue; and (iii) the yield on such fund is not greater than the discount rate determined under § 54A(d)(5)(B) (the “permitted sinking fund yield”).

The permitted sinking fund yield is determined under § 54A(d)(5)(B) by using a rate equal to 110 percent of the long-term adjusted AFR, compounded semi-annually, for the month in which the bond is sold. The IRS publishes the long-term adjusted AFR, compounded semi-annually, each month in a revenue ruling published in the Internal Revenue Bulletin. The Bureau of Public Debt publishes the permitted sinking fund yield for each month on its Internet site for State and Local Government Series securities at: <https://www.treasurydirect.gov>.

<sup>1</sup> The Conference Report to the American Recovery and Reinvestment Act of 2009 (“ARRA”) states the following regarding credit rate determinations under § 54A: “Given the differences in credit quality and other characteristics of individual issuers, the Secretary cannot set credit rates in a manner that will allow each issuer to issue tax credit bonds at par.” H.R. Conf. Rep. No. 111–16 (“ARRA Conf. Rep.”) at 592, n. 145 (Feb. 12, 2009). The ARRA Conf. Rep. further states: “The Secretary determines credit rates for tax credit bonds based on general assumptions about credit quality of the class of potential eligible issuers and such other factors as the Secretary deems appropriate. The Secretary may determine credit rates based on general credit market yield indexes and credit ratings.” *Id.* at 592.

## 2.7. Certain Other Applicable Rules for Refundable Credit Payments

Section 6431(c) provides that, in applying the arbitrage investment restrictions under § 148 to a Direct Pay Tax Credit Bond, the yield on the bond is reduced by the amount of the refundable credit allowed under § 6431(a). Section 6431(f)(1)(D) provides that, in the case of a Direct Pay Tax Credit Bond, interest on any such bond shall be includible in gross income. Section 6431(f)(1)(E) provides that, in the case of a Direct Pay Tax Credit Bond, no credit shall be allowed under § 54A with respect to the bond. Section 6431(f)(1)(F) provides that, in the case of a Direct Pay Tax Credit Bond, any payment made under § 6431(b) shall not be includible as income for purposes of the Code. Section § 6431(f)(1)(G) provides that the deduction otherwise allowed under the Code to the issuer of a Direct Pay Tax Credit Bond with respect to interest paid under the bond shall be reduced by the amount of the payment made under § 6431 with respect to that interest. For further information regarding the tax character and procedural framework for refundable credit payments under § 6431, see Section 3.2 of Notice 2009–26, 2009–16 I.R.B. 833 (April 20, 2009), regarding build America bonds.

## 2.8. General Application of Provisions of § 54A

Except as expressly modified by § 6431(f) in disallowing the credit under § 54A and in providing the payment terms of refundable credit payments, the requirements for qualified tax credit bonds under § 54A apply to Direct Pay Tax Credit Bonds, including, without limitation, provisions relating to expenditures under § 54A(d)(2), information reporting under § 54A(d)(3), arbitrage investment restrictions under § 54A(d)(4), maturity limitations under § 54A(d)(5), prohibition against financial conflicts of interest under § 54A(d)(6), and definitions under § 54A(e)(2)-(4).

## SECTION 3. REFUNDABLE CREDIT PAYMENT PROCEDURES FOR DIRECT PAY TAX CREDIT BONDS

### 3.1. In General

The IRS and the Treasury Department plan to implement the refundable credit payment procedures for Direct Pay Tax Credit Bonds in order to be able to process requests for refundable credit payments with respect to interest payments due on or after September 1, 2010, to enable issuers to begin issuing these bonds for qualified purposes. The IRS and the Treasury Department expect that Form 8038–CP, *Return for Credit Payments to Issuers of Qualified Bonds*, revised to take into account payment of the refundable credit payments with respect to Direct Pay Tax Credit Bonds, will be available on the IRS web site at <http://www.irs.gov/app/picklist/list/formsInstructions.html> on or before June 25, 2010. Effective on its release, issuers of build America bonds, recovery zone economic development bonds, and Direct Pay Tax Credit Bonds are required to submit to the IRS the revised Form 8038–CP to request payment of a refundable credit. Revised Form 8038–CP will be processed on receipt for build America bonds and recovery zone economic development bonds. The IRS will be prepared to process the revised Form 8038–CP for Direct Pay Tax Credit Bonds no later than July 12, 2010, and to make timely refundable credit payments with respect to bond interest payment dates on Direct Pay Tax Credit Bonds that are on or after September 1, 2010. Issuers of Direct Pay Tax Credit Bonds with interest payment dates prior to September 1, 2010, may submit a single Form 8038–CP for the full amount of the refundable credit payment with respect to interest paid on those dates subject to the following: for purposes of the due date and the processing of Form 8038–CP, all such interest shall be deemed to have been paid on, and the first date treated as an interest payment date for such bonds shall be, September 1, 2010. A Form 8038–CP must be filed with respect to each issue of Direct Pay Tax Credit Bonds. Form 8038–CP may be filed only if the Direct Pay Tax Credit Bonds with respect to which the form is filed meet all the requirements for the allowance of the

refundable credit under § 6431(a). For more information on refundable credit payment procedures, see the revised Instructions for Form 8038–CP.

### 3.2. Fixed Rate Bonds

In general, for fixed rate bonds, upon receipt of a timely filed Form 8038–CP requesting payment of the credit, such amount will be paid contemporaneously with the applicable interest payment date. For fixed rate bonds, the due date for an issuer to file a Form 8038–CP is the 45<sup>th</sup> day before the applicable interest payment date with respect to the bonds. This return, however, may not be filed earlier than the 90<sup>th</sup> day before the relevant interest payment date.

### 3.3. Variable Rate Bonds.

In general, for variable rate bonds, upon receipt of a timely filed Form 8038–CP requesting payment of the credit, such amount will be paid quarterly on a reimbursement basis for interest paid by the issuer during the quarter that includes the interest payment date with respect to which the return requesting payment relates. For variable rate bonds, the due date for an issuer to file Form 8038–CP is the 45<sup>th</sup> day after the last interest payment date within the quarterly period for which reimbursement is requested. If, however, the issuer knows the interest payment amount at least 45 days prior to the interest payment date, Form 8038–CP may be filed within the same timeframe as that for fixed rate bonds (*i.e.*, no later than 45 days before the interest payment date and no earlier than 90 days before the interest payment date). If an issuer of variable rate bonds files the Form 8038–CP under the timeframe for fixed rate bonds, the form will be processed, and the refundable credit payment will be made, in the same manner as for fixed rate bonds.

## SECTION 4. ELECTIONS TO ISSUE DIRECT PAY TAX CREDIT BONDS

Subject to updated IRS procedures, an issuer of Direct Pay Tax Credit Bonds must make the irrevocable election required by § 6431(f)(3)(B) to issue the bonds on its books and records on or before the issue date of the bonds.

## SECTION 5. INFORMATION REPORTING FOR DIRECT PAY TAX CREDIT BONDS

Section 54A(d)(3) provides that an issue shall be treated as meeting the requirements of § 54A(d)(3) if the issuer of Direct Pay Tax Credit Bonds submits reports similar to the reports required under § 149(e). The IRS and the Treasury Department expect that an IRS form for reporting tax credit bonds and Direct Pay Tax Credit Bonds, new IRS “Form 8038–TC, *Information Return for Tax Credit Bonds and Specified Tax Credit Bonds*,” will be available on the IRS web site at <http://www.irs.gov/app/picklist/list/formsInstructions.html> on or before June 25, 2010. Subject to updated IRS procedures, the IRS expects that, as of the date of public release of IRS Form 8038–TC and its Instructions, issuers of tax credit bonds, including Direct Pay Tax Credit Bonds, will be required to report the issuance of those bonds on Form 8038–TC in the time and manner contemplated by this notice, § 149(e), and Form 8038–TC. The IRS will be prepared to accept Form 8038–TC for processing immediately upon its public release.

Generally, Form 8038–TC with respect to an issue of Direct Pay Tax Credit Bonds must be filed with the IRS at least 30 days before the first Form 8038–CP is filed to request the refundable credit payment for an interest payment date for that issue. For Direct Pay Tax Credit Bonds with interest payment dates prior to September 1, 2010, Form 8038–TC may be filed less than 30 days before filing the first Form 8038–CP provided Form 8038–TC is filed separately from and prior to the filing of Form 8038–CP. Issuers should not attach Form 8038–TC to Form 8038–CP.

Issuers of Direct Pay Tax Credit Bonds must attach a schedule to Form 8038–TC which contains the information described below with respect to the bond issue:

(1) For fixed-rate bonds, attach a complete debt service schedule entitled “Fixed Rate Bond—Debt Service Schedule,” that provides a list of each interest payment date, the total interest payable on each such date, the total principal amount of bonds expected to be outstanding on each such date, the refundable credit payment expected to be requested from the IRS as allowed under section 2.3 of this Notice with

respect to each such date, and the earliest the bonds can be called.

(2) For variable rate bonds, attach a debt service schedule entitled “Variable Rate Bond—Debt Service Schedule,” that provides a list of each interest payment date, the total principal amount of bonds expected to be outstanding on each such date, and a description of how interest on the bond is computed. If, however, the issuer knows the interest payment amount for a certain period, the issuer should include the refundable credit payment expected to be requested from the IRS, as allowed under section 2.3 of this Notice, with respect to such period.

## SECTION 6. OTHER INTERIM GUIDANCE AND RELIANCE

### 6.1. *In General*

Pending the promulgation and effective date of future administrative or regulatory guidance, this notice provides certain interim guidance applicable to Direct Pay Tax Credit Bonds and to Build America Bonds on which issuers may rely.

### 6.2. *Limitation on Bond Premium*

For purposes of determining refundable credit payments under § 6431(f) on a Direct Pay Tax Credit Bond, a rule similar to the prohibition in § 54AA(d)(2)(C) against the issuance of a Build America Bond with more than a *de minimis* amount (determined under rules similar to the rules of § 1273(a)(3)) of premium in the issue price of the bond over the stated principal amount of the bond shall apply to Direct Pay Tax Credit Bonds. For purposes of applying this limitation on bond premium to Direct Pay Tax Credit Bonds and to Build America Bonds generally under § 54AA(d)(2)(C), the following rules apply. The definition of “issue price” applicable to tax-exempt bonds under § 1.148–1(b) applies. Section 1273(a)(3) and § 1.1273–1(d) provide rules for determining a *de minimis* amount for a bond, which generally means .25 percent of the stated redemption price at maturity of the bond multiplied by the number of complete years from the bond’s issue date to its maturity date. For purposes of applying section 1273(a)(3) and § 1.1273–1(d) to a bond, the rules in § 1.163–13(e)(3) (relating to an issuer’s determination of

bond issuance premium in certain circumstances) will apply to determine a bond’s payment schedule and maturity date. Under § 1.163–13(e)(3)(i), in the case of a bond subject to certain contingencies, the rules in § 1.1272–1(c) (other than § 1.1272–1(c)(3) (relating to mandatory sinking funds)) will apply to determine the bond’s payment schedule and maturity date. For example, under § 1.1272–1(c)(5), an issuer is presumed to exercise a call option or combination of call options if the exercise would minimize the yield on the bond. Under § 1.163–13(e)(3)(ii), the issuer must determine the payment schedule by assuming that a *pro rata* portion of the bond will be called under a sinking fund provision. In addition, the rules in § 1.1275–2(h) (relating to remote and incidental contingencies) will apply to determine a bond’s payment schedule and maturity date.

Thus, for example, if a 17-year bond issued at a premium is callable by the issuer at par after 10 years, the issuer will be treated as if it called the bond on the first call date if calling the bond on the first call date would produce the lowest yield on the bond. If so, then for purposes of section 6431, the issuer would determine if the premium is *de minimis* based on a 10-year maturity date rather than a 17-year maturity date. By comparison, for example, if a bond is callable by an issuer only under a “make whole” call option which requires the issuer to pay a call premium in an amount that preserves the bond’s original yield to maturity, the issuer’s exercise of that call option generally will not produce a lower yield and the call option will be disregarded in determining whether the bond premium is *de minimis*.

The Treasury Department and the IRS are reviewing the definition of issue price in this area and also are considering whether further limitations or special rules may be necessary or appropriate with respect to the allowability and treatment of bond issuance premium on Direct Pay Tax Credit Bonds and Build America Bonds in various circumstances in light of the particular purposes of the limitations on bond issuance premium in this area. The Treasury Department and the IRS expect to address any such further limitations or special rules in future prospective administrative or regulatory guidance.

### 6.3. *OID Not Treated as Interest for Purposes of Refundable Credit Payments*

For purposes of determining refundable credit payments under § 6431(b), as modified by § 6431(f), on a Direct Pay Tax Credit Bond or a Build America Bond, original issue discount (OID) (whether paid upon accrual, bond redemption, at maturity, or otherwise) is not treated as a payment of interest. OID is the excess of a bond's stated redemption price at maturity over the bond's issue price. See ARRA Conf. Rep. at 593, n. 146.

### 6.4. *Original Expenditures, Short-Term Interim Refinancing, and Reimbursements*

Section 54A(d)(2) generally provides in part that an issue of qualified tax credit bonds meets the expenditure requirements if, as of the issue date, the issuer reasonably expects (i) to spend 100 percent of the available project proceeds (as defined in § 54A(e)(4)), on qualified purposes (as defined in § 54A(d)(2)(C)) within 3 years, and (ii) a binding commitment with a third party to spend at least 10 percent of such available project proceeds will be incurred within the 6-month period beginning on such date of issuance. Proceeds of Direct Pay Tax Credit Bonds generally may not be used to refinance eligible expenditures for qualified purposes in "refunding issues" (as defined in § 1.150-1). For this purpose, however, Direct Pay Tax Credit Bonds issued to reimburse otherwise eligible expenditures for qualified purposes under § 1.150-2 that were paid or incurred after the date of enactment of the HIRE Act and that were financed originally with temporary short-term financing issued after the date of enactment of the HIRE Act will not be treated as a refunding issue under §§ 1.150-1(d) or 1.150-2(g).

In addition, under § 54A(d)(2)(D), issuers may use proceeds of Direct Pay Tax Credit Bonds to reimburse otherwise eligible expenditures for qualified purposes, regardless of whether such expenses were paid or incurred before or after the date of enactment of the HIRE Act. In applying § 54A(d)(2)(D) relating to reimbursement of eligible expenditures for qualified purposes, rules under § 1.150-2 generally shall apply.

### 6.5. *Preissuance Accrued Interest*

For purposes of determining refundable credit payments under § 6431(b), as modified by § 6431(f), on a Direct Pay Tax Credit Bond or a Build America Bond, preissuance accrued interest is not taken into account. For this purpose, the term "preissuance accrued interest" means the portion of the stated interest on the bond paid by the issuer that is allocable to interest accrued prior to the issue date of the bond (as defined in § 1.150-1(b)).

## SECTION 7. EFFECTIVE DATE

The effective date of this notice is April 26, 2010. This notice applies to bonds issued after March 18, 2010.

## SECTION 8. DRAFTING INFORMATION

The principal author of this notice is Zoran Stojanovic of the Office of Associate Chief Counsel (Financial Institutions and Products). For further information regarding this notice, contact Zoran Stojanovic at (202) 622-3980 (not a toll-free call).

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*26 CFR 301.6212-2: Definition of Last Known Address.*

## Rev. Proc. 2010-16

### SECTION 1. PURPOSE

.01 This revenue procedure explains how the Internal Revenue Service is informed of a change of address. When so informed, the Service will update the taxpayer's address of record to the new address. The Service uses the taxpayer's address of record for the various documents that are required to be sent to a taxpayer's "last known address" under the Internal Revenue Code and for refunds of overpayments of tax. Rev. Proc. 2001-18, 2001-1 C.B. 708, is superseded by this Revenue Procedure.

### SECTION 2. BACKGROUND

.01 The Code sections listed in section 3.01 of this revenue procedure use the

phrase "last known address." The meaning of the phrase "last known address" is important, and taxpayers should be aware of their need to update their address with the Service in order to receive refunds of tax as well as the notices and documents listed in section 3.01 of this revenue procedure. When a notice or document is sent to a taxpayer's "last known address," it is legally effective even if the taxpayer never receives it.

.02 A taxpayer's "last known address" is defined in Treas. Reg. § 301.6212-2(a) as the address on the taxpayer's most recently filed and properly processed return, unless the Service has been given clear and concise notification of a different address.

.03 A taxpayer should take appropriate steps to ensure that his or her address is correct in accordance with the addressing standards of the United States Postal Service (USPS) and, when providing the Service with an address, should include all required addressing information, including apartment/suite number, street name and number, city, state, and zip code.

### SECTION 3. SCOPE

.01 This revenue procedure applies to notices and documents that are required to be sent to a taxpayer's "last known address" including the following sections of the Code:

Section 982(c)(1) (formal document request for the production of foreign-based documentation);

Section 6015(e) (notice of final determination regarding spousal relief);

Section 6110(f)(3)(B) (notification of disclosure proceedings);

Section 6110(f)(4)(B) (notification of disclosure proceedings);

Section 6212(b) (notice of deficiency);

Section 6245(b)(1) (notice of partnership adjustment for electing large partnerships);

Section 6303(a) (notice and demand for tax);

Section 6320(a)(2)(C) (notice and opportunity for hearing upon filing of notice of lien);

Section 6325(f)(2)(A) (notice of revocation of certificate of release or nonattachment of a lien);

Section 6330(a)(2)(C) (notice and opportunity for hearing before levy);

Section 6331(d)(2)(C) (notice of intention to levy);

Section 6332(b)(1) (copy of notice of levy with respect to a life insurance or endowment contract);

Section 6335(a) and (b) (notices of seizure and sale);

Section 6404(h) (notice with respect to interest abatement);

Section 6901(g) (notice of liability in transferee cases);

Section 7430(f)(2) (action for reasonable administrative costs);

Section 7436 (employment status determinations);

Section 7603(b)(1) (summons by mail to third-party record keeper);

Section 7609(a)(2) (notice of third-party summons); and

Section 7623(b)(4) (Whistleblower award determinations).

.02 The Service generally will use the address on the most recently filed and properly processed return as the address of record for all the notices and documents set forth in section 3.01 above. The Service will, however, automatically update a taxpayer's address of record based on a new address that the taxpayer provides the USPS that is retained in USPS's National Change of Address database (NCOA database). See Treas. Reg. § 301.6212-2(b)(2). If a taxpayer wishes to change the address of record, the taxpayer must give clear and concise notification as provided by this revenue procedure. The terms "return," "properly processed," "address on return," and "clear and concise notification" are defined in section 5 below.

#### SECTION 4. PROCEDURES FOR CHANGE OF ADDRESS

.01 If a taxpayer files a return with new address information, the proper processing of the return will update the taxpayer's address of record. With the exception of the returns listed in section 4.04, a taxpayer's address of record will be updated for the name and taxpayer identification number (the employer identification number, individual taxpayer identification number, or social security number) under which the return is filed.

.02 If a taxpayer no longer wishes the address of record to be the one shown on the most recently filed return (for example,

because the taxpayer moved after the return was filed), clear and concise notification of a change of address as defined in section 5.04 below should be provided to the Service.

.03 If, after a joint return is filed, either taxpayer establishes a separate residence, each taxpayer should provide clear and concise notification of a current address to the Service as provided in section 4.02 above.

.04 The Service maintains address records for gift, estate, and generation-skipping transfer tax returns (Forms 706, 706-A, 706-NA, 709, and 709-A) separate from the address records for individual income tax returns (Forms 1040, 1040-A, 1040-EZ, 1040 (NR), 1040 (PR), 1040-SS, and 1040-X). Thus, an individual taxpayer's notification of a change of address should identify whether any gift, estate, or generation-skipping transfer tax returns are affected by the notification.

.05 A taxpayer should notify the USPS facility serving the taxpayer's old address of the taxpayer's new address so that mail from the Service can be forwarded to the new address. The Service will also automatically update a taxpayer's address of record based on a new address that the taxpayer provides to the USPS and that the USPS retains in its National Change of Address database. See Treas. Reg. § 301.6212-2(b)(2). Taxpayers are nonetheless advised to notify the Service directly of a change of address to ensure a timely and accurate update of the Service's address of record for the taxpayer.

.06 If the taxpayer's last known address is altered due to address reorganization or standardization measures taken by the USPS or a legislative body, the Service will treat the altered address as the taxpayer's new address of record. Examples of an address reorganization or standardization measures include the redesignation of rural route addresses as street addresses or changes to zip code boundaries. Any clear and concise notification of a different address provided by the taxpayer to the Service subsequent to an address standardization or reorganization shall control over any address changes made pursuant to this section 4.06.

#### SECTION 5. DEFINITIONS

.01 Return. For purposes of updating a taxpayer's address of record, the term "return" includes the following federal tax or information forms:

(1) Returns filed under a social security number or an individual taxpayer identification number:

(a) Individual income tax returns:  
Form 1040 *U.S. Individual Income Tax Return*;

Form 1040 (Schedule H) *Household Employment Taxes*;

Form 1040-A *U.S. Individual Income Tax Return*;

Form 1040-EZ *Income Tax Return for Single and Joint Filers With No Dependents*;

Form 1040 (NR) *U.S. Nonresident Alien Income Tax Return*;

Form 1040-EZ (NR) *U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents*;

Form 1040 (PR) *Planilla Para La Declaracion De La Contribucion Federal Sobre El Trabajo Por Cuenta Propia — Puerto Rico*;

Form 1040-SS *U.S. Self-Employment Tax Return (Including the Additional Child Tax Credit for Bonafide Residents of Puerto Rico), Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), or Puerto Rico*;

Form 1040-X *Amended U.S. Individual Income Tax Return*;

(b) Gift, estate, and generation-skipping transfer tax returns:

Form 706 *United States Estate (and Generation-Skipping Transfer) Tax Return*;

Form 706-A *United States Additional Estate Tax Return*;

Form 706-NA *United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of Nonresident not a citizen of the United States*; and

Form 709 *United States Gift (and Generation-Skipping Transfer) Tax Return*;

(2) Returns filed under an employer identification number:

Form CT-1 *Employer's Annual Railroad Retirement Tax Return*;

Form 720 *Quarterly Federal Excise Tax Return*;

Form 720-X *Amended Quarterly Federal Excise Tax Return*;

Form 730 *Monthly Tax on Wagering (Section 4401 of the Internal Revenue Code)*;

Form 940 *Employer's Annual Federal Unemployment (FUTA) Tax Return*;

Form 940 (PR) *Planilla Para La Declaración Anual Del Patrono — La Contribución Federal Para El Desempleo (FUTA)*;

Form 941 *Employer's Quarterly Federal Tax Return*;

Form 941–M *Employer's Monthly Federal Tax Return*;

Form 941 (PR) *Planilla Para La Declaración Federal Trimestral Del Patrono — La Contribución Federal Al Seguro Social Y Al Seguro Medicare*;

Form 941–SS *Employer's Quarterly Federal Tax Return*;

Form 943 *Employer's Annual Tax Return for Agricultural Employees*;

Form 943 (PR) *Planilla Para La Declaración Anual De La Contribución Federal Del Patrono De Empleados Agrícolas*;

Form 944 *Employer's Annual Federal Tax Return*;

Form 944 (PR) *Employer's Annual Federal Tax Return*;

Form 944–SS *Employer's Annual Federal Tax Return*;

Form 945 *Annual Return of Withheld Federal Income Tax*;

Form 990 *Return of Organization Exempt from Income Tax — Under section 501(c) of the Internal Revenue Code (except Black Lung Benefit Trust or Private Foundation)*

Form 990–C *Farmers' Cooperative Association Income Tax Return*;

Form 990–EZ *Short Form Return of Organization Exempt From Income Tax — Under section 501(c) of the Internal Revenue Code (except Black Lung Benefit Trust or Private Foundation)*

Form 990–PF *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*;

Form 990–T *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*;

Form 1041 *U.S. Income Tax Return for Estates and Trusts*;

Form 1041–N, *U.S. Income Tax Return for Electing Alaska Native Settlement Trusts*;

Form 1041–QFT, *U.S. Income Tax Return for Qualified Funeral Trusts*;

Form 1042 *Annual Withholding Tax Return for U.S. Source Income of Foreign Persons*;

Form 1045 *Application for Tentative Refund*;

Form 1065 *U.S. Return of Partnership Income*;

Form 1065–B *U.S. Return of Income for Electing Large Partnerships*;

Form 1066 *U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return*;

Form 1120 *U.S. Corporation Income Tax Return*;

Form 1120–A *U.S. Corporation Short-Form Income Tax Return*;

Form 1120–C *U.S. Income Tax Return for Cooperative Associations*;

Form 1120–F *U.S. Income Tax Return of a Foreign Corporation*;

Form 1120–FSC *U.S. Income Tax Return of a Foreign Sales Corporation*;

Form 1120–H *U.S. Income Tax Return for Homeowners Associations*;

Form 1120–L *U.S. Life Insurance Company Income Tax Return*;

Form 1120–ND *Return for Nuclear Decommissioning Funds and Certain Related Persons*;

Form 1120–PC *U.S. Property and Casualty Insurance Company Income Tax Return*;

Form 1120–POL *U.S. Income Tax Return for Certain Political Organizations*;

Form 1120–REIT *U.S. Income Tax Return for Real Estate Investment Trusts*;

Form 1120–RIC *U.S. Income Tax Return for Regulated Investment Companies*;

Form 1120–S *U.S. Income Tax Return for an S Corporation*;

Form 1120–SF *U.S. Income Tax Return for Settlement Funds (Under Section 468B)*;

Form 1120–X *Amended U.S. Corporation Income Tax Return*;

Form 1139 *Corporation Application for Tentative Refund*;

Form 2290 *Heavy Highway Vehicle Use Tax Return*; and

Form 5227 *Split-Interest Trust Information Return*.

(3) The term “return” includes substitute forms (as defined in Rev. Proc. 2003–73, 2003–2 C.B. 647, or as defined in other current revenue procedures concerning the requirements for substitute

forms) for those forms listed in section 5.01 (1) and (2) above as well as any form listed in section 5.01 (1) and (2) above that is provided by the Service in a language other than English.

(4) The term “return” does not include applications for extension of time to file a return or powers of attorney. Thus, for example, a new address listed on Form 4868, *Application for Automatic Extension of Time to File U.S. Individual Income Tax Return*, or on a Form 2848, *Power of Attorney and Declaration of Representative*, will not be used by the Service to update the taxpayer's address of record.

.02 Properly processed.

(1) Except as otherwise provided by the exceptions below, a return will be considered properly processed after a 45-day processing period which begins the day after the date of receipt of the return by the Internal Revenue Submission Processing Campus. If a return is received prior to the due date for the return, however, the 45-day processing period will begin the day after the due date of the return. Returns that are not filed in a processible form may require additional processing time. If additional processing time is required, the 45-day processing period for address changes will begin the day after the error that caused the return to be unprocessable is corrected.

(2) Due to the high volume of returns received during the filing season, if a taxpayer provides new address information on a Form 1040, 1040–A, 1040–EZ, 1040 (NR), 1040 (PR), 1040–SS, or 1040–X that is received in processible form by the Service after February 14 and before June 1, the return will be considered properly processed on July 16.

(3) A clear and concise written notification of a change of address will be considered properly processed after a 45-day processing period which begins the day after the date of receipt by:

(a) the Internal Revenue Service Submission Processing Campus serving the taxpayer's old address;

(b) the Customer Service Division in the local area office; or

(c) the Service employee who contacted the taxpayer in connection with the filing of a return or an adjustment in the taxpayer's account.

(4) Clear and concise electronic notification of a change of address will be considered properly processed after a 45-day

processing period which begins the day after the date on which the taxpayer submits a new address as described in section 5.04(2) below.

(5) Clear and concise oral notification of a change of address will be considered properly processed after a 45-day processing period which begins the day after the date of the communication to the Service employee.

(6) When the processing of address change information on a particular return will require a processing time in excess of 45 days, such as in section 5.02 (2), the taxpayer may provide clear and concise written, electronic, or oral notification of a change of address to the Service in accordance with sections 5.02 (3), 5.02 (4), or 5.02 (5) above.

#### .03 Address on Return.

The “address on return” is the address information shown in the upper portion of the front page of the return. When a taxpayer files an electronic return, the address information entered by the taxpayer as part of the return will be used to update the taxpayer’s address of record.

#### .04 Clear and Concise Notification.

Clear and concise notification may be written, electronic, or oral as defined below.

(1) Clear and Concise Written Notification.

(a) Clear and concise written notification is a written statement signed by the taxpayer and mailed to an appropriate Service address informing the Service that the taxpayer wishes the address of record changed to a new address. In addition to the new address, this notification must contain the taxpayer’s full name and old address as well as the taxpayer’s social security number, individual taxpayer identification number, or employer identification number. Filers of a joint return should provide both names, social security numbers, and signatures. Individuals who have changed their last name should provide the last name shown on the most recently filed return and the new last name. In all cases, clear and concise written notification must be specific as to a change of address. Thus, a new address reflected in the letterhead of taxpayer correspondence will not by it-

self serve to change a taxpayer’s address of record.

(b) Correspondence sent by the Service that solicits or requires a response by the taxpayer that is returned to the Service by the taxpayer with corrections marked on the taxpayer’s address information will constitute clear and concise written notification of a change of address.

(c) Additionally, Form 8822, *Change of Address*, can be used by taxpayers to provide clear and concise written notification of a change of address pursuant to this revenue procedure.

(2) Clear and Concise Electronic Notification.

(a) Clear and concise electronic notification is new address information submitted by the taxpayer through one of the secure applications found on the Service’s website, located at [www.irs.gov](http://www.irs.gov). A “secure application” is one that requires the taxpayer to verify the taxpayer’s identity before accessing the application. Other forms of electronic notification, such as electronic mail sent to a Service email address, do *not* meet the definition of clear and concise notification.

(b) In addition to the new address, the taxpayer’s social security number, individual taxpayer identification number, or employer identification number must be provided, as well as any additional information requested by the specific application.

(c) The information must be entered on the Service’s secure application in the space provided and electronically submitted to the Service.

(3) Clear and Concise Oral Notification.

Clear and concise oral notification is a statement made by a taxpayer in person or directly via telephone to a Service employee who has access to the Service Master File informing the Service employee of the address change. In addition to the new address, the taxpayer must provide the taxpayer’s full name and old address as well as the taxpayer’s social security number, individual taxpayer identification number, or employer identification number. The Service employee must follow established procedures to verify the taxpayer’s identity. The Service employee also will in-

form the taxpayer that the new address, and not the former address, will be used by the Service for all purposes.

## SECTION 6. AREAS NOT COVERED BY THIS REVENUE PROCEDURE

.01 This revenue procedure does not apply to the notice requirements under sections 6221 through 6234, and 6037(c) concerning the tax treatment of partnership and subchapter S items.

.02 This revenue procedure does not apply to the following returns because of their unique processing requirements:

Form 5330 *Return of Excise Taxes Related to Employee Benefits Plans (Under sections 4971, 4972, 4973(a)(3), 4975, 4976, 4977, 4978, 4978A, 4978B, 4979A, 4980 and 4980F of the Internal Revenue Code)*; and

Form 5500 *Series Annual Return/Report of Employee Benefit Plan*.

.03 Except for notices required by law to be sent to a taxpayer’s last known address, this revenue procedure does not require the Service to continue to send notices to an address furnished by the taxpayer when it is determined after a delivery attempt that the taxpayer cannot actually be contacted or located at that address.

## SECTION 7. EFFECT ON OTHER DOCUMENTS (when applicable)

This revenue procedure supersedes Rev. Proc. 2001–18, 2001–1 C.B. 708.

## SECTION 8. EFFECTIVE DATE

This revenue procedure is effective June 1, 2010.

## SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Meghan Mahaney of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this revenue procedure, contact Meghan Mahaney at (202) 622–7950 (not a toll-free call).

## Part IV. Items of General Interest

### Draft Schedule and Instructions for Uncertain Tax Positions Proposal

#### Announcement 2010–30

In Announcement 2010–9, 2010–7 I.R.B. 408, and Announcement 2010–17, 2010–13 I.R.B. 515, the Internal Revenue Service announced it is developing a schedule requiring certain taxpayers to report uncertain tax positions on their tax returns. The Service is now releasing the draft schedule, Schedule UTP, accompanied by draft instructions that provide a further explanation of the Service’s proposal. The Service invites public comment on the draft schedule and instructions. The schedule and instructions will be finalized after the Service has received and considered all of the comments regarding the overall proposal and the draft schedule and instructions.

The draft schedule and instructions provide that, beginning with the 2010 tax year, the following taxpayers with both uncertain tax positions and assets equal to or exceeding \$10 million will be required to file Schedule UTP if they or a related party issued audited financial statements:

- Corporations who are required to file a Form 1120, *U.S. Corporation Income Tax Return*;

- Insurance companies who are required to file a Form 1120 L, *U.S. Life Insurance Company Income Tax Return* or Form 1120 PC, *U.S. Property and Casualty Insurance Company Income Tax Return*; and
- Foreign corporations who are required to file Form 1120 F, *U.S. Income Tax Return of a Foreign Corporation*.

The draft schedule and instructions also provide that, for 2010 tax years, the Service will not require a Schedule UTP from Form 1120 series filers other than those identified above (such as real estate investment trusts or regulated investment companies), pass-through entities, or tax-exempt organizations. The Service will determine the timing of the requirement to file Schedule UTP for these entities after comments have been received and considered.

The Service is reviewing the extent to which the proposed Schedule UTP duplicates other reporting requirements, such as Form 8275, *Disclosure Statement*; Form 8275–R, *Regulation Disclosure Statement*; Form 8886, *Reportable Transaction Disclosure Statement*; and the Schedule M–3, *Net Income (Loss) Reconciliation for Corporations With Total Assets of \$10 Million or More*. The draft instructions provide that a taxpayer will be treated as having filed a Form 8275 or Form 8275–R for tax positions that are properly reported on

Schedule UTP. The Service is considering other circumstances under which a tax position reported on Schedule UTP need not be separately reported elsewhere on the tax return or another disclosure statement.

Comments on Announcement 2010–9, Announcement 2010–17, the draft schedule, and the draft instructions should be submitted by June 1, 2010.

Comments should be submitted to: Internal Revenue Service, CC:PA:LPD:PR (Announcement 2010–9), Room 5203, P.O. Box 7604, Ben Franklin Station, N.W., Washington, D.C. 20044. Alternatively, comments may be hand delivered between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, to CC:PA:LPD:PR (Announcement 2010–9), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Comments may also be transmitted electronically via the following e-mail address: *Announcement.Comments@irs.counsel.treas.gov*. Please include “Announcement 2010–9” in the subject line of any electronic communications. All comments will be available for public inspection and copying.

The principal author of this announcement is Kathryn A. Zuba of the Office of Associate Chief Counsel (Procedure & Administration). For further information regarding this announcement, contact Kathryn A. Zuba at (202) 622–7583 (not a toll-free call).



Name of entity as shown on page 1 of tax return

EIN of entity

This Part II, Schedule UTP (Form 1120) is page \_\_\_\_\_ of \_\_\_\_\_ Part II pages.

**Part II** **Uncertain Tax Positions For Prior Tax Years.** See instructions for how to complete columns A through G. Enter, in Part III, a description for each Uncertain Tax Position (UTP).

Check this box if the corporation was unable to obtain information from related parties sufficient to determine whether a tax position is a UTP (see instructions)

A. UTP No.	B. Primary IRC sections (e.g., "61", "108", etc.)			C. Timing Codes (check if Permanent, Temporary, or both)		D. Pass-Through Entity EIN	E. Check if Administrative Practice	F. Maximum Tax Adjustment (size of issue)	G. Year of Tax Position
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Draft: April 19, 2010

Department of the Treasury  
Internal Revenue Service

2010

# Instructions for Schedule UTP

Uncertain Tax Positions Statement  
Use for Forms 1120, 1120-F, 1120-L, and 1120-PC

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Section references are to the Internal Revenue Code unless otherwise noted.

## General Instructions

### Purpose of Schedule

Schedule UTP asks for information about tax positions that affect the United States federal income tax liabilities of certain corporations that issue or are included in an audited financial statement and have assets equal to or exceeding \$10 million.

### Reporting Uncertain Tax Positions on Schedule UTP

**Tax positions to be reported.** Schedule UTP requires the reporting of a corporation's federal income tax positions for which the corporation or a related party has recorded a reserve in an audited financial statement. Schedule UTP also requires the reporting of tax positions taken by the corporation in a tax return for which a reserve has not been recorded by the corporation or a related party based on an expectation to litigate or an IRS administrative practice.

A tax position is required to be reported on a Schedule UTP attached to a particular tax year's return if (a) at least 60 days before filing the tax return a reserve has been recorded with respect to that tax position, or at least 60 days before filing the tax return a decision was made not to record a reserve based on an expectation to litigate or an IRS administrative practice, and (b) the tax position has been taken by the corporation in a tax return for the current tax year or a prior tax year.

A tax position must be reported regardless of whether the audited financial statement is prepared based on United States generally accepted accounting principles (GAAP), International Financial Reporting Standards (IFRS), or other country-specific accounting standards, including a modified version of any of the above (for example, modified GAAP) that requires a taxpayer to record a reserve for federal income tax positions.

A tax position is based on the unit of account in the audited financial statements in which the reserve is recorded. A tax position taken in a tax return means a tax position that would result in an adjustment to a line item on that tax return if the position is not sustained. A line item on a tax return may be affected by multiple units of account, in which case each unit of account must be reported separately on Schedule UTP.

**Reporting current year and prior year tax positions.** Tax positions taken by the corporation in the current year's tax return for which the decision whether to record the reserve was made at least 60 days before filing the tax return are reported on Part I. Tax positions taken by the corporation in a prior year's tax return for which the decision whether to record the reserve was made at least 60 days before filing the tax return are reported on Part II. A corporation is not required to report a tax position it has taken in a prior tax year if the corporation reported that tax position on a Schedule UTP filed with a prior year tax return. If a transaction results in tax positions taken in more than one tax return (and a decision whether to reserve has been made), the tax positions arising from the transaction must be reported on Part I of the Schedule UTP attached to each tax return in which a tax position resulting from the transaction is taken regardless of whether the transaction or a tax position resulting from the transaction was disclosed in a Schedule UTP filed with a prior year's tax return. See Example 6. Do not report a tax position on Schedule UTP before the tax year in which the tax position is taken in a tax return by the corporation.

**Determinations made within 60 days prior to filing the tax return.** Tax positions for which a reserve was recorded within 60 days before filing a tax return, or a decision not to record a reserve was made during that same period based on an expectation to litigate or an IRS administrative practice, must be reported either on Part I of the Schedule UTP for the current year or on Part II of the Schedule UTP for the next tax year.

**Concise description of tax position.** A corporation that reports a tax position in either Part I or Part II is required to provide a concise description of each tax position on Part III. See Examples 14, 15, and 16.

**Transition rules.** A corporation is not required to report on Schedule UTP a tax position taken in (a) a tax year beginning before December 15, 2009, or (b) a tax year beginning on or after December 15, 2009, and ending before January 1, 2010, regardless of whether or when a reserve was recorded with respect to that tax position.

**Electronic Filing. [RESERVED]**

## **Who Must File**

A corporation must file Schedule UTP with its income tax return if:

1. The corporation files Form 1120, U.S. Corporation Income Tax Return; Form 1120 F, U.S. Income Tax Return of a Foreign Corporation; Form 1120 L, U.S. Life Insurance Company Income Tax Return; or Form 1120 PC, U.S. Property and Casualty Insurance Company Income Tax Return;
2. The corporation has assets equal to or exceeding \$10 million;
3. The corporation or a related party issued an audited financial statement and the audited financial statement covers all or a portion of the corporation's operations for all or a portion of the corporation's tax year; and
4. The corporation has one or more tax positions that must be reported on Schedule UTP.

A corporation's assets equal or exceed \$10 million if the amount reported on Part I, Box D of Form 1120, or the higher of the beginning or end of year total assets amounts reported on Schedule L of Form 1120-F, Form 1120-L, or Form 1120-PC, is at least \$10 million.

Schedule UTP must accompany a tax return and should not be filed separately. A taxpayer that files a protective Form 1120, 1120 F, 1120 L, or 1120 PC must file Schedule UTP if it satisfies the requirements set forth above.

**Affiliated groups.** An affiliated group of corporations filing a consolidated return will file a Schedule UTP for the affiliated group. The affiliated group need not identify the member of the group to which the tax position relates or which member recorded the reserve for the tax position. Any affiliate that files separately and satisfies the requirements set forth above must file a Schedule UTP with its return setting forth its own tax positions.

## Definitions

**Audited financial statement.** An audited financial statement means a financial statement that an independent third party expresses an opinion on under GAAP, IFRS, or another country-specific accounting standard, including a modified version of any of the above (for example, modified GAAP) that requires a taxpayer to record a reserve for federal income tax positions.

**Record a reserve.** In general, a corporation or a related party records a reserve with respect to a tax position taken by the corporation when any of the following occurs in an audited financial statement of the corporation or a related party:

1. An increase in a liability for income taxes payable or a reduction of an income tax refund receivable with respect to the tax position,
2. A reduction in a deferred tax asset or an increase in a deferred tax liability with respect to the tax position, or
3. Both (1) and (2) above.

The initial recording of a reserve will trigger reporting of a tax position, but subsequent reserve increases or decreases with respect to a tax position taken in a tax return will not.

*Examples - All examples assume the corporation is a calendar year taxpayer*

*Example 1 (general rule regarding recording a reserve).* A corporation has an investment in a partnership and receives a Form 1065 Schedule K-1 from the partnership stating the corporation's share of ordinary income is \$100. The partnership took a tax position in its 2010 tax return that resulted in the exclusion of \$20 of income reported on the corporation's Schedule K-1. The corporation excluded the \$20 of income from its 2010 tax return, and on September 30, 2010, the corporation recorded a reserve with respect to this tax position taken in the 2010 tax return. Because the corporation recorded a reserve for the tax position taken in the 2010 tax year more than 60 days before filing its tax return for the 2010 tax year, the corporation must report the tax position on the Schedule UTP filed with its 2010 tax return.

*Example 2 (reserve increase).* A corporation took a tax position in its 2010 tax return and recorded a reserve for the tax position on September 30, 2010. On December 31, 2012, the corporation increased its reserve with respect to the tax position taken in its 2010 tax return. Because the corporation recorded a reserve with respect to its 2010 tax position more than 60 days before filing its 2010 tax return, the corporation must report the 2010 tax position on the Schedule UTP filed with its 2010 tax return. The taxpayer is not required to report the 2010 tax position again on its 2012 tax return as a result of the reserve increase in 2012.

**Related party.** A related party is any entity that is related to the corporation under sections 267(b), 318(a), or 707(b), or any entity that is included in a consolidated audited financial statement in which the corporation is also included.

*Examples - All examples assume the corporation is a calendar year taxpayer.*

*Example 3 (related party general rule).* Corporation A is a corporation filing Form 1120 with \$20 million of assets. Corporation B is a foreign corporation not doing business in the United States and is related party to Corporation A. Corporations A and B issue their own audited financial statements. If Corporation A has taken a tax position in a tax return, but does not record a reserve with respect to that tax position in its own audited financial statements, that tax position must be reported by Corporation A on its Schedule UTP if the audited financial statements of Corporation B include a reserve with respect to that tax position.

*Example 4 (reserve recorded in consolidated financial statement).* Corporation C files a Form 1120 and has assets of \$20 million. Corporations C and D issue a consolidated audited financial statement, but

they do not file a consolidated tax return. Corporation C has taken a tax position for which a reserve was recorded in the consolidated financial statements of Corporations C and D. The tax position taken by Corporation C on its tax return must be reported on its Schedule UTP because a reserve was recorded for its tax position in a consolidated financial statement in which Corporation C was included.

**Reserve not recorded based on administrative practice.** A tax position required to be reported on Schedule UTP includes a tax position for which a reserve would have been recorded in the audited financial statement but for a determination that, based upon past administrative practices and precedents of the IRS in dealing with the tax position of the taxpayer or similar taxpayers, the IRS has a practice of not challenging the tax position during an examination.

**Reserve not recorded based on expectation to litigate.** A tax position required to be reported on Schedule UTP includes a tax position for which a reserve was not recorded in the audited financial statement after the taxpayer or a related party determines that, if the IRS had full knowledge of the tax position it is unlikely a settlement could be reached. For this purpose, a settlement is unlikely if the probability of settlement is less than 50%.

*Example 5 (expectation to litigate).* A corporation takes a position that it can exclude certain income from its 2010 tax return. On September 30, 2010, the corporation determines that, if the IRS had full knowledge of the tax position, there is less than a 50% probability of settling the issue with the IRS. The corporation also determines that, if the tax position were litigated, it has a 60% probability of prevailing in the litigation. Based upon these determinations, the corporation did not record a reserve for the tax position. Because the corporation made a decision not to record a reserve with respect to its 2010 tax position based on a determination, consistent with applicable accounting standards, that it will litigate, rather than settle, the issue with the IRS and that the corporation will prevail in the litigation, and because that decision was made more than 60 days before filing its 2010 tax return, the corporation must report this tax position on the Schedule UTP filed with its 2010 tax return.

**Tax position taken in a tax return.** A tax position taken in a tax return means a tax position that would result in an adjustment to a line item on that tax return (or would be included in a section 481(a) adjustment) if the position is not sustained.

*Examples - All examples assume the corporation is a calendar year taxpayer*

*Example 6 (permanent differences).* A corporation incurs an expenditure in its 2010 tax year and takes the position that the expenditure may be amortized over 5 years beginning in its 2010 tax return. The corporation determines it is uncertain whether any current deduction or amortization of this expenditure is allowable. The corporation has taken a tax position in each of the 5 tax years because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained.

*Example 7 (temporary difference).* A corporation incurs an expenditure in its 2010 tax year and claims a deduction for the entire amount on its 2010 tax return. The corporation determines it is uncertain whether the deduction is allowable in the 2010 tax year or the amount instead is amortizable over 5 years. The corporation has taken a tax position in each of the 5 years, even though it claimed a deduction in a single year, because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained.

*Example 8 (use of expiring net operating loss carryforward).* A corporation has a \$100 net operating loss carryforward that will expire unless it is used in the 2010 tax year. The corporation reports \$100 of income in 2010 but is uncertain whether the income should be reported in 2010 or 2011. The corporation has taken a tax position in each of its 2010 and 2011 tax returns because in each return there would be an adjustment to a line item on that return if the position taken in that year is not sustained.

Whether any of the tax positions taken in Examples 6, 7, or 8 must be reported on Schedule UTP in a particular tax year depends upon whether a reserve is recorded in an audited financial statement or is not recorded because of an expectation to litigate or an IRS administrative practice.

**Unit of account.** A unit of account is the level of detail used in analyzing a tax position, taking into account both the level at which the taxpayer accumulates the information to support the tax return and the level at which the taxpayer anticipates addressing the issue with the IRS. The unit of account used by a GAAP or modified GAAP taxpayer for reporting a tax position on Schedule UTP must be the same unit of account used by the taxpayer for GAAP or modified GAAP. In the case of audited financial statements prepared under other accounting standards, a unit of account based on an entire tax year or entire income tax return for a tax year may not be used as the basis for determining a tax position to be reported on Schedule UTP, even if that is the level of detail used for other applicable accounting standards, such as IFRS. In such cases, a unit of account that may be used as the basis for determining a tax position to be reported on Schedule UTP is any level of detail that is consistently applied and reasonably based on the items of income, gain, loss, deduction or credit.

### **How to Calculate Maximum Tax Adjustment (MTA)**

**General.** The MTA for a tax position taken in a tax return is an estimate of the maximum amount of potential United States federal income tax liability associated with the tax year for which the tax position was taken. The MTA is determined on an annual basis. For tax positions that relate to items of income, gain, loss, and deduction, estimate the total amount in dollars and multiply by 0.35 (35%). For items of credit, estimate the total amount of credit in dollars. Combine the dollar estimates related to all applicable items of income, gain, loss, deduction, and credit to determine the MTA of that tax position. For example, the MTA for a tax position taken in a tax return claiming a \$100 deduction is  $\$100 \times 0.35$  or \$35. The MTA for a tax position taken in a tax return claiming a \$50 credit is \$50.

The MTA does not include interest or penalties. The effects of a tax position on state, local, or foreign taxes are disregarded when computing the MTA.

Each item of income, gain, loss, deduction or credit relating to a tax position taken in a tax return is determined separately and may only be offset by other such items relating to that tax position. For example, if a \$100 deduction is associated with a tax position taken in a tax return, enter \$35 on Schedule UTP, even if that deduction is used to offset \$100 of income generated by general operations of the business. Likewise, if \$200 of income is associated with a tax position taken in a tax return, enter \$70 [ $\$200 \times 0.35$ ] on Schedule UTP, even if the \$200 of income was offset by \$200 of net operating losses. Items of income, gain, loss, deduction, or credit associated with a tax position may offset each other in determining the MTA for that tax position. For example, if income of \$100 is associated with a tax position taken in a tax return and a deduction of \$300 is associated with that same tax position, then the MTA is \$70 [ $\$300 - \$100 \times 0.35$ ].

**Affiliated groups.** The determination of the MTA for a tax position taken in a tax return by an affiliated group is to be determined at the affiliated group level and must take into account all items of income, gain, loss, deduction, or credit with respect to that tax position for all members of the affiliated group.

**Determination of MTA for valuation and transfer pricing tax positions.** A determination of a maximum tax adjustment amount is not required for valuation or transfer pricing tax positions. Instead, the MTA reporting requirement is satisfied by indicating whether the tax position is a valuation or a transfer pricing tax position and by providing a ranking of these tax positions based on either the amount recorded as a reserve for United States federal income tax for that tax position taken in the tax return, or the estimated adjustment to United States federal income tax that would result if the tax position taken in the tax return is not sustained. For tax positions that relate to items of income, gain, loss, and deduction, estimate the total amount in dollars and multiply by 0.35 (35%). The corporation may choose either method and is not required to describe the method chosen or report the reserve or adjustment amounts for the reported positions. The method selected must be consistently applied to all valuation tax positions and transfer pricing tax positions reported on this schedule. The rankings should be done separately for

the valuation tax positions and the transfer pricing tax positions. See Specific Instructions to Parts I and II, Column F.

### **Coordination with Other Reporting Requirements**

A complete and accurate disclosure of a tax position on the appropriate year's Schedule UTP will be treated as if the corporation filed a Form 8275, Disclosure Statement, or Form 8275-R, Regulation Disclosure Statement, regarding the tax position. A separate Form 8275 or Form 8275-R need not be filed to avoid penalties with respect to that tax position.

### **Other disclosures and penalties. [RESERVED]**

### **Comprehensive Examples**

*All examples assume the corporation is a calendar year taxpayer.*

*Example 9 (temporary difference).* A corporation incurs an expenditure in 2010 and claims the entire amount as a deduction on its 2010 return. On September 30, 2010, the corporation determines it is uncertain whether the expenditure should instead be amortized over 5 years and records a reserve with respect to the position taken in 2010. The corporation did not record a reserve for any of the positions taken in tax years 2011 through 2014. The corporation has taken a tax position in each of the 5 tax years because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained. The tax position taken in the 2010 tax year must be reported on Part I of Schedule UTP filed with the 2010 tax return because a reserve was recorded with respect to the tax position more than 60 days before filing that return. None of the 2011 to 2014 tax positions must be reported on Schedule UTP because the corporation did not record a reserve with respect to any of those tax positions.

*Example 10 (permanent differences).* A corporation incurs an expenditure in 2010 and takes the position that the expenditure may be amortized over 5 years beginning in its 2010 tax return. The corporation determines it is uncertain whether any deduction or amortization of this expenditure is allowable. On September 30 of each year beginning in 2010, the corporation records a reserve with respect to the amortization deduction claimed in each tax year. The corporation has taken a tax position in each of the 5 tax years because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained. Because the corporation recorded a reserve for the 2010 tax position more than 60 days before filing the 2010 tax return, the corporation must report the 2010 tax position on Part I of Schedule UTP for the 2010 tax year. In addition, because the corporation recorded a reserve more than 60 days before filing its tax returns for tax years 2011 through 2014, the tax position taken in each of those tax years must be reported on Part I of the Schedule UTP filed with the tax return for the respective tax year in which the tax position was taken.

*Example 11 (transition rule).* The facts are the same as in Example 10, except that the corporation incurred the expenditure and recorded the reserve in 2009. The corporation has taken a tax position in each of the 5 tax years (2009 through 2013) because in each year's tax return there would be an adjustment to a line item on that return if the position taken in that year is not sustained. However, the corporation should not report the tax position taken in the 2009 tax year because it was taken in a tax year beginning before December 15, 2009. Because the corporation recorded a reserve more than 60 days before filing its tax returns for tax years 2010 through 2013, the tax position taken in each of those tax years must be reported on Part I of the Schedule UTP filed with the tax return for the respective tax year in which the position was taken.

The following chart illustrates when and how to report tax positions on Schedule UTP.

Tax year position is taken	Date of determination whether to take reserve	Date next tax return is filed after determination whether to take reserve	Tax return to which Schedule UTP is attached	Part of Schedule UTP on which tax position is reported
2011	12/1/2011	9/15/2012	2011	I
2011	5/1/2012	9/15/2012	2011	I
2011	8/6/2012	9/15/2012	2011 or 2012	I (if 2011) or II (if 2012)
2011	5/1/2013	9/15/2013	2012	II

## Specific Instructions for Part I

### Part I Uncertain Tax Positions For the Current Tax Year

#### When to Complete Part I

Part I is used to report tax positions taken by the corporation in the current year's tax return.

*All examples assume the corporation is a calendar year taxpayer.*

*Example 12.* On February 15, 2011, a corporation records a reserve relating to a tax position taken in its tax return for the 2010 tax year. The corporation files its 2010 tax return on September 15, 2011. Because the reserve for the 2010 tax position was recorded at least 60 days before filing the 2010 return, the corporation must report the 2010 tax position on Part I of Schedule UTP filed with its 2010 tax return.

*Example 13.* A corporation incurs a \$50 expenditure in 2010 and claims the entire amount as a deduction on its 2010 tax return. The deduction increases the corporation's net operating loss carryforward from \$100 to \$150. The corporation uses the entire \$150 net operating loss carryforward in its 2011 tax return. Claiming the \$50 deduction in 2010 is a tax position taken in the 2010 tax year because the position would result in an adjustment to a line item on the 2010 tax return if the position is not sustained. The deduction in 2011 of the net operating loss carried forward from 2010 is a 2011 tax position, because the position would result in an adjustment to a line item on the 2011 tax return if the position is not sustained. The corporation did not record a reserve with respect to its 2010 tax position, but did record a reserve on September 30, 2011, with respect to its 2011 tax position. Because the corporation did not record a reserve with respect to the tax position taken in 2010, the 2010 tax position is not required to be reported on Schedule UTP. However, because the corporation recorded the reserve for the 2011 tax position more than 60 days before filing its 2011 tax return, the 2011 tax position must be reported on Part I of Schedule UTP filed with the tax return for the 2011 tax year.

#### Information From Related Parties

Check the box if the corporation was unable to obtain sufficient information from one or more related parties and was therefore unable to determine whether a tax position taken in the current year's tax return is required to be reported on Part I of this schedule.

#### Column A. UTP Number

Enter a number in column A for each tax position listed in this Part. This number will be used on Part III for reporting the concise description of the tax position. Begin with the number 1 and do not skip any whole numbers.

#### Column B. Primary IRC Sections

Provide the primary IRC sections (up to three) relating to the tax position.

**Column C. Timing Codes**

Check T for temporary differences, P for permanent differences, or check both T and P for a tax position that creates both a temporary and permanent difference. Categorization as a temporary difference, permanent difference, or both must be consistent with the accounting standards used to prepare the audited financial statements.

**Column D. Pass-Through Entity EIN**

If the tax position taken by the corporation relates to a tax position of a pass-through entity, enter the EIN of the pass-through entity to which the tax position relates. For example, if the corporation is a partner in a partnership and the tax position involves the partner's distributive share of an item of income, gain, loss, deduction, or credit of the partnership, enter the EIN of the partnership. A pass-through entity is any entity listed in section 1(h)(10). If the tax position is not related to a tax position of a pass-through entity, leave this blank. Enter F if the pass-through entity is a foreign entity that does not have an EIN.

**Column E. Administrative Practice**

Check this box if the tax position must be reported because it was determined the IRS would not challenge the position upon examination based on IRS administrative practice.

**Column F. Maximum Tax Adjustment**

Enter the maximum tax adjustment amount for each tax position that is not a valuation tax position or a transfer pricing tax position. If the tax position is a valuation tax position, enter V for valuation followed by a number representing the ranking of the tax position within all reported valuation tax positions (e.g., V1). If the tax position is a transfer pricing tax position, enter TP for transfer pricing followed by a number representing the ranking of the tax position within all reported transfer pricing tax positions (e.g., TP1). Begin with the number 1 for the tax position with the largest estimated potential tax adjustment or, if applicable, the largest reserve, and do not skip any whole numbers.

**Specific Instructions for Part II [This section will not be completed in 2010]****Part II Uncertain Tax Positions For Prior Tax Years****When to Complete Part II**

Part II is used to report tax positions taken by the corporation in a prior tax year that have not been reported on a Schedule UTP filed with a prior year's tax return.

**Information From Related Parties**

Check this box if the corporation was unable to obtain sufficient information from one or more related parties and was therefore unable to determine whether a tax position taken in a prior year's tax return is required to be reported on Part II of this schedule.

**Column A. UTP Number**

Continue the numeric sequence based on the last UTP number entered on Part I. For example, if the last UTP listed on Part I is 10, enter 11 for the first UTP listed on Part II. Assign a new number to each tax position that is listed in Column G.

**Column B. Primary IRC Sections**

Refer to the instructions for Part I Column B.

**Column C. Timing Codes**

Refer to the instructions for Part I Column C.

**Column D. Pass-Through Entity EIN**

Refer to the instructions for Part I Column D.

**Column E. Administrative Practice**

Refer to the instructions for Part I Column E.

**Column F. Maximum Tax Adjustment**

Refer to the instructions for Part I Column F.

**Column G. Year of Tax Position**

List the prior tax year in which the tax position was taken and the last month of that tax year, using a six-digit number. For example, enter 201012 for tax years ending December 31, 2010, and 201108 for tax years ending August 2011.

**Specific Instructions for Part III****Part III Concise Description of Uncertain Tax Positions****When to Complete Part III**

Part III must be completed for every tax position listed in either Part I or II. Enter the corresponding UTP number from Part I or Part II related to the description.

Provide a concise description of the tax position, including information that reasonably can be expected to apprise the IRS of the identity of the tax position and the nature of the uncertainty. The description must include a statement that the position involves an item of income, gain, loss, deduction, or credit against tax; a statement whether the position involves a determination of the value of any property or right or a computation of basis; and the rationale for the position and the reasons for determining the position is uncertain. In most cases, the description should not exceed a few sentences.

*Examples of concise descriptions*

*Example 14.* The corporation investigated and negotiated several potential business acquisitions during the tax year. One of the transactions was completed during the tax year, but all other negotiations failed and the other potential transactions were abandoned during the tax year. The corporation deducted costs of investigating and partially negotiating potential business acquisitions that were not completed, and capitalized costs allocable to one business acquisition that was completed. The issue is the allocation of costs between failed acquisitions and the successful acquisition.

*Example 15.* The corporation entered into a loan transaction in which it made a general pledge of its assets to its lender. The corporation's assets include stock of FSub, a wholly-owned foreign subsidiary. FSub reports no earnings and profits for U.S. federal income tax purposes based on its treatment of an item of income that defers income recognition to a later year. The corporation has taken the position that the pledge of FSub stock did not result in an investment in U.S. property under section 956. The issue is whether there was an investment in U.S. property causing a deemed distribution of FSub earnings to the corporation as a result of the treatment of an item of FSub's income that defers its recognition.

*Example 16.* The corporation received a cash distribution from Venture LLC (Venture LLC is treated as a U.S. partnership for tax purposes). The corporation claims the distribution is not taxable because it did not exceed the corporation's basis in its interest in Venture LLC. The issue concerns (1) the computation of basis in the Venture LLC interest, and (2) the application of the disguised sale and partnership anti-abuse rules of Subchapter K and regulations thereunder to recharacterize the transaction as other than a distribution.

## Foundations Status of Certain Organizations

### Announcement 2010–31

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

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

Brown Star, Inc., Culver City, CA  
Center for Productive Worklife, Inc.,  
Aldan, PA  
Chosen to Change Enterprise, Inc.,  
Sacramento, CA  
Cover to Cover Ministries, Inc.,  
Eules, TX  
Family Empowerment Zone, Inc.,  
Saint Charles, MO  
Foundation of Daycare Providers,  
Phoenix, AZ  
Fountain of Hope Foundation,  
Yakima, WA  
Global Community Development  
Corporation, League City, TX  
Harmony Cultural Development  
Corporation, Lakeland, FL  
James Thomas & Associates, Inc.,  
Morrow, GA  
Leonard E. Hicks Multi Purpose  
Community Center Incorporation,  
Baltimore, MD  
Nazareth Ministries, New Orleans, LA  
New Generation International Community  
Service, Miami Gardens, FL

New Life Community Development  
Center, Atlanta, GA  
New Life Youth Development  
Corporation, Gary, IN  
Radicand Foundation, Pleasant Grove, AL  
Redeemed International Outreach Center,  
Palatka, FL  
Solid Rock Community Development  
Corporation, Hanover, MD  
Soulja Boyz and Girlz Academy,  
North Las Vegas, NV  
South Mansfield Community Association,  
South Mansfield, LA  
Starlite Williams Ministries, Inc.,  
Katy, TX  
St. Clair Shores Lions Charities, Inc.,  
St. Clair Shores, MI  
Tri-Centric Foundation, Inc.,  
Brooklyn, NY

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)–7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

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### Revision of Form 3115

### Announcement 2010–32

DECEMBER 2009 REVISION OF  
FORM 3115

The Internal Revenue Service has revised Form 3115, *Application for Change in Accounting Method*, and its instructions. The Form 3115 (Rev. December 2009) is the *current* Form 3115 and replaces the December 2003 version of the Form 3115.

Ordinarily, a taxpayer applies for consent to change a method of accounting for

federal income tax purposes by completing and filing a *current* Form 3115. For automatic change requests procedures, see section 6.02(1)(a) of Rev. Proc. 2008–52, 2008–36 I.R.B. 587 (as amplified, clarified, and modified by Rev. Proc. 2009–39, 2009–38 I.R.B. 371). For non-automatic change request procedures, see section 8.06 of Rev. Proc. 97–27, 1997–1 C.B. 680 (as modified and amplified by Rev. Proc. 2002–19, 2002–1 C.B. 696, as amplified and clarified by Rev. Proc. 2002–54, 2002–2 C.B. 432, as modified by Rev. Proc. 2007–67, 2007–2 C.B. 1072, and as clarified and modified by Rev. Proc. 2009–39, 2009–38 I.R.B. 371).

To allow a reasonable transition to the December 2009 Form 3115, the IRS will accept either the December 2009 Form 3115 or the December 2003 Form 3115 through May 31, 2010, except where the use of the December 2009 Form 3115 is specifically required in guidance published in the Internal Revenue Bulletin. Taxpayers filing Forms 3115 after May 31, 2010, must use the December 2009 Form 3115. The IRS encourages taxpayers to use the December 2009 Form 3115 prior to June 1, 2010.

Section 6.02(3) of Rev. Proc. 2008–52 requires a taxpayer filing a request for an automatic change to file its original Form 3115 with its return and a duplicate of that Form 3115 with the national office. If prior to June 1, 2010, a taxpayer filed its duplicate copy of Form 3115 with the national office using the December 2003 Form 3115, the taxpayer may file its original Form 3115 with its return on either the December 2003 Form 3115 or the December 2009 Form 3115.

Taxpayers may download the December 2009 Form 3115 and its instructions from the IRS website, [www.irs.gov](http://www.irs.gov), or order them by calling 1–800–TAX FORM (1–800–829–3676).

For further information regarding this announcement, contact Karla Meola at (202) 622–4930 or Brenda Wilson at (202) 622–4800 (not toll-free calls).

# Definition of Terms

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

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

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

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

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

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

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

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

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

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

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

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

# Abbreviations

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

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

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

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

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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2009–27 through 2009–52 is in Internal Revenue Bulletin 2009–52, dated December 28, 2009.

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